EXPLANATORY MEMORANDUM

THE PENSIONS (2008 ACT) (SUPPLEMENTARY PROVISION) ORDER (NORTHERN IRELAND) 2010

S.R. 2010 No. 20

1. Introduction

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

1.2 The Statutory Rule is made under section 19(1) of the Pensions Act (Northern Ireland) 2008 and is subject to the negative resolution procedure.

2. Purpose

2.1 The Order amends the Social Security (Widow's Benefit and Other Benefits) (Transitional) Regulations (Northern Ireland) 1979 ("the Widow's Benefits Regulations"), the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 ("the Decisions and Appeals Regulations") and the Social Security (Reduced Rates of Class 1 Contributions, Rebates and Minimum Contributions) Order 2006 ("the Minimum Contributions Order"). The amendments are consequential on provisions in the Pensions Act (Northern Ireland) 2008 and come into operation on 6 April 2010.

2.2 The provisions are consequential on the introduction of a single contribution condition for entitlement to State Pension and changes to the rules for calculating the State Second Pension.

2.3 Article 1 provides for citation and commencement.

2.4 Article 2 makes provision relating to the treatment of contributions paid or credited before 1975. The contribution conditions for a basic state pension in their current form date from 1975, when earnings-related National Insurance contributions were introduced to replace the former, flat-rate system. Before 6 April 1975, a person's state pension entitlement was established by reference to the yearly average of the contributions they had paid, or been credited with, over their working life.

2.5 From 6 April 1975, entitlement depends on the number of "qualifying years" in the working life; that is, the number of tax years in which the requisite amount of contributions have been paid or credited. The Widow's Benefits Regulations provide the formula for converting pre-1975 contributions into qualifying years for the purposes of the contribution conditions applying to people reaching state pension age from 6 April 1975 onwards.

2.6 Under the new single contribution condition applying to people who reach State Pension age on or after 6 April 2010, the number of qualifying years needed to qualify for a full basic pension is reduced to 30 but the definition of qualifying year itself is unchanged. While the existing method of converting pre-1975 contributions into qualifying years remains unchanged, it is necessary to provide for those qualifying years to count towards satisfying the new contribution condition. The Order therefore inserts references to the new contribution condition in the Widow's Benefits Regulations to that effect.

2.7 Article 3 amends the Decisions and Appeals Regulations to provide that a decision on the award of credits under section 23A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 will carry a right of appeal. The amendment ensures that these decisions carry the same appeal rights as other National Insurance credits.

2.8 Article 4 amends Article 7 of, and Schedules 5 and 6 to, the Minimum Contributions Order. It replaces some of the amounts used in determining the age-related percentages for the tax years 2010-2011 and 2011-2012. Those provisions specify the appropriate age-related percentages of earnings payable as minimum contributions in respect of members of appropriate personal pension schemes. Age-related percentages are used to determine the amount of Class 1 National Insurance contributions which are paid into a pension scheme for persons who contract out of the state second pension.

3. Background

3.1 This Order is consequential on provisions enacted in sections 1, 3 and 8 of the Pensions Act (Northern Ireland) 2008.

3.2 Section 1 of that Act inserted paragraph 5A into Schedule 3 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and provides for a single contribution condition for entitlement to State Pension and a reduction in the number of qualifying years required to 30 for both men and women.

3.3 It also provides that contributions paid before 1975, i.e., those paid under the National Insurance Act (Northern Ireland) 1946 or the National Insurance Act (Northern Ireland) 1966 will count towards satisfying the single contribution condition from April 2010.

3.4 Section 3 of the Pensions Act (Northern Ireland) 2008 inserted a new section 23A into the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to provide for the award of a weekly National Insurance credit for parents and carers in respect of their caring activities. The carer's credit will count towards State Pension, Bereavement Allowance and Widowed Parent's Allowance and will replace Home Responsibilities Protection for people reaching State Pension age on or after 6 April 2010.

3.5 Credits will be available to people awarded Child Benefit for a child under age 12, approved foster parents and other people engaged in caring as defined in Regulations. Proposals for these Regulations will be brought to the Committee in due course.

3.6 It is intended that any decision of the Department on the award of the new credit will carry a right of appeal. This means that, if the applicant is dissatisfied with a decision not to award credits, or, for example, they consider that an award should cover a longer period, they will have the right to ask for the decision to be reconsidered by an independent Appeals Tribunal.

3.7 Employees accruing rights in the State Second Pension can decide to leave the State scheme ("contract out") provided they have an alternative suitable private pension arrangement. Individuals who contract out are compensated for State Second Pension forgone through a refund of National Insurance contributions from Revenue and Customs. This is known as a rebate. The rebate is paid directly to the pension scheme.

3.8 Rebates of National Insurance contributions for appropriate personal pensions are calculated as an age-related percentage of earnings between certain levels. When a person contracts out, the amount of the rebate is linked to the cost of providing benefits under the private pension scheme in lieu of the amount of State Second Pension forgone. Therefore, the age-related percentages reflect the three bands of earnings on which the State Second Pension currently accrues. These are set out in the Minimum Contributions Order and are:

- earnings between the lower earnings limit and low earnings threshold (40 per cent);
- earnings between the low earnings threshold and upper earnings threshold (10 per cent); and
- earnings between the upper earnings threshold and the upper accrual point (20 per cent).

3.9 From April 2010 the upper earnings threshold band will be removed and State Second Pension will accrue at two rates only – 40 per cent on earnings not exceeding the low earnings threshold and 10 per cent on earnings between it and the upper accrual point.

3.10 As State Second Pension will accrue on a reduced number of earnings bands, it is appropriate to change how the rebate is calculated for those contracted-out through an appropriate personal pension. The proposed Order provides that the appropriate age-related percentage is based on two earnings bands. This ensures that people who contract out of the State Second Pension continue to get a rebate which is linked to the State Second Pension they are forgoing.

4. Consultation

4.1 There is no requirement to consult on the proposals in this Order.

5. Equality Impact

5.1 The proposals in the Order are consequential on provisions in the Pensions Act (Northern Ireland) 2008 which was the subject of a full Equality Impact Assessment published in October 2007.

6. Regulatory Impact

6.1 An assessment of the impact of the reform and simplification of the State Pension is included in the Regulatory Impact Assessment which accompanied the Pensions Act (Northern Ireland) 2008 Act, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of that assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, Gasworks Business Park, 2-4 Cromac Avenue, Ormeau Road, Belfast BT7 2JA or from the website: http://www.dsdni.gov.uk/index/ssa/ssani-publications/ssani-pensions-publications.htm

7. Financial Implications

7.1 None.

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 the Rule is not incompatible with any of the Convention rights, is not incompatible with Community law, does not discriminate against a person or class of person on the ground of religious belief or political opinion, and does 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 provisions come into operation on 6th April 2010 at the same time as the corresponding Great Britain provisions. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.