

EXPLANATORY MEMORANDUM TO
THE PENSION PROTECTION FUND (PENSION COMPENSATION SHARING
AND ATTACHMENT ON DIVORCE ETC.) REGULATIONS
(NORTHERN IRELAND) 2011

S.R. 2011 No. 113

AND

THE PENSION PROTECTION FUND
(PENSIONS ON DIVORCE ETC.: CHARGES) REGULATIONS
(NORTHERN IRELAND) 2011

S.R. 2011 No. 114

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rules (details above) which are laid before the Northern Ireland Assembly.
- 1.2 S.R. 2011 No. 113 is made under Articles 152A, 188(4)(a), 189 and 287(1) to (3) of the Pensions (Northern Ireland) Order 2005 and sections 86(2), 90, 92(3), 93(1)(b)(ii) and (4), 94(6) and (8)(b), 95(1), (2)(b) and (c), 96, 97 and 113(2) of, and paragraphs 5(4), 7(5), 9(1), (2) and (6), 10(1), 17(6), 18 and 19 of Schedule 4 to, the Pensions (No. 2) Act (Northern Ireland) 2008.
- 1.3 S.R. 2011 No. 114 is made under Articles 152A, 185(1)(a) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005.

2. Purpose

- 2.1 These Statutory Rules implement the pension compensation on divorce etc. provisions. Under existing provision, it is possible to offset pension compensation against other assets but not to share it.

3. Background

- 3.1 The Pensions Act 2004 set up, on a UK-wide basis, the Pension Protection Fund to provide compensation for members of eligible occupational pension schemes, where the sponsoring employer is insolvent and the scheme has insufficient assets to pay benefits at the Fund compensation levels. The Pensions (No. 2) Act (Northern Ireland) 2008 introduces provisions to enable pension compensation to be shared on divorce, dissolution or annulment of a marriage or civil partnership. The provisions also enable courts to make orders in respect of Pension Protection

Fund compensation and allow the Pension Protection Fund to recover relevant charges from the parties involved.

3.2 These Statutory Rules provide for similar mechanisms to existing provision governing pensions on divorce etc. where pension schemes have transferred to the Pension Protection Fund. This is intended to help to facilitate the fairness of financial settlements, allow a clean break between couples and provide additional income in later life for the former spouse/civil partner.

3.3 The Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc.) Regulations (Northern Ireland) 2011

These Regulations set out the detail of the pension compensation sharing process. In particular, the Regulations set out –

- the information that the Board of the Pension Protection Fund must supply, and what information has to be provided about the member and their spouse or civil partner;
- the rights that are shareable;
- how pension compensation and the cash equivalent value of that compensation are calculated and verified;
- adjustments that can be made to, and notification about, the implementation period;
- that charges will be recovered by the Board of the Pension Protection Fund from the parties to the proceedings;
- the circumstances in which compensation will be payable to survivors;
- provisions relating to revaluation, commutation, early payment, annual increases and the compensation cap.

3.4 The Pension Protection Fund (Pensions on Divorce etc.: Charges) Regulations (Northern Ireland) 2011

These Regulations apply where a pension sharing order (a percentage of the value of the member's shareable pension rights is to be transferred into a pension arrangement for the former spouse/civil partner), an attachment order or an earmarking order (schemes to pay a proportion of a member's pension when it becomes payable direct to the former spouse/civil partner) was made before the Board of the Pension Protection Fund assumed responsibility for an eligible pension scheme, but was not implemented by the trustees or managers of the scheme. In particular, the Regulations set out –

- the information which must be provided to the parties to the order;
- the circumstances in which the Board may recover the costs incurred;
- that the information to be provided includes the date that the Pension Protection Fund took responsibility for the scheme and confirmation that the Fund will implement the order;
- the circumstances in which the Pension Protection Fund can recover the costs it incurs from the parties, and the methods it can use to recover charges.

4. Consultation

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

5. Equality Impact

- 5.1 Proposals for the Pensions (No. 2) Act (Northern Ireland) 2008 were subject to a full Equality Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these Statutory Rules. As the proposals are largely of a technical nature to underpin the primary legislation they 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 The proposed Rules do not require a Regulatory Impact Assessment as they have only a negligible impact on costs on business, charities or voluntary bodies. The proposed changes will only impact on the Pension Protection Fund, which will undertake the implementation work, and the associated costs are expected to be minimal. The parties to the divorce, dissolution or annulment will pay the costs incurred by the Fund in undertaking this work.

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 Statutory Rules –
- (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 Statutory Instruments are the Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc) Regulations 2011 (S.I. 2011/731) and the Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2011 (S.I. 2011/726) which come into force on 6th April 2011. 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.