EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL AND STAKEHOLDER PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2013

S.R. 2013 No. 72

1. Introduction

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

1.2 The Statutory Rule is made under sections 8C(1), 16(1) and (2), 33(1) and (2), 69(2)(b) and (4)(b), 89(1)(a), 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993, Articles 68(2)(e) and 166(1) and (2) of the Pensions (Northern Ireland) Order 1995 and Articles 3(1)(b) and (5), 4(2), 5(1) and (5), 37(1) and 73(4)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and is subject to the negative procedure.

2. Purpose

2.1 These Regulations amend a number of sets of Regulations in relation to occupational and stakeholder pension schemes. In summary, the Regulations:

- restore the policy intention to allow bulk transfer of accrued rights without member consent to non-UK pension schemes within the European Economic Area ("EEA") subject to existing transfer safeguards;

- clarify the tests to be applied in relation to rule changes in contracted-out salary-related schemes;

- allow bulk transfer of scheme membership, without member consent, from contracted-out schemes to formerly contracted-out schemes and clarify the definition of "connected employer";

- make amendments following the Government's decision to use the Consumer Prices Index rather than Retail Prices Index for the statutory minimum increases in defined benefit occupational pensions;

- clarify the calculation of increases to pensions which have been shared on divorce;

- make consequential, incidental and supplementary changes following the removal of the requirement for most employers to designate a stakeholder pension scheme.

3. Background

3.1 Bulk transfer of accrued rights without individual consent for EEA-based members (regulation 2(1) to (3))

Legislation permits bulk transfers without the consent of individual scheme members to be made to another occupational pension scheme. However, when the definition of an occupational pension scheme was amended by the Pensions (Northern Ireland) Order 2005 to make it clear that schemes based in other EEA states would be regulated by that state rather than by any UK provisions, the change inadvertently removed the ability of schemes to make bulk transfers without consent to a non-UK scheme based in another EEA country. The Regulations rectify this by allowing a transfer to a European pensions institution without consent, subject to existing bulk transfer safeguards. (Regulations 6 and 9 make consequential changes.)

3.2 Changes to contracted-out pension scheme rules (regulation 3)

The intention of the existing legislation is to protect accrued rights where schemes wish to alter their rules, so that those rights, accrued whilst the scheme met the standards set out in legislation, are not reduced. The amendment to regulation 42 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 will provide assistance to the actuary who is responsible for assessing the effect of proposed scheme rule changes on the benefits payable to members to see whether they are lawful and will enable the actuary to undertake suitable tests of the effect of any proposed rule changes to those contracted-out rights that have already accrued and contracted-out rights that are to accrue in the future. In relation to changes to benefits to accrue in the future under a contracted-out scheme, the test remains the "reference scheme test" (RST) as set out in section 8A of the Pension Schemes (Northern Ireland) Act 1993. In relation to retrospective scheme rule changes made by schemes to contracted-out rights that have already accrued, the RST is not appropriate. The new requirement means that retrospective scheme rule changes made by schemes cannot proceed if a member's accrued contracted-out rights are replaced with a money purchase benefit and would or might result in a reduction of pension payment. A rule change which might adversely affect a member's accrued rights cannot take place unless the actuarial equivalence test set out in Article 67 of the Pensions (Northern Ireland) Order 1995 is met (i.e. the change would have little effect on the overall value of the pension benefits to be provided). There is also a new requirement to preserve the value of survivors' benefits, and the circumstances in which benefits are payable to survivors.

3.3 Bulk transfer of scheme membership without member consent (regulations 2(4) and 4)

Pensions industry representatives raised concerns that the current legislation that governs bulk transfer of scheme membership without member consent was inconsistent, and caused additional administrative cost and burdens for schemes that wished to consolidate pension provision. There was also uncertainty about whether bulk transfers could take place between schemes where both schemes have the same sponsoring employer, but one scheme no longer has any active members (that is, the members are no longer employed by the sponsoring employer). The regulations are being changed to assist the pensions industry and alleviate administrative burdens. For both contracted-out and not contracted-out schemes, the amendment will allow this type of bulk transfer to take place between schemes where members were or had been in employment with the same employer; and for contracted-out schemes, allow those bulk transfers to be made to active and formerly contracted-out schemes.

3.4 Amendment of a reference to the Retail Prices Index (regulation 5)
Following the Government's move to using the Consumer Prices Index (CPI) rather than Retail Prices Index (RPI) for calculating statutory minimum pension increases, some references to the RPI in legislation need to be amended. One is a reference in the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996 where pre-1986 leavers do not have a statutory right to request their pension be transferred to another scheme if the existing scheme revalues those rights by uncapped RPI. Changing the reference to "the general level of prices" will ensure that scheme members do not gain new, and unintended, transfer rights if their scheme has changed or changes to revaluing by uncapped CPI (rather than uncapped RPI).

3.5 Calculation of increases to pension credit benefit (regulation 7)
Pension credit benefit (not to be confused with the State income-related benefit for pensioners called Pension Credit) is the name for pension rights gained by a former spouse where a pension has been shared following a divorce. The intention is that, if the benefits remain in a defined benefit arrangement, those benefits should be subject to a similar statutory minimum indexation requirement as defined benefit pensions in general. For pension credit, pensions shared before 6 April 2005 must be increased by inflation capped at 5 per cent. and rights shared after that date by inflation capped at 2.5 per cent. The annual Revaluation Order publishes the statutory minimum figures to be used. However, the existing legislation is not explicit as to which of the figures in the order should be used in which circumstances. The changes will set out which figures should be used and the method by which the appropriate indexation figure is calculated.

3.6 Increases to pension credit benefit in schemes which index by scheme rules (regulation 7)
Some schemes have provisions in scheme rules for pension increases. The current statutory minimum level of indexation for schemes which use their own reference period to calculate increases (rather than the annual revaluation order) in the pension Credit Benefit Regulations refers specifically to the Retail Prices Index. This is being replaced with a reference to the Consumer Prices Index, in line with the change made for such schemes in general by the Pensions Act (Northern Ireland) 2012. This will ensure that pension credit benefits will be indexed in the same way as other pensions including the main scheme benefits from which the pension shares have been derived. Additionally, the Pensions Act (Northern Ireland) 2012 introduced an easement for schemes which have always indexed by the Retail Prices Index and continue to do so in that they do not have to also track the Consumer Prices Index and pay increases based on that for any year that Consumer Prices Index is higher. This easement will also apply to pension credit benefits following this change.

3.7 Indexation of pension credit benefit held in cash balance schemes (regulation 7)
Cash balance schemes are schemes which provide a lump sum, with which the member can purchase an annuity but, unlike a pure money purchase scheme, there is some form of promise or guarantee as to how the lump sum is calculated. The Pensions Act (Northern Ireland) 2012 removed the requirement from 3 January 2012 for annuities bought with cash balance schemes to be indexed and the intention is to bring pension credit benefits held in cash balance schemes into line with the requirement for cash balance schemes generally. This will allow pension credit members to take advantage of a wider choice of retirement income at no cost or savings to schemes since the starting rate of an indexed annuity is lower than a flat rate annuity to reflect the indexation.

3.8 Stakeholder pensions – existing employees (regulation 8(4))
The removal of the requirement for employers to designate a stakeholder pension also removes the obligation on employers to comply with any new requests for contributions to be deducted and paid over to the designated scheme. However, employers are still required to continue deducting contributions in respect of employees who had already made a request before 1 October 2012, until the employee leaves or ceases contributing. They are not required to implement any new requests, but must allow an employee to vary the amount of the contribution as long as the new level is acceptable to the scheme. It is possible that the employer's existing designated scheme may wind up or become unavailable for reasons beyond the employer's control, while employees' requests for deductions are still valid. In these circumstances, the regulation provides that the employer will not have to continue deducting contributions, or wait until the employee formally withdraws his request.

3.9 Amendments consequential on tax changes (regulation 8(2))
There are references in the Stakeholder Pension Schemes Regulations (Northern Ireland) 2000 to the Income and Corporation Tax Act 1988 relating to permitted reductions or to people who may set up stakeholder schemes which have been superseded by the Finance Act 2004. The Department is taking this opportunity to update the references.

3.10 Revocations (regulation 10)
Several consequential revocations are made.

4. Consultation

4.1 There is no requirement to consult on these Regulations.

5. Equality Impact

5.1 Proposals for the Pensions (No. 2) Act (Northern Ireland) 2008 and the Pensions Act (Northern Ireland) 2012 were subject to full Equality Impact Assessments. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals. As the amendments are technical in nature, the proposals would have little implication for any of the section 75 categories. In light of this, the Department has concluded that the proposals would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 Regulatory Impact Assessments were carried out on the proposals for the Pensions (No. 2) Act (Northern Ireland) 2008 and the Pensions Act (Northern Ireland) 2012. The proposed Rule does not require a Regulatory Impact Assessment as it has no impact on costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 None for the Department.

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 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Regulations are the Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/459) which come into force on 6th April 2013. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.