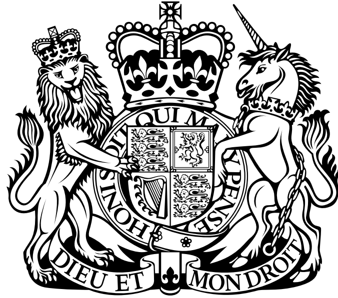

EXPLANATORY NOTES

Pensions Act (Northern Ireland) 2012

Chapter 3

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PENSIONS ACT (NORTHERN IRELAND) 2012

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Pensions Act (Northern Ireland) 2012 which received Royal Assent on 1st June 2012. They have been prepared by the Department for Social Development in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. This Act makes provision for Northern Ireland corresponding to the Westminster Pensions Act 2011.

4. In June 2010, the Westminster Government announced a review of the timetable for increasing State Pension age to 66; provided for in the Pensions Act 2007 and the Pensions Act (Northern Ireland) 2008. The response to the review was published in the White Paper *A sustainable State Pension: when the State Pension age will increase to 66 (CM 7956)* in November 2010.

5. Changes to the timetable for increasing State Pension age to 66 were proposed. The increase would be phased in by October 2020 rather than by 2026.

6. As a result of bringing forward the increase to age 66, the timetable contained in the Pensions (Northern Ireland) Order 1995 ("the 1995 Order") for equalising women's State Pension age with men's by April 2020 will be accelerated so that women's State Pension age reaches 65 by November 2018.

7. The Act implements a revised timetable.

8. An independent review of automatic enrolment into workplace pensions was announced by the Westminster Government in June 2010. The review examined the scope of the automatic enrolment policy. Recommendations, expanding on measures introduced by the Pensions Act 2008 and the Pensions (No. 2) Act (Northern Ireland) 2008 ("the Pensions (No. 2) Act"), were published in October 2010 in the report *Making Automatic Enrolment Work*. Those recommendations provide the basis for a number of measures contained in the Act.

9. The Act also introduces changes to existing legislation required as a result of the Westminster Government's decision to use the Consumer Prices Index rather than the Retail Prices Index as the measure of inflation for indexation and revaluation of occupational pensions and payments from the Pension Protection Fund.

10. A number of technical amendments, reflecting experience gained since April 2005, are made in relation to the operation of the Pension Protection Fund.

CONSULTATION

11. The paper *When should the state pension age increase to 66 – A call for evidence* was the subject of a consultation exercise carried out in Northern Ireland and Great Britain between 24 June 2010 and 6 August 2010. Two responses were received to the Northern Ireland consultation. Issues arising from the consultation were addressed in the Command Paper *A sustainable State Pension: when the State Pension age will increase to 66 (Cm 7956)* published in November 2010.

12. In 2010, the Department for Work and Pensions commissioned an external review team to re-examine the policy behind automatic enrolment. As part of this process the review team issued a call for evidence on the scope of the reforms and potential options for amending the policy. On 27 October 2010 the Westminster Government published the outcomes of the review in the report *Making automatic enrolment work – a review for the Department for Work and Pensions*.

OVERVIEW

13. The Act has five parts:

- Part 1 (which includes Schedules 1, 2 and 3) introduces provisions for amending the State Pension framework. This includes bringing forward the equalisation of State Pension age and the increase to age 66.

- Part 2 contains measures to amend the automatic enrolment provisions for workplace pension schemes. This includes –

    - the introduction of an earnings trigger at which an employee must be automatically enrolled into a workplace pension and new up-rating provisions for the qualifying earnings band on which contributions are made;

    - the introduction of an optional waiting period of up to three months before the automatic enrolment duty commences; and

    - changes to the way an employer can certify that their pension scheme meets the necessary quality test.

- Part 3 (which includes Schedule 4) contains amendments regarding indexation and revaluation requirements for occupational pensions. Part 3 also contains

provisions relating to the Pension Protection Fund and the Pensions Regulator and includes minor technical amendments to previous pensions legislation.

- Part 4 contains amendments regarding Money Purchase Benefits.

- Part 5 contains miscellaneous and technical measures.

COMMENTARY ON SECTIONS

PART 1: STATE PENSION

Section 1: Equalisation of and increase in pensionable age for men and women

Section 1 amends the rules for determining State Pension age for men and women as set out in paragraph 1 of Schedule 2 to the 1995 Order.

Subsection (2) amends sub-paragraph (1) to provide that men born before 6th December 1953, rather than those born before 6th April 1959, will continue to attain State Pension age on their 65th birthday.

Subsection (3) omits sub-paragraph (4) as a woman born between the relevant dates will now reach State Pension age on her 66th birthday.

Subsection (4) amends the timetable which sets out when a woman born on a particular date reaches State Pension age during the transition from 60 to 65. The transition is accelerated, so that instead of increasing in one-month increments, State Pension age increases in increments of three months, as laid out in the table below:

(1) Date of Birth	(2) Date State Pension age Reached under Current timetable	(3) Age on date in (2) (years/months)*	(4) Date State Pension age reached under revised timetable	(5) Age on date in (4) (years/months)*
6 April 1953 to 5 May 1953	6 May 2016	63.1 – 63.0	6 July 2016	63.3 – 63.2
6 May 1953 to 5 June 1953	6 July 2016	63.2 – 63.1	6 Nov 2016	63.6 – 63.5
6 June 1953 to 5 July 1953	6 Sept 2016	63.3 – 63.2	6 March 2017	63.9 – 63.8
6 July 1953 to 5 Aug 1953	6 Nov 2016	63.4 – 63.3	6 July 2017	64.0 – 63.11
6 Aug 1953 to 5 Sept 1953	6 Jan 2017	63.5 – 63.4	6 Nov 2017	64.3 – 64.2
6 Sept 1953 to 5 Oct 1953	6 March 2017	63.6 – 63.5	6 March 2018	64.6 – 64.5

(1) Date of Birth	**(2) Date State Pension age Reached under Current timetable**	**(3) Age on date in (2) (years/months)***	**(4) Date State Pension age reached under revised timetable**	**(5) Age on date in (4) (years/months)***
6 Oct 1953 to 5 Nov 1953	6 May 2017	63.7 – 63.6	6 July 2018	64.9 – 64.8
6 Nov 1953 to 5 Dec 1953	6 July 2017	63.8 – 63.7	6 Nov 2018	65.0 – 64.11

*Note: Those born on the last day of the period in column (1) will in fact be one day older than indicated in columns (3) and (5), for example, a woman born on 5th May 1953 will be aged 63 years, 0 months and 1 day on the day she would reach current state pension age.

Subsection (5) replaces Table 2, which provides for the transition from 65 to 66 for men and women between April 2024 and April 2026, with the revised timetable.

Subsection (6) amends sub-paragraph (7) which provides that people born on or after 6th April 1960 (namely those born after the last group affected by the schedule in Table 2) but before 6th April 1968 will have a State Pension age of 66. With the revisions made by *subsection* (5), anyone born on or after 6th October 1954 but before 6th April 1968 will now also reach State Pension age on their 66th birthday.

Subsection (7) introduces Schedule 1 (equalisation of and increase in pensionable age for men and women: consequential amendments).

Section 2: Duty to report on the impact of socio-economic background (including health indicators) in relation to retirement pension

Section 2 places a duty on the Department to report on the impact of socio-economic background (including health indicators) in relation to retirement pension. The report is to be laid before the Assembly within two years of Royal Assent.

Section 3: Abolition of certain additions to the state pension

Section 3 amends section 132 of the Social Security Administration (Northern Ireland) Act 1992 and Schedule 5 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992. This section removes the provision for new awards of small "top-up" amounts to a person's State Pension from the specified date where that person is a member of a salary-related contracted-out scheme who has delayed taking his or her private pension and earned "increments" on their Guaranteed Minimum Pension (GMP), or is the survivor of such a member. The GMP is the minimum pension a scheme is required by law to pay to a person who was in contracted-out employment between 1978 and 1997.

The small "top-up" amounts, referred to as "Payable Uprated Contracted-out Deduction Increments" (PUCODIs), are paid by the State to take account of the fact that the occupational pension scheme is only responsible for providing limited indexation on the extra amounts gained by the individual for postponing their private pension – the GMP increments. For example, schemes are not required to provide any indexation on GMP increments accrued between 1978 and 1988, but must provide indexation at the rate of the rise in the

general level of prices in Great Britain capped at three per cent for accruals between 1988 and 1997. Hence the State will index any GMP increments in line with the general rise in the level of prices for any 1978 to 1988 accruals, and by anything over three per cent for accruals between 1988 and 1997.

PUCODIs do not apply to any periods of contracted-out employment after April 1997 as the requirement to provide a GMP was replaced with the requirement to provide benefits which are broadly equivalent to those provided under the Reference Scheme Test.

Awards which have been made and are in payment before the specified date will not be affected.

Subsection (6) gives effect to Schedule 2 (Abolition of certain additions to the state pension: consequential amendments etc.).

Section 4: Consolidation of additional pension

Section 4 gives effect to Schedule 3 (Consolidation of additional pension).

PART 2: AUTOMATIC ENROLMENT

Section 5: Automatic re-enrolment where scheme membership interrupted

Section 5 amends section 2 of the Pensions (No. 2) Act. Under this section, where the jobholder is an active member of a qualifying scheme, the employer must not take any action or make any omission by which the jobholder ceases to be a member of the qualifying scheme or the scheme ceases to be a qualifying scheme unless a specified exception applies. One of those exceptions is where the employer arranges for the jobholder to become an active member of another qualifying scheme, within a prescribed period. (The definition of "jobholder" is set out in section 1 of the Pensions (No. 2) Act.)

As section 2 stands, there is no duty on the employer to automatically re-enrol the jobholder into another qualifying scheme where the employer takes an action or makes an omission referred to in the preceding paragraph. The employer can put the jobholder into another qualifying scheme but only with the jobholder's consent. In the event that this consent is not forthcoming the employer could potentially be in breach of section 2 of the Pensions (No. 2) Act until the next automatic re-enrolment date arises.

Subsection (1) amends section 2 of the Pensions (No. 2) Act so that section 2 is not contravened if, in compliance with the duty to re-enrol under section 5, the jobholder becomes an active member of an automatic enrolment scheme from the day after the jobholder ceases to be an active member of a qualifying scheme or the scheme ceases to be such a scheme or within a prescribed period of time. This subsection should be read with *Section 6(3)* which substitutes new subsection (1), and *subsection (2)* which inserts subsections (1A) and (1B) into section 5 of the Pensions (No. 2) Act. Section 5, as amended, imposes a duty to re-enrol a jobholder specified in new subsections (1), (1A) or (1B) with effect from a date specified in regulations.

Subsection (1) of section 5 of the Pensions (No. 2) Act (as amended) applies to a jobholder aged between 22 and State Pension age who earns more than £7,475. Subsections (1A) and (1B) apply to a jobholder who earns £7,475 or below, where the jobholder has ceased to be

an active member of a qualifying scheme, or where the qualifying scheme of which the jobholder was an active member has ceased to be such a scheme.

Regulations under section 5 of the Pensions (No. 2) Act, as amended by the Act, will therefore be able to provide for a duty to re-enrol to occur whenever the employer takes an action or makes an omission by which the jobholder ceases to be a member of the qualifying scheme, or the scheme ceases to be a qualifying scheme, subject to any exceptions that may be provided for.

Subsection (3) amends section 5(4) of the Pensions (No. 2) Act (circumstances in which the duty to re-enrol does not apply) to allow for regulations to prescribe the circumstances where there is no duty to re-enrol in a case where:

- the jobholder, or the employer at the jobholder's request, takes an action or makes an omission such that the jobholder is no longer a member of a qualifying scheme; or

- the jobholder opts out of membership of a qualifying scheme, under section 8 of the Pensions (No. 2) Act.

Subsection (4) amends section 5(8) of the Pensions (No. 2) Act to remove a reference to re-enrolment having to occur after the automatic enrolment date.

Subsection (5) amends section 6(4) of the Pensions (No. 2) Act (timing of automatic re-enrolment) to ensure that regulations may provide for a re-enrolment date to occur earlier than the time referred to in section 6(1)(b) of the Pensions (No. 2) Act where the jobholder ceases to be in a qualifying scheme or the scheme ceases to be a qualifying scheme by reason of an action or omission of the employer. It also removes an unnecessary reference.

Subsection (6) amends section 54(1)(a) and (b) of the Pensions (No. 2) Act (inducements) to prevent an employer from inducing a worker to give up membership of a relevant scheme without becoming an active member of another relevant scheme and without leaving a period where the worker is not a member of a scheme.

Section 6: Earnings trigger for automatic enrolment and re-enrolment

Section 6 amends sections 3 and 5 of the Pensions (No. 2) Act. Section 3 provides that an employer is under a duty to enrol a jobholder into an automatic enrolment scheme, with effect from the automatic enrolment date, where the jobholder is aged at least 22 and under pensionable age, and certain other conditions are met. Section 5 provides that an employer is under a duty to re-enrol a jobholder into an automatic enrolment scheme, on a date as set out in regulations, where the jobholder is aged at least 22 and under pensionable age, and certain other conditions are met.

Subsections (1) and (3) provide that a jobholder will not be eligible for automatic enrolment under section 3 or re-enrolment under section 5 respectively unless, in addition to complying with the above conditions, the jobholder earns in excess of £7,475 per annum (the "earnings trigger").

The earnings trigger is distinct from the band of "qualifying earnings" in section 13 of the Pensions (No. 2) Act (which concerns the earnings on which contributions are payable in the case of a "qualifying scheme" which is a money purchase or personal pension scheme). Therefore, where the jobholder has been automatically enrolled or re-enrolled, employers and jobholders must still pay contributions if the jobholder's earnings fall below the earnings trigger, but are above the lower limit of the qualifying earnings band (see section 13(1)(a) of the Pensions (No. 2) Act).

Subsections (2) and (4) define the term "earnings" for the purposes of sections 3 and 5 of the Pensions (No. 2) Act and permit an employer to use a proportionate amount of the earnings trigger where a pay reference period is shorter or longer than one year. For example, employers may wish to convert the amount of the earnings trigger to a monthly or weekly figure.

Section 7: Postponement or disapplication of automatic enrolment

Section 7 introduces an optional waiting period into the automatic enrolment process. This allows employers to defer the automatic enrolment date of a worker for up to three months by providing him or her with a notice. The notice must state that the employer intends to use a waiting period, together with details of the worker's new enrolment date.

The employer may apply the waiting period from one of three dates (according to their relevant situation):

- the employer's staging date (the date from which an employer is required to comply with the automatic enrolment duty);
- the worker's first day of employment with that employer (where that falls after the employer's staging date); or
- the first day on which a worker is eligible for automatic enrolment whilst employed by that employer. This could be, for example, the day on which the worker turns 22 or their earnings change, so that they become a jobholder who is eligible for automatic enrolment.

In the first two cases, the employer does not have to check the worker's eligibility to be automatically enrolled in a pension scheme before applying the waiting period. In all cases the employer must confirm the worker's eligibility at the end of the waiting period before automatically enrolling them.

The section amends section 7 of the Pensions (No. 2) Act so that the worker may opt into pension saving at any point during the waiting period. Regulations under the substituted section 4 (see below) may provide that the worker will be advised of this right in the notice provided by the employer.

Subsection (2) substitutes a new section 4 into the Pensions (No. 2) Act. In the case of all three dates on which the employer may apply the waiting period, in meeting the conditions for using the waiting period, the employer must have made an active choice to use the waiting period. The employer indicates this choice by giving the worker a notice.

The provision for deferral at the staging date includes the following:

- under section 4(1) a deferral notice may be given in the case of a worker who is employed on the employer's staging date. An employer may defer such a worker's automatic enrolment date to a date specified in the notice the employer gives to the worker – "the deferral date"- if, on that date, the worker satisfies certain eligibility criteria. The eligibility criteria in sections 1 and 3 of the Pensions (No. 2) Act determine whether the worker is eligible to be automatically enrolled. The employer must automatically enrol the worker, with effect from the deferral date, if the worker is eligible to be automatically enrolled on the deferral date. If the worker is not eligible to be automatically enrolled, the employer is under no duty to automatically enrol that worker into a pension scheme (and see section 4(4)).

- section 4(1)(a) provides that an employer must give a notice to all the workers whose automatic enrolment date he intends to defer. This notice should state the employer's intention to defer the automatic enrolment date of that worker until the date specified in the notice.

- section 4(1)(b) provides a power to prescribe further requirements in relation to the notice, such as its form and content.

Under section 4(2) a deferral notice may be given to a new worker who commences employment after the employer's staging date. An employer may defer the automatic enrolment date of such a worker to a date specified in the notice the employer gives to the employee – "the deferral date"- if, on that date, the worker satisfies the eligibility criteria. The eligibility criteria in sections 1 and 3 of the Pensions (No. 2) Act determine whether the worker is eligible to be automatically enrolled. The employer must automatically enrol the worker, with effect from the deferral date, if the worker is eligible to be automatically enrolled on the deferral date. If the worker is not eligible to be automatically enrolled, the employer is under no duty to automatically enrol that worker into a pension scheme (and see section 4(4)).

Under section 4(3) a deferral notice may be given to a worker who satisfies the eligibility criteria for automatic enrolment after the employer's staging date. The employer may defer that worker's automatic enrolment date to a date specified in the notice the employer gives the employee – "the deferral date". If the worker is not eligible to be automatically enrolled, the employer is under no duty to automatically enrol that worker into a pension scheme (and see section 4(4)).

Section 4(4) applies when the worker does not satisfy certain eligibility criteria on the deferral date specified in a notice under this section. In that case the duty under section 3(2) of the Pensions (No. 2) Act on employers, to automatically enrol certain workers into pension schemes, does not apply to the employer in relation to that worker. Section 4(4) provides that where the worker fails to satisfy the eligibility requirements in sections 1 and 3 of the Pensions (No. 2) Act on the deferral date, but did satisfy those criteria before the deferral date, the employer is not required to automatically enrol the worker with effect from the date when he did satisfy the criteria.

Section 4(5) provides that the employer may give a worker a notice on or before the starting day, as defined in section 4(8), or within a prescribed period after that day. The employer, if he wishes to defer the worker's automatic enrolment date, must give the notice to the worker within this timeframe.

Section 4(6) provides that the employer can defer the automatic enrolment date of a worker under this section for a maximum of three months from the starting day.

Section 4(7) has the effect that an employer cannot defer the automatic enrolment date of a worker for more than three months. The subsection provides that an employer cannot give a worker more than one notice, which could extend the deferral of that worker's automatic enrolment date beyond three months.

Section 4(8) defines "staging date" and "starting day" for the purposes of section 4.

Subsection (3) omits subsection (5) of section 5 of the Pensions (No. 2) Act as a consequence of replacing section 4 with a new provision.

Subsection (4)(a) omits subsections (3) and (6) of section 6 of the Pensions (No. 2) Act as a consequence of replacing section 4 with a new provision.

Subsection (5) omits section 7(2)(b) of the Pensions (No. 2) Act (as a consequence of the substitution of section 4) allowing a jobholder to opt in during the waiting period.

Subsection (6) amends section 30(7) of the Pensions (No. 2) Act to allow an employer who uses a transitional period under section 30 to use section 4 to defer the automatic enrolment date of a worker by up to three months from the end of that transitional period.

Section 8: Timing of automatic re-enrolment

Section 8 amends section 6(1)(b) of the Pensions (No. 2) Act to stipulate that automatic re-enrolment will not happen more frequently than once in every period of two years and nine months. The two years and nine months interval applies to the employer rather than the jobholder. This section is relevant only where the Department makes provision under section 6(1)(b) rather than section 6(1)(a).

Section 9: Review of earnings trigger and qualifying earnings band

Section 9 amends section 14 of the Pensions (No. 2) Act. Whenever the Secretary of State makes an order under section 14 of the Pensions Act 2008 reviewing the qualifying earnings band for automatic enrolment and re-enrolment, section 14 enables the Department to make a corresponding order for Northern Ireland. The amendment to section 14 takes account of the introduction of the earnings trigger for automatic enrolment and re-enrolment introduced by *section 6*.

Section 10: Rounded figures for earnings trigger and qualifying earnings band

Section 10 inserts a new section 15A into the Pensions (No. 2) Act. The amounts for the earnings trigger and the upper and lower limits of the qualifying earnings band relate to a jobholder's gross earnings in a nominal pay reference period of 12 months. Sections 3(6B), 5(7B) and 13(2) of the Pensions (No. 2) Act provide that, where an employer's pay reference

period is less or more than 12 months, those amounts will be proportionately less or more. Whenever the Secretary of State makes an order under section 15A of the Pensions Act 2008 specifying rounded figures to be used for the purposes of the corresponding provisions of that Act, section 15A enables the Department to make a corresponding Order for Northern Ireland.

Section 11: Qualifying Schemes: administration charges

Section 11 amends section 16 of the Pensions (No. 2) Act to correct an anomaly in the existing legislation, where the Department has the power to cap administration charges charged by qualifying schemes in respect of active members but not deferred members of the scheme. Section 16 as amended will enable a cap on administration charges of qualifying schemes to apply to charges made to deferred members as well as charges made to active members.

Section 12: Test scheme standard for schemes that produce sum of money for provision of benefit

Sections 21, 22 and 23 of the Pensions (No. 2) Act set out the quality requirements for defined benefits schemes used by employers to discharge their automatic enrolment duties. Quality requirements are based on a test of overall scheme quality which requires employers to compare their scheme against a benchmark or model scheme.

At present the quality requirements have been designed for defined benefits schemes in which the member accrues a pension rather than a sum of money. *Section 12* amends sections 22 and 23 to accommodate defined benefits schemes which provide a sum of money to be used for purchasing an annuity from a provider or securing a pension within the scheme and introduces a regulation making power to enable the Department to provide for the detailed requirements for a test scheme for such schemes.

Section 13: Certification that alternative to quality requirement is satisfied

Section 13 amends section 28 of the Pensions (No. 2) Act and introduces alternative self-certification arrangements for employers. Employers using money purchase occupational pension schemes, personal pension schemes or certain types of hybrid schemes to discharge their enrolment duties will be able to use section 28 to certify that their scheme satisfies the relevant quality requirements, providing the scheme satisfies certain alternative requirements, to be prescribed in regulations.

Subsections (2) and (3) make minor consequential amendments as a result of the substantive changes to section 28.

Subsection (4) inserts a new subsection (1A) into section 28 defining “relevant jobholder” as a jobholder to whom a certificate applies and providing that a reference to a “scheme” in that section includes a reference to part of a scheme.

Subsection (5) amends subsection (2) to include a new paragraph (b). The amended section 28(2) provides that the certificate must state that, in the opinion of the person giving it, the scheme being certified either satisfies the relevant quality requirements, or an alternative prescribed requirement, throughout the certification period.

Subsection (6) makes minor consequential amendments to section 28(6).

Subsection (7) amends section 32(1)(b) of the Pensions (No. 2) Act to enable scheme trustees to modify an occupational pension scheme by resolution to satisfy the quality requirements contained in section 20(1) or those requirements as modified under section 24(1)(a), or section 28(2)(b).

Section 14: Certification for non-UK schemes

Section 14 amends section 28 of the Pensions (No. 2) Act to give employers using money purchase, or personal pension schemes or the money purchase elements of hybrid schemes the option of self-certifying that their scheme meets the relevant quality requirement where the scheme has its main administration in a Member State of the EEA other than the UK.

Section 15: Transitional period for defined benefits and hybrid schemes to be optional

Section 15 amends section 30 of the Pensions (No. 2) Act which allows employers using defined benefits and hybrid schemes to adjust gradually to the additional costs of the automatic enrolment reforms. Currently, section 30 provides that for certain jobholders, where the conditions in section 30(2) are met, the automatic enrolment date under section 3 of the Pensions (No. 2) Act is automatically deferred until the end of a transitional period as set out in regulations. This section amends section 30, so that employers can choose whether or not to defer automatic enrolment until the end of that transitional period.

Subsection (2) amends subsection (3) of section 30 to provide that deferral of the automatic enrolment date will only apply where an employer serves a notice on the jobholder, within a period set out in regulations, stating that the employer intends to defer.

Subsection (3) amends subsection (4) of section 30 (provision where certain conditions in section 30(2) cease to be satisfied during the transitional period) to take account of the fact that the employer has to give a notice in order to defer the automatic enrolment date.

Subsection (4) inserts a new subsection (7A) into section 30, allowing the Department to make regulations regarding the form and content of that notice.

Section 16: Arrangements where transitional conditions cease to be satisfied

Section 16 amends section 30 of the Pensions (No. 2) Act. Under section 30(5), if certain conditions of deferral cease to apply, the employer must enrol the jobholder into an alternative scheme. Currently section 30(5) provides that the alternative scheme must either be another defined benefit or hybrid scheme, or a money purchase scheme. This amendment gives employers a further option of enrolling jobholders into a personal pension scheme. It also has the effect of requiring the Department to make regulations about the arrangements that must be made by an employer in order for the jobholder to become a member of a personal pension scheme.

Subsection (3) amends subsection (6)(b) to ensure that where an employer makes arrangements to enrol a jobholder into a personal pension scheme the jobholder is not required to make a back payment of contributions.

Section 17: Power of managers to modify by resolution

Section 17 extends section 32 of the Pensions (No. 2) Act. Section 32 provides that the trustees of an occupational pension scheme may by resolution modify the scheme so that it complies with the requirements for an automatic enrolment scheme in section 17 of the Pensions (No. 2) Act or the requirements as to payment of contributions in sections 20 and 24 of the Pensions (No. 2) Act. Section 32 is extended so that managers, as well as trustees, of occupational pension schemes are able to use this power to modify a scheme.

Section 18: No indemnification for civil penalties

Section 18 extends the prohibition in Article 233 of the Pensions (Northern Ireland) Order 2005 ("the 2005 Order") on a pension scheme trustee or manager being reimbursed out of scheme funds for fines or penalties payable by the trustee or manager. The extension covers penalties payable by a trustee or manager under section 40 or 41 of the Pensions (No. 2) Act. A trustee or manager in receipt of a fixed or escalating penalty under that Act will not be able to take monies from scheme funds in order to pay those penalties.

Section 19: Power to exempt certain cross-border employment from enrolment duty

Section 19 inserts a new Article 268A into Part 7 of the 2005 Order (cross-border activities within European Union) to provide a regulation making power allowing the Department to provide that the employer's automatic enrolment duties under the Pensions (No. 2) Act do not apply in the case of employment of an individual in relation to whom the employer is a European employer as defined in the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005.

PART 3: OCCUPATIONAL PENSION SCHEMES

Section 20: Indexation and revaluation

Section 20 amends three provisions concerning the indexation of defined benefit pensions in payment and the revaluation of the deferred pensions of early leavers from occupational pension schemes following the Westminster Government's decision to use the Consumer Prices Index (CPI) as the measure of increase in the general level of prices in place of the Retail Prices Index (RPI).

Subsections (1) to (3) amend section 80 of the Pension Schemes (Northern Ireland) Act 1993 ("the Pension Schemes (NI) Act") so that schemes which provide full uncapped revaluation of deferred members' preserved pensions (including Guaranteed Minimum Pension rights) may do so without reference to the statutory revaluation requirements contained in section 80 provided they maintain, the value of pensions by reference to the rise in the general level of prices.

Subsections (4) to (6) make consequential amendments to Schedule 2 to the Pension Schemes (NI) Act which sets out methods for revaluing accrued benefits for the purposes of section 80. In particular, where scheme rules continue to require revaluation by reference to the RPI, the scheme will not also have to consider the statutory revaluation addition calculated using the CPI.

Subsections (7) and (8) amend Article 51 of the 1995 Order to allow schemes to continue increasing pensions in payment under provisions in scheme rules rather than under the statutory requirement contained in Article 51(2). In place of increasing by reference to the RPI, schemes will be able to increase by the RPI, the CPI or a combination of the two, depending on the rules of the individual scheme. Where schemes continue to increase pensions by the RPI and have done so continuously from January 2011 (or when the pension first comes into payment if later), the amendments will ensure they will not have to carry out an annual comparison of the RPI under scheme rules and the CPI under the statutory requirements and pay the higher of the two.

Subsections (9) to (11) amend Article 37 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 to allow the Department to prescribe that (as a minimum) pension credit benefit (arising from a pension share on divorce) paid by an occupational pension scheme must be increased by reference to the percentage increase in the general level of prices determined by the Secretary of State for the purpose of the statutory revaluation requirements under the Pension Schemes Act 1993.

Section 21: Indexation requirements for cash balance benefits

Section 21 removes the requirement for cash balance benefits to be indexed under Article 51 of the 1995 Order. Cash balance benefits are benefits which the member accrues in the form of a lump sum or fund, the level of which can be determined in advance, is guaranteed to reach a particular minimum, or is determined by the application of a notional accrual rate or rate of interest. The fund is then used to buy an annuity or to provide a pension from scheme funds.

Current legislation requires that members with cash balance benefits buying or receiving an annuity or being paid a scheme pension must receive Limited Price Indexation. This means that accruals between 1997 and 2005 must be indexed to at least the lower of the RPI or five per cent and accruals post 2005 must be indexed at the lower of the RPI or 2.5 per cent.

Pensions or annuities already in payment prior to this section coming into force will continue to be indexed and will not be affected by the changes.

Section 22: Pension Protection Fund

Section 22 gives effect to Schedule 4.

Section 23: Payment of surplus to employer: transitional power to amend scheme

Section 23 amends Article 228 of the 2005 Order. Article 228 provided trustees with a transitional power to confirm or amend powers in scheme rules to make payments to the employer in the light of changes to the taxation regime for pension schemes, and to the requirements relating to payments of surplus to employers as stated in Article 37 of the 1995 Order.

Article 228 came into operation from 6th April 2006. It specifically allowed trustees to pass a resolution to confirm or amend powers in their scheme's rules to make payments to the employer, or allow them to cease to be exercisable. Trustees were required to pass a resolution within five years of the commencement of the provision (before 6th April 2011) and to satisfy prescribed requirements for notifying scheme members.

This section ensures that Article 228 does not apply to payments which trustees can make without having to satisfy the general requirements relating to payments of surplus in Article 37 of the 1995 Order. It extends the transitional period during which Article 228 will apply to 6th April 2016. This will allow trustees more time to review any powers in their scheme's rules to make payments to the employer, decide how such powers should be exercised in the future, and take whatever action they consider is necessary under Article 228.

Section 24: Contribution notices and financial support directions

Section 24 amends Articles 34, 39 and 91 of the 2005 Order. Article 34 provides the Pensions Regulator with the power to issue a contribution notice where certain conditions are satisfied. Article 39 provides the Pensions Regulator with the power to issue a financial support direction where certain conditions are satisfied. Article 91 describes the standard procedure for consideration of certain of the Pensions Regulator's functions.

At present the Regulator must determine to exercise its regulatory functions to issue a contribution notice or a financial support direction within certain statutory periods. The amendments to Articles 34 and 39 provide that those periods end with the Regulator giving a warning notice of its intention to exercise its regulatory functions instead of ending with the determination to exercise the relevant regulatory function. The amendment to Article 91 also creates a power to prescribe a period after giving a warning notice beyond which the Regulator cannot exercise the relevant regulatory function.

Section 25: Technical amendment to Schedule 4 to the Pensions Act (Northern Ireland) 2008

Section 25 amends a consequential amendment made to Schedule 3 to the Pension Schemes (NI) Act and contained within paragraph 59 of Schedule 4 to the Pensions Act (Northern Ireland) 2008.

Where an employer becomes bankrupt, the amount of debt (in respect of the contributions owed to a salary-related contracted out pension scheme) is calculated according to the rebate percentages specified in Schedule 3 to the Pension Schemes (NI) Act. The consequential amendment as currently drafted would substitute out of date rebate percentages into Schedule 3 to the Pension Schemes (NI) Act. This amendment will ensure the most recent rebate percentages are retained in that Schedule.

Section 26: Technical amendment to section 38(2) of the Pension Schemes (Northern Ireland) Act 1993

Section 26 amends an inaccurate cross-reference in section 38(2) of the Pension Schemes (NI) Act. The power specified previously allowed the percentages stated in Schedule 3 to that Act (in respect of contributions owed by bankrupt employers of salary-related contracted-out schemes) to be changed in line with changes to the rebate percentages. The amendment refers to the correct paragraph in Schedule 3 which contains the rebate percentages.

PART 4: MONEY PURCHASE BENEFITS

Section 27: Definition of money purchase benefits

Section 27 amends the Pension Schemes (NI) Act and the Pensions (No. 2) Act to amend the definition of money purchase benefits. The effect is to ensure that, in order for a benefit to qualify as a money purchase benefit, the amount or rate of the benefit must be calculated only by reference to assets which must necessarily suffice to provide the benefit. If any other factor such as a guaranteed investment return or other guarantee of the amount were used to calculate the benefit, it is not a money purchase benefit. The aim is to ensure that money purchase benefits cannot develop a funding deficit. In the case of a scheme pension in payment, the pension must be backed by an annuity contract or insurance policy to be a money purchase benefit.

Subsections (5) and (6) give retrospective effect to the amendments.

Section 28: Transitional

Section 28 provides a power, by regulations, to make transitional provision in relation to the coming into operation of the amendments in *section 27*. This includes power to disapply the amended definition of money purchase benefits, and power to modify the application of other legislation where the amended definition applies.

Section 29: Consequential and supplementary

Section 29 provides a power, by regulations, to make consequential or supplementary provision in relation to the amendments made by *section 27*. *Subsection 2* amends Article 280 of the 2005 Order to allow provisions of that Order relating to scheme funding to be modified in relation to hybrid schemes, multi-employer schemes or partnerships. For example, this would allow provision to be made for hybrid schemes which provide both money purchase and defined benefits, so that regulatory requirements could be separately applied to different parts of the scheme.

Section 30: Power to make further provision

Section 30 provides a power to make further amendments to the definitions of money purchase benefits in the Pension Schemes (NI) Act and the Pensions (No. 2) Act.

Section 31: Regulations

Section 31 makes technical provision for regulations made under this Part, in particular it allows regulations to amend primary legislation and to have retrospective effect.

PART 5: MISCELLANEOUS AND GENERAL

Section 32: Grants by the Department to advisory bodies etc

Section 32 amends section 169 of the Pension Schemes (NI) Act to enable the Department to make grants to pensions advisory bodies or those undertaking such other functions in relation to pensions as may be specified in regulations. As these grants will be made under section 169, the expenditure can be recouped under the general levy which is imposed on

occupational and personal pension schemes under section 170 of the Pension Schemes (NI) Act and is collected by the Pensions Regulator on behalf of the Department.

Section 33: Service of documents and electronic working

Section 33 introduces a 'service rule' covering Part 1 (Chapters 2 and 3 and section 59(1)(c)) and Part 3 (Chapter 1) of the Pensions (No. 2) Act. This section applies the service rule as set out in Articles 277 and 278 of the 2005 Order and makes minor consequential amendments to section 59(1)(c).

A service rule provides a means of proving that a notice or other document authorised or required by this legislation was sent to its intended recipient. It specifies the persons to whom the notification or documents are to be sent and the manner in which they can be properly served on them.

Schedule 1: Equalisation of and increase in pensionable age for men and women: consequential amendments

Schedule 1 amends the definition of "pensionable age" in sections 2A, 2AA and 2D of the Social Security Administration (Northern Ireland) Act 1992. Those provisions contain regulation-making powers under which regulations may be made requiring a person, or the partner of a person, claiming one of a specified list of social security benefits to attend a work-focused interview or engage in work-related activity to prepare them for returning to work, if that person (or the partner of that person) is under pensionable age, as defined.

Paragraphs 1, 2 and 3 amend the definition of "pensionable age" in the above provisions where, for the purposes of ensuring that the relevant provisions apply equally to men and women, a man born before 6th April 1955 is deemed to be of pensionable age if he is the same age as a woman who has reached State Pension age. With the acceleration in the timetable for State Pension age equalisation, only men born before 6th December 1953 will have a higher state pension age than a woman born on the same day.

Paragraph 4 amends Article 123 of the 1995 Order which gives effect to Schedule 2 to that Order. The amendment modifies the descriptive words introducing the Schedule.

Paragraph 5(a) makes an equivalent amendment to section 11 of the Pensions Act (Northern Ireland) 2008 to amend the period over which the State Pension age will increase from 65 to 68.

Paragraph 5(b) amends the date from which a number of consequential amendments made by the Pensions Act (Northern Ireland) 2008 were to have taken effect. These amendments replace age 65 with "pensionable age" for the purposes of:

- the upper age for qualification for Disability Living Allowance;
- the minimum age for entitlement to Attendance Allowance;
- the maximum age for entitlement to Widow's Pension;
- the minimum age for entitlement to the savings credit element of Pension Credit; and

- the minimum age for eligibility for the £10 Christmas Bonus where the sole qualifying benefit is War Disablement Pension.

These age thresholds will change in line with State Pension age once it exceeds 65. The amendment made by *paragraph 5(b)* inserts the new date from which that will take place.

Schedule 2: Abolition of certain additions to the state pension: consequential amendments etc

Schedule 2 makes amendments in the Social Security Contributions and Benefits (Northern Ireland) Act 1992 which are consequential on *section 3* and repeals amending enactments which are now spent.

Schedule 3: Consolidation of additional pension

Schedule 3 makes amendments to remove the references in the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and amendments inserted by the Pensions (No. 2) Act that link the start date for additional State Pension consolidation to the flat rate introduction year. The amendments provide a power to set the consolidation start date by order.

The consolidation of additional State Pension is a measure to provide a single value for a person's additional pension, the method for calculation of which has changed over time, so as to enable easier prediction of entitlement in retirement. The flat rate of additional pension is a measure by which, instead of bands of different rates by which additional pension is calculated, one flat rate is applicable. These measures were introduced to simplify the additional pension by the Pensions Act (Northern Ireland) 2008 and the Pensions (No. 2) Act; both are yet to have effect.

Consolidation will have no impact on a person's overall State Pension income over the course of their retirement, but can affect the income flow for people who have been contracted-out.

In payment contracted-out pension rights are offset against additional State Pension entitlement built up before 1997, meaning a number of people gain additional State Pension for that period at some time after pensionable age. This is because differences in the way private pension schemes increase rights in accrual and pensions in payment, compared to the state scheme, can mean that at State Pension age a person's additional State Pension entitlement for that period might be small, or non-existent, but increases later on in retirement.

Under consolidation, actuarial factors would be applied to a person's contracted-out pension rights in order to smooth the disparities in entitlement that occur during retirement. As a result, there are short-term costs to the State associated with consolidation, in that some additional State Pension entitlement for the pre-1997 period would be brought forward to State Pension age to smooth income over retirement.

This Schedule also removes the references which define those to whom the consolidation would apply, that is, those reaching State Pension age from 6th April 2020, instead providing a power to set the relevant retirement date by way of an order.

These measures provide flexibility to determine when the short-term costs outlined above will be incurred.

Schedule 4: Pension Protection Fund

Paragraphs 1 to 13 make amendments to the 2005 Order permitting the Board of the Pension Protection Fund ("the Board of the PPF") where it is able to do so, to determine the funding position of an eligible pension scheme without obtaining a fresh actuarial valuation in accordance with the requirements of Article 127(2) of the 2005 Order, which is used by the Board of the PPF to decide whether it must accept responsibility for the scheme.

A scheme's protected liabilities are the cost of providing benefits equivalent to pension compensation, any non-pension liabilities of the scheme, and the estimated cost of winding up the scheme. The amendments provide the Board of the PPF with the power to decide whether it can use other information for the purpose of determining whether the assets of the scheme are less than the protected liabilities (for example, a valuation undertaken for the purposes of calculating a scheme's pension protection levy), or whether an actuarial valuation is needed to determine the funding position of the scheme.

Paragraph 11 makes equivalent provision in relation to valuations for closed schemes under Article 142. Where a scheme has been through an assessment period and has not initially transferred into the Board of the PPF, but where the scheme's assets have subsequently fallen below its protected liabilities, the Board will also have the power to determine whether an actuarial valuation under Article 142 is required or whether it can use other information it has in order to decide if the scheme should transfer into the Pension Protection Fund.

Paragraph 13 amends Schedule 8 to the 2005 Order (which lists matters that are reviewable by the Board of the PPF) so that a determination made by the Board, in cases where it has decided that an actuarial valuation is not required, is reviewable.

Paragraphs 14 to 16 remove the requirement in Article 135 of the 2005 Order that an application for reconsideration must include a "protected benefits quotation". A protected benefits quotation is a quote, from an insurance company, of the cost of purchasing annuities providing each scheme member with benefits equivalent to the lower of the compensation which they would receive if their scheme transferred to the Pension Protection Fund and their scheme benefits.

The amendments enable the trustees or managers of an eligible scheme that has not initially transferred to the Pension Protection Fund because it was not sufficiently underfunded to apply for reconsideration if the trustees or managers are unable, despite their best efforts, to obtain a protected benefits quotation. The amendments provide the Board of the PPF with a power to determine whether the value of the assets of the scheme at the reconsideration time is less than the amount of the protected liabilities at that time. If so, the scheme may transfer into the Pension Protection Fund, without the trustees or managers obtaining a protected benefits quotation. The Board of the PPF will be able to use any information it has available and any additional information it may request in order to determine the value of the assets and liabilities of the scheme at that time.

Paragraph 15(5) and (7) amends Article 136 of the 2005 Order to enable the Board of the PPF to issue a determination notice under that Article in a form and containing such information as may be decided by the Board.

Paragraph 17 removes the requirement in Article 144 of the 2005 Order that an assessment period for the Pension Protection Fund must last for a minimum of 12 months. An assessment period starts when the employer of a scheme that is eligible for the Pension Protection Fund has a qualifying insolvency event. An assessment period may also start when an employer in relation to a scheme is unlikely to continue as a going concern and the Board of the PPF receives either an application for transfer from the scheme's trustees or managers under Article 113(1) of the 2005 Order or a notification from the Regulator under Article 113(4) of the 2005 Order. During an assessment period the Board of the PPF assesses whether or not it must assume responsibility for a scheme. The removal of the requirement in Article 144 of the 2005 Order that an assessment period must last for a minimum of 12 months will enable the Board to transfer some schemes into the Pension Protection Fund earlier.

Paragraph 18 removes the requirements in Article 288 of the 2005 Order that regulations relating to the Pension Protection Fund administration levy cease to have effect within 6 months of their coming into operation unless approved by a resolution of the Assembly. As a result, those statutory rules will be subject to the negative resolution procedure. The Pension Protection Fund administration levy is collected on behalf of the Department to recoup any money paid by the Department or the Secretary of State to meet the administrative expenses of the Board of the PPF (Article 103 of the 2005 Order).

Paragraph 19 replaces paragraph 21 of Schedule 6 to the 2005 Order so that the calculation of pension compensation paid to pension credit members includes revaluation if revaluation would have been applied under the rules of the relevant scheme to the pension credit member's benefits. Under section 79 of the Pension Schemes (NI) Act, occupational pension schemes are required to revalue benefits payable by virtue of pension credit rights only where the rights involve the pension credit member being credited by the scheme with notional pensionable service. New paragraph 21 of Schedule 6 deals with the case where the member is not credited with notional pensionable service (so that no revaluation is required). New paragraph 21A deals with the case where the member is credited with notional pensionable service (so that revaluation is required).

Under new paragraph 21A, the revaluation would be based on:

- scheme rules for the period from the implementation of a member's pension credit to the day before the start of an assessment period for the Pension Protection Fund; and

- statutory requirements for the period from the start of the assessment period to a member's normal benefit age (the equivalent, for pension credit members, to normal pension age).

As a consequence, *paragraph 20* repeals paragraphs 10 and 11 of Schedule 6 to the Pensions (No. 2) Act.

Paragraphs 21 to 28 replace an existing regulation-making power within paragraph 25A of Schedule 6 to the 2005 Order (as inserted by paragraph 13 of Schedule 6 to the Pensions (No. 2) Act) so that people may postpone payment of their pension compensation past their normal pension age.

The paragraphs provide that, if a person does postpone payment of pension compensation:

- the pension compensation cap would apply as at the time the person first becomes entitled to pension compensation (their normal pension age);
- revaluation would apply up to a member's normal pension age; and
- the Board of the PPF must provide an appropriate increase in pension compensation when it comes into payment, calculated on an actuarial basis to take account of the postponement of the start of payment.

Paragraphs 29 to 36 make amendments parallel to those in paragraphs 21 to 28. These paragraphs omit an existing regulation-making power in paragraph 11 of Schedule 4 to the Pensions (No. 2) Act, replacing it with a similar power to prescribe circumstances where a person who is entitled to pension compensation by virtue of pension compensation sharing may choose to receive compensation from a later date than normal benefit age. This power will permit postponement whether or not the person entitled to compensation is below or above normal benefit age at the time that they first become entitled to payment of compensation.

Paragraph 37 amends paragraph 35 of Schedule 6 to the 2005 Order. This paragraph requires recent changes to scheme rules, which have the effect of increasing the amount of a scheme's protected liabilities, to be disregarded in calculating the amount of compensation to which members of the scheme are entitled. Paragraph 35, in conjunction with paragraph 3(5) and 5(6) of Schedule 6, also stipulates that discretionary increases to pensions that are either in payment or postponed in the three-year period before the start of an assessment period, which have the effect of increasing the protected liabilities, are disregarded.

The amendments clarify the operation of these provisions.

HANSARD REPORTS

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction of the Act to the Committee for Social Development	8 December 2011
First Stage	23 January 2012
Second Stage	31 January 2012
Committee Stage – Departmental briefing and evidence from Access to Benefits and Northern Ireland Public Service Alliance	2 February 2012
Committee Stage – Departmental briefing	9 February 2012
Committee Stage – Departmental briefing	16 February 2012
Committee Stage – consideration of section 1, sections 3-35 and Schedules 1-4	23 February 2012
Committee Stage – Publication of Committee's report on the Act (Reference: NIA 40/11-15)	8 March 2012
Consideration Stage	27 March 2012
Further Consideration Stage	24 April 2012
Final Stage	8 May 2012
Royal Assent	1 June 2012

ANNEX

DEFINITIONS

* *the Board of the PPF* means the Board of the Pension Protection Fund
* *CPI* means Consumer Prices Index
* *the Department* means the Department for Social Development
* *GMP* means Guaranteed Minimum Pension
* *PUCODI* means Payable Uprated Contracted–out Deduction Increments
* *RPI* means Retail Prices Index
* *the 1995 Order* means the Pensions (Northern Ireland) Order 1995 (S.I. 1995 No. 3213(N.I. 22))
* *the 2005 Order* means the Pensions (Northern Ireland) Order 2005 (S.I. 2005 No. 255 (N.I. 1))
* *the Pensions (No. 2) Act* means the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)
* *the Pension Schemes (NI) Act* means the Pension Schemes (Northern Ireland) Act 1993 (c. 49)

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