

**EXPLANATORY MEMORANDUM TO
THE DIVORCE etc. (PENSION PROTECTION FUND) REGULATIONS
(NORTHERN IRELAND) 2006**

2006 No. 310

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These regulations make modifications to Part III of the Matrimonial Causes (Northern Ireland) Order 1978 (“the 1978 Order”) and to the Divorce etc. (Pensions) Regulations (Northern Ireland) 2000 following the implementation of the Pensions Act 2004 and the Pensions (Northern Ireland) Order 2005.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Background**

The Pensions Act 2004 and the Pensions (Northern Ireland) Order 2005

- 4.1 The Pensions Act 2004 (“the 2004 Act”) established the Pension Protection Fund (“PPF”). The Pensions (Northern Ireland) Order 2005 (“the 2005 Order”) makes provision for the functions of the Board of the Pension Protection Fund (“the Board”) in Northern Ireland. The Board pays compensation to members of certain pension schemes when a qualifying insolvency event occurs and there are insufficient assets in the pension scheme to cover the levels of compensation which would be payable by the Board under the 2004 Act or the 2005 Order. When a qualifying insolvency event occurs in relation to a pension scheme an assessment period is triggered during which the assets and liabilities of the scheme are valued to determine whether the Board should assume responsibility for the scheme. If it is decided that the Board should assume responsibility then it will issue a transfer notice.
- 4.2 These events may be relevant to a person who is making an application for ancillary relief, which includes a pension sharing or a pension attachment order, or to a person who already has the benefit of such an order in his favour.
- 4.3 Once the Board assumes responsibility for a scheme no new pension related orders may be made in ancillary relief proceedings since the PPF is not itself a pension scheme but is a compensation fund. However the Board will implement orders that were made before it issues a transfer notice with the exception of any lump sum payable on death.

- 4.4 Part III of the 1978 Order provides for the court's powers to make financial provision orders in connection with proceedings on divorce, nullity or judicial separation. The 2005 Order amended Part III of the 1978 Order to take account of the establishment of the PPF and to make provision for regulations to modify the application of that Part in relation to cases where the Board is involved with a pension scheme.

The Divorce etc. (Pensions) Regulations (Northern Ireland) 2000

- 4.5 The above Regulations make provision pursuant to orders for ancillary relief, which relate to the pension rights of a party to the marriage, including provision for notices of changes of circumstances to be provided by the person responsible for the pension arrangement to the party with pension rights, or by that party to the person responsible for the pension arrangement.

5. Extent

- 5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The policy intention is to make provision for modification of Part III of the 1978 Order to take account of the establishment of the PPF and in particular, to make the following provision:

- In relation to cases where a pension attachment order has been made and the Board subsequently becomes involved with the pension arrangement, to provide for the reference in Article 27B(6) to payment by the person responsible for the pension arrangement to be read as a reference to payment by the Board and for the reference to the party with pension rights to be read as a reference to the party entitled to PPF compensation.
- In relation to a court order requiring a member of an occupational pension scheme to exercise his right of commutation to any extent, where the scheme transfers to the PPF prior to the benefits being commuted, to provide that the order will have effect as if references in it to the pension scheme and to pension rights are read as references to the Board and compensation entitlement. This will enable the order to be enforced in respect of PPF compensation.
- To allow the court to exercise any of its powers on an application to vary or an appeal in relation to a pension sharing or pension attachment order notwithstanding the fact that the Board has assumed responsibility for the pension arrangement in question.

- 7.2 The Divorce etc. (Pensions) Regulations (Northern Ireland) 2000 are modified to ensure that a party with the benefit of the pension attachment order has a duty to notify the Board of changes of circumstances and to ensure that the Board is discharged from liability in relation to payments made incorrectly either because it has been given

incorrect information or because changes of circumstances have not been notified to it. This puts the Board in the same position, in this respect, as a pension scheme would be.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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