

**EXPLANATORY MEMORANDUM TO**  
**THE OCCUPATIONAL PENSION SCHEMES**  
**(MISCELLANEOUS AMENDMENTS) REGULATIONS**  
**(NORTHERN IRELAND) 2014**

**S.R. 2014 No. 93**

**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 15(4)(c) and 177(2) and (3) of the Pension Schemes (Northern Ireland) Act 1993, Articles 47(5)(b), 87(2) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995 and Article 235(7) of the Pensions (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1 These Regulations make technical amendments to a number of sets of existing Regulations in relation to occupational pension schemes to –
- provide for an easement of current requirements to assist large trust-based multi-employer schemes in appointing a statutory auditor;
  - clarify the circumstances in which trustees may obtain a discharge of their liability to provide pension benefits by purchasing annuities that include an option for a tax-free lump sum on commencement of the pension;
  - clarify existing provision and allow new employers following a business transfer to match the contributions payable by the former employer immediately before the transfer (to align with the automatic enrolment phasing profile);
  - update a cross-reference to primary legislation.

**3. Background**

- 3.1 Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations (regulation 2)  
Article 47 of the Pensions (Northern Ireland) Order 1995 requires trustees of occupational pension schemes to appoint an auditor unless an exemption under the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1996 applies. Regulation 4(2)(d) of the Scheme

Administration Regulations specifies that such an auditor must not be prohibited from acting as a statutory auditor under the independence requirements in section 1214 of the Companies Act 2006. This creates difficulties for large multi-employer schemes. There are a limited number of audit firms able to audit large trust-based multi-employer schemes, for example, the National Employment Savings Trust (NEST) and it will become increasingly difficult for an audit firm to meet the current requirements as schemes grow in size following the roll out of automatic enrolment.

- 3.2 These Regulations amend regulation 4(2)(d) of the Scheme Administration Regulations to exempt trust-based multi-employer schemes that have at least 500 participating employers from the requirements.
- 3.3 Amendment of the Occupational Pension Schemes (Discharge of Liability) Regulations (regulation 3)  
The policy intention is that trustees should be able to obtain a discharge of their liability to provide pension benefits by purchasing annuities that include an option for a tax-free lump sum on commencement of the pension. However, the Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1997 no longer make this explicit, following changes to the tax treatment of pensions.
- 3.4 These Regulations amend regulation 4 of the Discharge of Liability Regulations to clarify the circumstances in which trustees may obtain a discharge of their liability to provide pension benefits when those benefits have been secured by means of an insurance policy or annuity contract.
- 3.5 Amendment of the Transfer of Employment (Pension Protection) Regulations (regulation 4)  
Article 234 of the Pensions (Northern Ireland) Order 2005 (“the Order”) defines the qualifying conditions that employees must satisfy to be eligible for employer pension provision following a business transfer. Article 235 of the Order provides the options that the transferee employer must offer these employees. These comprise membership of a non-money purchase occupational scheme (defined benefit) which must meet either the Reference Scheme Test (which sets minimum requirements for schemes contracted out of the State Pension) or such alternative requirements that may be prescribed, or membership of either a money purchase occupational pension scheme (defined contribution) or a stakeholder pension scheme where the employer makes relevant contributions.
- 3.6 The Transfer of Employment (Pension Protection) Regulations (Northern Ireland) 2005 (“the TEPP Regulations”) prescribe the alternative requirements for a non-money purchase (defined benefit) occupational pension arrangement, and define the meaning of “relevant contributions” for the purposes of Article 235 of the Order.

3.7 These Regulations amend the TEPP Regulations to allow new employers, following a business transfer, to satisfy the provisions by matching the contributions payable by the former employer immediately before the transfer.

3.8 Amendment of the Occupational Pension Schemes (Employer Debt) Regulations (regulation 5)

These Regulations amend the Employer Debt Regulations to update a cross-reference to primary legislation.

#### **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 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 Pension Schemes (Miscellaneous Amendments) Regulations 2014 (S.I. 2014/540) which were made on 6th March 2014 to come into force on 6th April 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.

## **11. 21 Day Rule**

11.1 The final content of the corresponding Great Britain Regulations was agreed on 3rd March 2014 and these Regulations were made as soon as possible thereafter. The proposals were agreed by the Social Development Committee at its meeting on 20th March 2014 and these Regulations were made that day. Owing to parity considerations it is vital that the Regulations come into operation on the same date as the Great Britain Regulations, in this instance on 6th April 2014.