

EXPLANATORY MEMORANDUM TO
THE PENSION PROTECTION FUND (ENTRY RULES) (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2014

S.R. 2014 No. 195

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 Articles 105(5) and (9)(b) and 287(3) of the Pensions (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005 following a judgment of the Court of Appeal in England and Wales to ensure that members of the pension scheme in the case, and of other schemes in a similar position, can access the protection provided by the Pension Protection Fund.

3. Background

- 3.1 The Pension Protection Fund provides 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.
- 3.2 If a qualifying insolvency event occurs in relation to an employer of a pension scheme eligible for access to the Pension Protection Fund, the scheme will enter an assessment period to enable the Fund to assess whether or not the scheme is eligible to transfer into the Fund. During this period the scheme continues to be administered by its trustees.
- 3.3 The EU Insolvency Regulation provides that once insolvency proceedings have been opened in a Member State where the company has its centre of main interest, secondary insolvency proceedings can only be opened in another Member State if the company has “an establishment” in that Member State. The question of what constitutes “an establishment” was considered by the Court of Appeal in *Trustees of Olympic Airlines SA Pension & Life assurance Scheme v Olympic Airlines SA [2013] EWCA Civ 643*. The Court of Appeal decided that the UK part of Olympic Airlines was not “an establishment” within the meaning of the EU Insolvency Regulation at the time the trustees of the scheme petitioned for company wind-up.

This meant that the underfunded pension scheme did not have a sponsoring employer with a qualifying insolvency event for access to the Pension Protection Fund. The effect of the judgment is that members of the UK pension scheme in the case, and potentially members of schemes in similar circumstances, cannot access the Pension Protection Fund.

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 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 no 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 It is understood that the EU proposes to amend the EU Insolvency Regulation in due course to resolve the specific problem identified by the case.

10. Parity or Replicatory Measure

- 10.1 The corresponding Great Britain Regulations are the Pension Protection Fund (Entry Rules) (Amendment) Regulations 2014 (S.I. 2014/1664) which were made on 25th June 2014 to come into force on 21st July 2014. 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.