EXPLANATORY MEMORANDUM

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AUTHORISED PAYMENTS) REGULATIONS (NORTHERN IRELAND) 2009

S.R. 2009 No. 365

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)(c), 17(1), 24(4), 28A(2)(c), 67(6), 97C(2), 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993, Articles 74(3)(e), 89(5)(c)(ii) and (iii) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995 and Article 73(4) of, and paragraph 7(4) of Schedule 5 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 and is subject to the negative resolution procedure.

2. Purpose

2.1 These Regulations amend a number of Regulations covering occupational and personal pension schemes to reflect the administrative easement measures introduced by the Registered Pension Schemes (Authorised Payments) Regulations 2009 which were made by Her Majesty's Revenue and Customs ("HMRC").

3. Background

3.1 Many pension schemes are funded in part by the State through beneficial tax rates. Existing pensions legislation allows for lump sum payments to be made in certain circumstances in line with HMRC tax law under provisions of the Finance Act 2004. The tax legislation sets out the payments a registered pension scheme can make which are compatible with the tax incentives - these are known as "authorised payments". All other payments are unauthorised and taxable on the recipient at a rate of up to 55% of the payment. The tax charge on unauthorised payments is intentionally high as it is designed to recoup any relief on payments which are not used to provide pension benefits as intended when the relief was given.

3.2 Working with the pensions industry, HMRC identified a number of situations where the tax rules treat payments as unauthorised but where it would produce a fairer tax treatment for the recipient if they were treated as authorised payments. The payments concerned fall within two main areas:

- small uneconomic pension funds which cannot be commuted under the existing commutation rules and where it is desirable to allow them to be paid as taxed lump sums; and

- certain unauthorised payments currently being made by pension schemes, such as overpayments of pension made in error, and pensions continuing to be paid after a member has died.

3.3 HMRC made the Registered Pension Schemes (Authorised Payments) Regulations 2009 to provide for these and other easements including:

- introducing further circumstances where any residual funds can be commuted after pension benefits have already started being paid;

- making it easier for occupational schemes to benefit from the new commutation rules;

- giving scheme administrators more options for correcting errors after they have been discovered; and

- allowing lump sums paid in error to be treated as authorised payments.

4. Consultation

4.1 There is no requirement to consult on these Regulations as they make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain.

5. Equality Impact

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for these Regulations. As the amendments are largely 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 These Regulations do not require a Regulatory Impact Assessment as they have only a negligible 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 Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009 (S.I. 2009/2930) which come into force on 1st December 2009. 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.

11. Additional Information

11.1 Not applicable.