EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT AND TRANSITIONAL PROVISIONS) REGULATIONS (NORTHERN IRELAND) 2014

S.R. 2014 No. 189

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of the Environment (“the Department”) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the powers conferred by Articles 9 and 14 of, and Schedule 3 to the Superannuation (Northern Ireland) Order 1972 (S.I. 1972/1073 (N.I. 10)) and is subject to the negative resolution procedure.

2. Purpose

2.1. These Regulations make transitional provisions between the existing Local Government Pension Scheme (Northern Ireland) arrangements and the reformed scheme which will come into operation on 1 April 2015. They preserve the benefits already accrued by members under the existing arrangements and make provision to ensure that members within 10 years of retirement age on 31 March 2012 do not suffer any detriment.

2.2. The reformed Local Government Pension Scheme (Northern Ireland) (the Scheme) will remain a defined benefit scheme and provide benefits based on career average and actual pay instead of the current final salary basis. The reformed Scheme replaces the 2009 Scheme established under the-

- Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 32) (the Benefits Regulations);
- Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 33); and
- Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 34).

3. Background

3.1. The Independent Public Service Pensions Commission (the Commission), chaired by Lord Hutton of Furness, recommended that all public service pensions are reformed to make them more sustainable and affordable in the long term, and fairer to both members and the taxpayer.

3.2. The main recommendation from the Commission’s final report was that the current final salary public service pension schemes should be replaced by new schemes which would continue to be defined benefit schemes with pension entitlement linked to salary, but rather than being linked to the employee’s final salary, pension benefits would be linked to career average earnings.

3.3. In November 2011, the Westminster Government set out its preferred design for the new National Health Service, civil service, teachers' and local government pension schemes in "Public Service Pensions: Good Pensions That Last" (Cm 8214).

3.4. On 8 March 2012, the Northern Ireland Executive agreed to:

- commit to the policy for a new career average re-valued earnings (CARE) scheme model with pension age linked to State pension Age to be adopted for general use in the public service schemes; and
- adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.

3.5. The Public Service Pensions Bill (Northern Ireland) received Royal Assent on 11 March 2014. The main purpose of the Public Service Pensions Act (Northern Ireland) 2014 (the 2014 Act) is to provide the necessary regulation making powers for Departments to introduce their new schemes on 1 April 2015. As these Regulations are being made before section 28 of the 2014 Act has been commenced they are being made under Articles 9 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972 (the 1972 Order).

3.6. Section 28 of the 2014 Act provides for regulations made under Article 9 of the 1972 Order in respect of a person's service on or after 1 April 2015 and which could have been made under the powers contained in the 2014 Act to have effect as if they were scheme regulations under the 2014 Act. Article 9 of the 1972 Order provide that regulations may include all or any of the provisions (including transitional provisions) referred to in Schedule 3 to that Order.

3.7. These Regulations preserve benefits already accrued by members under any of the former Local Government Pension Schemes (the former schemes) and to save those provisions in the former schemes that are necessary to ensure this protection. The main protections and savings are described in paragraphs 3.8 and 3.19.

3.8. **Final salary protection.** Under section 20 of the 2014 Act, if a member has continuous membership in an existing public service pension scheme and a new public service pension scheme or leaves and rejoins that public service pension scheme with a break of less than five years, the pension rights accrued in the earlier pension scheme must be calculated by reference to their final salary at the point of departure. For the Local Government Pension Scheme, this means benefits accrued in relation to service up to 31 March 2015 will continue to be based on a member's final salary when they leave the scheme (in certain circumstances, at a member's request, a different final salary figure can apply instead, where that would lead to a higher final salary). This principle is enshrined in regulations 3, 4, 16 and 17.

3.9. **Membership before 1 April 2015.** Regulation 3 provides for benefits derived from the former schemes to continue to be payable. Where membership of the

3.10. **Statutory underpin.** Regulation 4 provides for certain persons to receive transitional protection from the changes to introduce new pension arrangements from 1 April 2015 where they would otherwise receive a pension that is lower than that they would have received if the current pension scheme had instead continued. The protection applies to persons who were active members of the 2009 Scheme on 31 March 2012 and who, on 1st April 2012, were 10 years or less from the normal retirement age applicable to them under the 2009 Scheme (age 65 for most members, but age 60 for some members). The underpin applies where pension benefits are paid to such members –

- on or after the date on which they could have chosen to take them under the 2009 Scheme (age 60 for most members, but earlier for certain members who had a normal retirement age of 60 under the 2009 Scheme);
- on or after age 65 (or age 60 where that was the member's normal retirement age under the 2009 Scheme); or
- on ill-health grounds or by reason of redundancy.

This means that these members will receive benefits, in relation to any period where they were an active member of the scheme up to the date the pension is paid, or their normal retirement age under the 2009 Scheme if later, at least equal to those that they would have received if the 2009 Scheme had continued. Other qualifying conditions are set out in regulation 4(1), including a requirement that there has been no disqualifying break in service of more than 5 years in a public service pension scheme since 31 March 2012.

3.11. **Ill-health retirement.** Regulation 12 continues to provide for those who would have benefited from the age 45 protection in regulation 20(7) (transitional protection for those aged 45 before 1 April 2009) of the Benefits Regulations by ensuring the enhancement is calculated by reference to the period under the 2002 Scheme compared with the period under the reformed Scheme. Regulation 12 ensures continuity by deeming the 1st and 2nd tiers of ill-health benefits where they have been paid under the 2009 Scheme Regulations to be the same ill-health tier benefits for the purposes of the 2014 Regulations. This regulation also deals with the situation whereby some ill-health assessments may cover the pre and post 2015 implementation date and allows the certificate from the independent registered medical practitioner to remain valid under the regulatory framework with effect from 1 April 2015. Finally this regulation covers for situations whereby persons who retired on ill-health grounds before the 2009 Scheme came into operation, subsequently

3.12. **Contributions.** Regulation 13 ensures that the payment of contributions is made according to the regulations pertaining to the period in question. Regulation 13(2) ensures that contributions paid in respect of earlier periods of membership aggregated with membership under the reformed Scheme can also be refunded.

3.13. **Survivor benefits.** Where a member dies in active membership, survivor benefits are calculated in the same way for each category of eligible survivor.

3.14. **Pension sharing.** Regulation 20 provides that the valuation of benefits for the purposes of the reformed Scheme under a Pensions Sharing Order will also take into account the benefits accrued by the member in any former scheme.

3.15. **Determination of questions and disputes.** Regulation 23 ensures that questions concerning a member's rights and liabilities under any former scheme but not determined by 1 April 2015 can be determined under the dispute resolution provisions in regulations 79 to 89 of the 2014 Regulations.

3.16. **Councillors' Pensions.** Councillors aged less than 75 have been eligible to join the Local Government Pension Scheme since the local government elections in May 2011. They will remain eligible to join the reformed Scheme, with the modifications set out in Schedule 4 to the 2014 Regulations. Also, councillors who are members of the 2009 Scheme as at 31 March 2015 will automatically become members of the reformed Scheme on 1st April 2015.

3.17. **The 85 year rule.** Regulation 19 and Schedule 3 carry forward transitional arrangements that were put in place when provisions enabling long serving members to take unreduced retirement benefits before reaching age 65, were removed from the former schemes in 2006. These arrangements relate to a provision known as the rule of 85 or the 85 year rule, which was removed for new joiners with effect from 1 October 2006. It broadly allowed for certain members who retire before age 65 to receive unreduced pension benefits if their period of scheme membership and age add up to 85 years or more at that point. Schedule 3 preserves the transitional arrangements that were introduced in 2006 so that they continue to apply to persons who were members of the former scheme prior to 1 October 2006, as they did prior to the introduction of the reformed Scheme. This means that where such members retire on or after age 60, benefits arising from service before 1 April 2008 for all members and before 1 April 2016 for those who reach age 60 before that date, will continue to be paid unreduced if they satisfy the 85 year rule. Further provisions apply in respect of persons who were members of the former schemes prior to October 2006 and who will reach age 60 before 1 April 2020, which provide for tapered reductions to apply to benefits arising from membership between 1 April 2008 and that point. The phased removal of the protection was objectively justified and is continued by this Schedule. A useful summary of the 85 year rule can be found at http://www.parliament.uk/briefing-papers/sn04002.pdf

3.18. The reformed Scheme provides for members to choose to receive their pension benefits between the ages of 55 and 60, whereas members previously needed their employer to agree to pay benefits before age 60. Schedule 3 provides that where a member chooses to take benefits before age 60 and the member satisfies the 85 year rule, or would do so before reaching age 60, the employer may agree to the benefit being paid unreduced. Where they do not agree, benefits will be reduced by reference to age 60 instead – the earliest age the member could have chosen to take them from the former scheme without employer consent. This change retains parity with existing arrangements, but members now have an additional option available to them – to choose to take reduced benefits before age 60 if they wish to do so and without the need of their employer's consent.

3.19. Provision is also made for the administrative arrangements necessary to ensure continuity between the 2009 Scheme and the reformed Scheme. These include arrangements for the-

- automatic transfer of active members as at 31 March 2015, from the 2009 Scheme to the reformed Scheme;
- preservation of admission agreements;
- scheme compliance with the Finance Act 2004 in terms of the annual allowance;
- continuation of apportionment agreements; and
- a number of minor and consequential amendments.

4. Consultation

4.1. As required by Article 9 of the 1972 Order, the Department has consulted with such associations of local authorities, individual local authorities and such representatives of persons affected by the proposals for the reformed Scheme as appeared to the Department to be appropriate.

4.2. Two consultations were held; an initial consultation on the scheme design proposals from 11 April to 6 June 2013, and a second consultation which included the draft 2014 Regulations and a draft of these Transitional Regulations from 12 December 2013 to 28 February 2014. A total of 59 responses were received – 40 responses during the first consultation and 19 during the second consultation. Of the 19 responses received during the second consultation, 8 commented on the draft Transitional Regulations.

4.3. Copies of each consultation paper and the Department's Response can be found at:

http://www.doeni.gov.uk/index/local_government/local_goverment_pension_scheme_2015.htm

5. Equality Impact

5.1. An equality screening exercise by the Department of Finance and Personnel concluded that a full equality impact assessment was not required for the Public Service Pension Bill (Northern Ireland) which would give effect to the reformed public sector pension schemes based on CARE with retirement age linked to state pension age.

5.2. The Department, having carried out its own screening exercise, is satisfied that these Regulations and the 2014 Regulations which provide for the reformed Scheme will not lead to a significant discriminatory or negative differential impact on any particular Section 75 group.

6. Regulatory Impact

6.1. The majority of members of the Local Government Pension Scheme (Northern Ireland) are employed in the public sector. The intentions in developing the new Scheme are to ensure that there are no significant adverse effects on ratepayers and taxpayers and to ensure the ongoing solvency, cost stability and viability of the Scheme. A regulatory impact assessment has not been carried out because private sector firms, voluntary organisations and charities which are employing authorities will also benefit from the achievement of these objectives.

7. Financial Implications

7.1. No Executive expenditure required.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that the Regulations comply with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Not applicable.

11. Additional Information

11.1. Not applicable.