

*These notes refer to the Pensions (No. 2) Act (Northern Ireland) 2008 (c.13) which received Royal Assent on 15 December 2008*

# Pensions (No. 2) Act (Northern Ireland) 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **PART 3 – Pension Compensation**

##### *Chapter 1 - Pension compensation on divorce etc.*

##### *Section 86: Scope of mechanism*

This section sets out the scope of the pension compensation sharing mechanism that will enable compensation paid by the Pension Protection Fund to be shared on divorce or dissolution of a civil partnership.

*Subsection (2)* sets out that pension compensation rights will be shareable subject to certain exceptions that will be set out in regulations.

##### *Section 87: Interpretation*

This section sets out the meaning of particular words and phrases used throughout Chapter 1 of Part 3.

##### *Section 88: Activation of pension compensation sharing*

This section provides that orders made by a court under the Matrimonial Causes (Northern Ireland) Order 1978, the Civil Partnership Act 2004, the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 and corresponding Great Britain provisions, upon taking effect, trigger the new pension compensation sharing regime.

##### *Section 89: Creation of pension compensation debits and credits*

Pension compensation sharing will be initiated by an order of the court specifying a percentage of the compensation rights which are to be “shared” (i.e. transferred). The effect of this section is that the rights to compensation are valued for the purpose of the transfer on “valuation day” – a day during the “implementation period” (see *section 93*).

*Subsection (4)* provides a regulation-making power to enable any description of payment to be disregarded for the purposes of the compensation sharing

calculation. For example, benefits due to a survivor as a consequence of a previous marriage or civil partnership.

### ***Section 90: Cash equivalents***

This section allows the Department to establish, in regulations, the method for the calculation of the cash equivalent in pension compensation sharing cases. It is intended that this will broadly reflect the principles set out for calculating cash equivalents for early leavers.

### ***Section 91: Reduction of compensation***

This section provides for the reduction of the transferor's pension compensation payments by the percentage specified in the pension compensation sharing order (or qualifying agreement). *Subsection (3)(b)* provides for the calculation of a percentage, where the order has specified an amount.

### ***Section 92: Time for discharge of liability***

#### ***Section 93: "Implementation period"***

*Section 92* provides that the Board of the Pension Protection Fund must implement the order conferring rights to compensation on the beneficiary of a pension compensation sharing order during the implementation period. *Section 93* defines the implementation period as 4 months beginning on the date on which the sharing order takes effect or, if later, the date on which the Board receives the relevant documents.

Regulation making powers are provided to allow the Department to define the parameters of this requirement. Regulations may provide for:

- the circumstances where the implementation period can be extended;
- the information required (for example, addresses, ages, National Insurance numbers);
- the procedure for notifying the transferor and transferee of the day on which the implementation period begins; and
- the effect on the implementation period where the pension compensation sharing order is the subject of an application for leave to appeal out of time.

#### ***Section 94: Discharge of liability***

*Section 94* sets out the procedure which the Board of the Pension Protection Fund must follow in order to discharge its liability in respect of a pension compensation credit. The beneficiary of a pension compensation order will in the first place receive a notice stating that they are entitled to periodic compensation and setting out the initial annual amount of that compensation (*subsections (2) and (7)*). The initial annual amount will have been calculated by the Board (*subsection (4)*) and will reflect the value of the rights transferred

by the court (*subsection (5)*). The timing of payments and, calculation of their amounts in the future, is set out in *Schedule 4. Subsection (8)* provides a power to make provision for what is to happen if the person dies before the Board makes its calculation and sends out the notice. For example, regulations will provide for survivors' benefits to be paid where appropriate.

***Section 95: Charges in respect of pension compensation sharing costs***

The purpose of this section is to enable provision to be made to allow the Board of the Pension Protection Fund to recover from the transferor and transferee prescribed charges in respect of pension compensation sharing activity.

***Section 96: Supply of information about pension compensation in relation to divorce etc.***

***Section 97: Supply of information about pension compensation sharing***

These sections allow the Department to make regulations relating to the Board of the Pension Protection Fund releasing information on pension compensation sharing cases.

*Section 96* provides for the Department to make regulations requiring information to be supplied by the Board, or about the calculation and verification of compensation rights, in connection with proceedings for divorce or dissolution of a civil partnership. It also enables regulations to be made imposing charges for the provision of such information.

*Section 97* allows the Department to make regulations requiring the Board to provide prescribed persons with information regarding the implementation of pension compensation sharing. For example, regulations would prescribe that the parties to the divorce or dissolution of a civil partnership are provided with information about their future entitlements to compensation.

***Section 98: Pension compensation sharing and attachment on divorce etc.***

This section gives effect to *Schedule 5* which amends matrimonial and civil partnership legislation for Northern Ireland so that the court can make pension compensation sharing orders and orders for the attachment of pension compensation.

***Chapter 2 – other provision about pension compensation***

***Section 99: Charges in respect of pension sharing etc.***

This section inserts a new Article 152A into the Pensions (Northern Ireland) Order 2005 to give the Department the power to make provision through regulations for the purpose of enabling the Board of the Pension Protection Fund to recover charges, including allowing the Board to offset charges against Pension Protection Fund compensation.

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***Section 100: Amendments of Schedule 6 to the Pensions (Northern Ireland) Order 2005***

This section gives effect to *Schedule 6* which amends Schedule 6 to the Pensions (Northern Ireland) Order 2005 (pension compensation provisions).

***Section 101: Consequential amendments***

This section makes amendments to the Pensions (Northern Ireland) Order 2005 consequential on the creation of pension compensation sharing.