EXPLANATORY MEMORANDUM TO

THE PENSION SCHEMES ACT 2015 (JUDICIAL PENSIONS) (CONSEQUENTIAL PROVISION) REGULATIONS 2017

2017 No. 393

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 These Regulations make a consequential amendment to section 30 of the Public Service Pensions Act 2013 ("the 2013 Act") to enable the creation of a pension scheme for eligible fee-paid judges that corresponds with the arrangement for a final salary pension scheme for salaried judges as established by the Judicial Pensions and Retirement Act 1993 ("the 1993 Act").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Section 78 of the Pension Schemes Act 2015 inserted a new section 18A into the 1993 Act to enable the creation of a pension scheme for fee-paid judges. That provision was enacted in consequence of the decision in *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. Subsection (6) of section 18A of the 1993 Act provides that such a scheme may make provision comparable to Part 1 or section 20 of, or Schedule 2 or 2A to, the 1993 Act. Section 30 of the 2013 Act creates a set of requirements for public sector pension schemes enacted after that section came into force which contains provision incompatible with making such a scheme. This consequential provision is being made now to amend section 30 to enable the Judicial Pensions (Fee-Paid Judges) Regulations 2017, which will create a pension scheme for fee-paid judges, to make equivalent provision to the 1993 Act.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales, Scotland and Northern Ireland.

5.2 The territorial application of this instrument is to the United Kingdom.

6. European Convention on Human Rights

6.1 The Lord Chancellor and Secretary of State for Justice, The Right Honourable Elizabeth Truss MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Pension Schemes Act 2015 (Judicial Pensions) (Consequential Provision) Regulations 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 This amendment is required to facilitate the establishment of the Fee Paid Judicial Pension Scheme (FPJPS) which is intended, subject to parliamentary approval, to be established by the Judicial Pensions (Fee-Paid Judges) Regulations 2017. As explained above, following the case of *O'Brien v MOJ* it is now established law that a lack of 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.

7.2 The Ministry of Justice made a commitment to implement a pension scheme for fee-paid judges. This commitment was honoured for future service (subject to transitional protection) by the Judicial Pensions Regulations 2015. However a new scheme will be required as the remedy in respect of reckonable fee-paid service from 7 April 2000 (the date when the Part-Time Work Directive ought to have been transposed into UK law). To achieve this new section 18A was enacted as set out above.

7.3 The Public Sector Pensions Act 2013 enacted the government's policy on public sector pensions. Section 30 of that Act placed certain restrictions on the content and operation of public sector pensions, subject for an exception for pre-existing pension schemes. No provision was made to permit the making of a new scheme which was comparable to a pre-existing scheme as required by the court's decisions in *O'Brien* and subsequent litigation.

7.4 These regulations are to ensure that the relationship between the 2013 Act and the FPJPS which (subject to Parliamentary approval) will be the same as the relationship between the 2013 Act and pensions for salaried judges under the 1993 Act.

Consolidation

7.5 No consolidation is applicable to this instrument.

8. Consultation outcome

8.1 There is no statutory consultation requirement applicable to this instrument. We have however shared a draft of this instrument with the devolved administrations, particularly as similar provision is required by the Northern Ireland Assembly in respect of devolved Northern Ireland judicial offices which are eligible to be a member of the FPJPS.

9. Guidance

9.1 No specific guidance is relevant for the purposes of this instrument. In accordance will usual practice a Scheme Guide will be issued by the Ministry of Justice for the FPJPS.

10. Impact

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

10.2 There is no impact on the public sector arising from this instrument. In terms of the actual FPJPS itself, once established there will be a cost to the Ministry of Justice. The FPJPS will be included within the overall Judicial Pension Scheme (JPS), which sits outside the Ministry of Justice and the JPS is responsible for its own annual accounts.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 There is no specific monitoring or review required in relation to this instrument. The Judicial Pension Board will oversee the governance of the Fee-Paid Judicial Pension Scheme, once it is established.

13. Contact

13.1 Surinder Sawali at the Ministry of Justice, Telephone: 020 3334 3142 or email: surinder.sawali@justice.gsi.gov.uk, who can answer queries regarding the instrument.