EXPLANATORY MEMORANDUM TO

THE PENSION SCHEMES ACT 2015 (JUDICIAL PENSIONS) (CONSEQUENTIAL PROVISION NO. 2) REGULATIONS (NORTHERN IRELAND) 2019

S.R. 2019 No. 158

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under section 83 of the Pension Schemes Act 2015 and is subject to the confirmatory procedure.

2. Purpose

2.1 These Regulations revoke and re-enact the Pension Schemes Act 2015 (Judicial Pensions) (Consequential Provision) Regulations (Northern Ireland) 2019 which would otherwise cease to have effect by virtue of section 85(3)(b) of the Pension Schemes Act 2015. The Regulations make a technical amendment to section 31 of the Public Service Pensions Act (Northern Ireland) 2014 ("the 2014 Act") in consequence of section 78 of the Pension Schemes Act 2015 which inserted section 18A of the Judicial Pensions and Retirement Act 1993 ("the 1993 Act"). This is to ensure that the relationship between the 2014 Act and a scheme for fee-paid judges established by section 18A of the 1993 Act is the same as the relationship between the 2014 Act and other judicial pension schemes established under the 1993 Act.

3. Background

3.1 Historically, fee-paid judges did not have entitlement to a pension and legislation only permitted pensions for salaried judges. Following the case of *O'Brien* v *Ministry of Justice* [2013] UKSC 6 which found that the UK's implementation of Directive 97/81/EC, as extended to the UK by Directive 98/23/EC (usually referred to as the Part-Time Work Directive), was required by EU law to extend to judicial office holders, it is now established law that a lack of a pension and other specified benefits amounted to less favourable treatment of some fee-paid judicial office holders in comparison to salaried judges doing the same or broadly similar work contrary to the Part-Time Work Directive.

3.2 The Department of Justice made the Judicial Pensions Regulations (Northern Ireland) 2015 under the 2014 Act (analogous to Regulations made by the Ministry of Justice), to implement a judicial pension scheme for future service from 1st April 2015.

3.3 Following a Legislative Consent Motion passed by the Assembly in 2014, the Lord Chancellor made the Judicial Pensions (Fee-Paid Judges) Regulations 2017 under section 18A of the 1993 Act, to provide for a remedy final salary pension for eligible fee-paid judges throughout the UK, for service from 7th April 2000 until 31st March 2015, in response to the O'Brien litigation. Section 18A of the 1993 Act enables a pension scheme for fee-paid judges to be established comparable to that for salaried judges and provides for the scheme to make provision for payments in relation to service before the scheme is established.

3.4 It had been identified that, in order to make the fee-paid judicial pension scheme, a technical, consequential amendment is required to section 31 of the 2014 Act which corresponds to an amendment made to section 30 of the Public Service Pensions Act 2013 for the rest of the UK. The legislative provision empowering the Lord Chancellor to make a fee-paid pension scheme was inserted by the Pension Schemes Act 2015, and the power to make the requisite consequential amendment to the 2014 Act vests in the Department for Communities.

3.5 The Regulations amend the definition of public body pension scheme in section 31 of the 2014 Act (analogous to Regulations made by the Ministry of Justice which amend section 30 of the 2013 Act) to ensure that the relationship between the 2014 Act and a scheme for fee-paid judges established under section 18A of the 1993 Act will be the same as the relationship between the 2014 Act and pension schemes for salaried judges under the 1993 Act.

3.6 The Regulations ensure that provisions in the 2014 Act which place restrictions on the content and operation of public sector pensions, do not apply to the new fee-paid scheme. This facilitates the establishment of the new fee-paid scheme, which must as a matter of law, be analogous to the existing final salary scheme for salaried judges for service between 7th April 2000 and 31st March 2015.

4. Consultation

4.1 There is no requirement to consult on the Regulations. They make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Justice.

5. Equality Impact

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for the Regulations. As the Regulations merely facilitate the making of the scheme for eligible fee-paid judges to ensure compliance with European law, the Department has concluded that they would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 The Regulations do not require a Regulatory Impact Assessment as they have no impact on costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 None.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations –

(a) are not incompatible with any of the Convention rights,

(b) are not incompatible with Community law,

(c) do not discriminate against a person or class of person on the ground of religious belief or political opinion, and

(d) do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 The Regulations are necessary to ensure compliance with European law.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Regulations are the Pension Schemes Act 2015 (Judicial Pensions) (Consequential Provision) Regulations 2017 (S.I. 2017/393).

10.2 The Regulations were made, and brought into operation on 13th August 2019. They revoke and re-enact the Pension Schemes Act 2015 (Judicial Pensions) (Consequential Provision) Regulations (Northern Ireland) 2019 which would otherwise cease to have effect by virtue of section 85(3)(b) of the Pension Schemes Act 2015. Under section 85(3)(b) regulations cease to have effect unless approved by resolution of the Assembly within 6 months of coming into operation. It was, therefore necessary to make the Regulations during the period of interregnum.