EXPLANATORY MEMORANDUM TO

THE STATE PENSION REGULATIONS (NORTHERN IRELAND) 2015

S.R. 2015 No. 315

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 powers conferred by the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Welfare Reform and Pensions (Northern Ireland) Order 1999 and the Pensions Act (Northern Ireland) 2015 and is subject to the confirmatory resolution procedure before the Assembly.

2. Purpose

2.1 The Pensions Act (Northern Ireland) 2015 ("the Act") introduces a new state pension for people reaching state pension age on or after 6 April 2016. These regulations support the introduction of the new scheme. In particular, they:

- specify the minimum number of years of National Insurance contributions or credits a person will need to qualify for any new state pension;
- specify the rate at which a person who defers claiming their new state pension will accrue an increase to their new state pension when they finally claim it;
- provide that the new state pension will not be payable to prisoners, except in certain circumstances;
- make transitional provisions enabling a person in the new state pension scheme to inherit a deferral payment where their deceased spouse or civil partner had deferred an old state pension; and
- amend regulations relating to the sharing of state scheme rights following divorce or dissolution of a civil partnership, as a consequence of new arrangements for state pension sharing.

3. Background

Overview of the new State Pension:

3.1 The new state pension will replace the current, complex two-tier system of basic and earnings-related state pension with a single-component flat-rate pension set above the level of the means-test. Part 1 of the Regulations makes clear that the new state pension is for persons reaching state pension age on or after 6 April 2016. The implementation date is 6 April 2016.

3.2 A person with no pre-implementation National Insurance record will need 35 qualifying years of paid or credited National Insurance contributions to qualify for the full rate (£151.25 is the illustrative rate for 2015/16). They will need a minimum number of ten qualifying years (see paragraph 3.25) to qualify for any state pension.

3.3 People reaching state pension age on or after 6 April 2016 whose working lives began before that date will qualify for the new state pension under transitional arrangements. Their pre-2016 National Insurance contributions and credits will be consolidated into a starting amount which will be the higher of two valuations; the first based on the old state pension rules and the second based on the new rules (with each pre-2016 qualifying year valued at $1/35^{th}$ of the full rate of the new state pension). In both calculations, a deduction will be made to account for periods during which an individual was contracted-out of the additional state pension.

3.4 If the starting amount is less than the full rate, each qualifying year a person gains between 6 April 2016 and state pension age will increase their new state pension by $1/35^{th}$ of the full rate, up to a maximum of the full rate. If their starting amount equals or exceeds the full rate they will not be able to add to it, but any excess will be awarded as a “protected payment”.

3.5 These rules are designed to recognise a person’s pre-2016 contributions and ensure that, subject to satisfying the minimum qualifying period condition by the time they reach state pension age, no-one will get a lower rate under the new scheme than they would have got based on their own contributions in the current scheme as at the date of implementation.

3.6 Amounts up to the full rate will be up-rated annually by at least the increase in average earnings and protected payments will be uprated in line with price inflation. This contrasts with the current position for the old state pension in which only the basic state pension (currently £115.95 a week) is uprated by at least earnings, while the additional state pension is price-uprated. This will help ensure that the new state pension retains its value in relation to the basic means test.

3.7 The new state pension will be based solely on a person's own National Insurance record, reflecting the fact that the great majority of men and women now reaching State Pension age in Northern Ireland have the opportunity to qualify for a full basic pension themselves without the need to draw on a spouse or civil partner's contributions.

3.8 However, transitional arrangements have been put in place to recognise that, in the old scheme, a person's additional state pension could be inherited, either wholly or in part, by their surviving spouse or civil partner or could be subject to a pension-sharing order following divorce or dissolution of a civil partnership (see paragraph 3.27). Similarly, there are provisions to protect inheritance of the "reward" earned by a person deferring an old state pension

3.9 Arrangements for deferring the state pension will also be simplified. People will be able to defer their new state pension and get an increased weekly pension in return (but the alternative of a lump-sum payment, which is a feature of the old scheme will not be available.

3.10 Certain rules which apply in the old scheme will continue to apply to the new scheme: these include rules on payability of the state pension to people while detained in prison.

Other provisions in the Regulations

Part 2: Prisoners (regulations 2 and 3)

3.11 Section 19 of the Act and regulations 2 and 3 extend the long-standing policy of non-payment of state pension to prisoners to the new state pension. As now, for these purposes, a prisoner means a person who is imprisoned following sentencing by a criminal court or is "on remand" (that is, detained in custody pending trial and sentencing), and includes a person who is hospitalised under Mental Health legislation whilst serving a prison sentence. These provisions also ensure that the new state pension is not payable to a prisoner who is "unlawfully at large".

3.12 The basic rationale underlying the policy, which applies to social security benefits in general, is to avoid making double provision out of public funds by meeting both the cost of the prisoner's maintenance while detained and paying benefit, in this case, a state pension.

3.13 As with the existing policy, an exception applies in the case of a person who is detained in custody while on remand. Payment is suspended pending the outcome of proceedings, but restored for the period of detention if the person is not imprisoned at the conclusion of those proceedings.

3.14 In the case of a person imprisoned outside Northern Ireland, these provisions apply only to the extent that the imprisonment is for an offence which would have resulted in imprisonment in Northern Ireland.

Part 3: Deferral of State Pension

Inheritance of deferred old state pension (regulations 4 to 6)

3.15 Under the old state pension scheme, a surviving spouse or civil partner whose late spouse or civil partner had deferred their state pension may "inherit" a weekly pension increase. Where the deceased had deferred for at least 12 months but died before exercising their choice of a lump sum or pension increase, this choice is extended to their survivor.

3.16 Although the pension increase accrued by a person who defers their new state pension will not be inheritable, sections 8 and 9 of the Act enable a survivor in the new scheme whose late spouse or civil partner had deferred their old state pension to inherit a pension increase or, if applicable, choose between an increase and a lump-sum payment, subject to the same conditions that apply in the old scheme.

3.17 The rationale for protecting old state pension deferral inheritance is that in most cases the deferral will have begun before the start of the new scheme and the decision on the part of the deceased to defer their pension may have been based, at least in part, on the expectation that in the event of them pre-deceasing their spouse or civil partner, the surviving party would be able to inherit deferral benefits.

3.18 The provisions at regulations 4 to 6 specify the details of when and how the survivor is to make their choice of reward, and the "cooling off" period during which they may change their choice. These replicate the existing provisions relating to the choice of lump sum or pension increase and ensure that a surviving spouse or civil partner has the same options as would have been available to them had they qualified under the old scheme.

Deferral of the new state pension (regulations 7 to 12)

3.19 The option to defer claiming the state pension in order to get an increased amount when it is finally claimed has been a feature of the scheme since it began in 1948. Under changes introduced in April 2005, people who defer for at least 12 months can choose between a pension increase (which forms part of their taxable income, as does their state pension) and a one-off taxable lump-sum payment based on pension foregone plus cumulative interest. At the same time the accrual rate for the pension increase was raised from the equivalent of 7.4 per cent of the deferred weekly pension for each year of deferral to 10.4 per cent.

3.20 It is recognised that deferring the state pension can be an important flexibility for some people, so deferral will continue to be available in the new scheme but will revert to the simpler, pre-2005 arrangement of a weekly pension increase only. This will not be inheritable, in line with the policy of simplifying the system and positioning the state pension as an individual benefit.

3.21 Following advice from the Government Actuary's Department (GAD) on an actuarially fair rate for deferral, the Westminster Government announced that it would be set at 1/9th of 1 per cent of the weekly pension for each week of deferral (regulation 10), equivalent to just under 5.8 per cent for a full year. Section 17 of the Act provides that (as now) any increase of less than 1 per cent is not payable, so a person must defer for at least 9 weeks to get an increase.

3.22 The chosen rate is higher than the rate of 5.2 per cent used in modelling although at the lower end of the range indicated by GAD. The decision takes account both of the need to contain expenditure on the new state pension within current projections and the limited effect of the deferral policy in influencing retirement behaviour.

3.23 Regulation 11 provides that, as is the case under the old scheme rules, a person cannot gain any benefit from deferring their state pension while another benefit from public funds is being paid to them or to another person on their behalf. It also provides that, as now, a person cannot accrue a pension increase during any period their state pension would not have been payable to them, if they had claimed it, because they are a prisoner (see regulations 2 and 3). This is achieved by ignoring the days the benefit is payable or, as the case may be, the person is a prisoner, when the total number of days within the deferment period is calculated. After dividing the net total by 7 to establish the number of weeks of deferral, any part-week is to be rounded up to a whole week (regulation 12).

3.24 In addition to deferring their claim on reaching state pension age, people will, as now, have a once-only option after state pension age to stop drawing their state pension for a period in order to earn an increase. The arrangements at regulations 7 to 9 for suspending payment for this purpose and cancelling the suspension when they want to reinstate payment, mirror the existing arrangements.

Part 4: Minimum Qualifying Periods (regulation 13)

3.25 Regulation 13 sets the minimum qualifying period for entitlement to the new state pension. The minimum number of qualifying years of paid or credited contributions required will be 10. Setting a minimum qualifying period of 10 years is intended to ensure that entitlement to the new state pension is restricted to those who have a strong connection with, and have made a significant contribution to, the UK.

Part 5: Sharing of state pension rights (regulation 14)

3.26 Under the current pension-sharing arrangements, which were introduced by the Welfare Reform and Pensions (Northern Ireland) Order 1999 (the "1999 Order"), the additional state pension may be shareable on divorce or on dissolution of a civil partnership by order of the Courts. The Department provides the Courts with a valuation of the additional state pension, called the cash equivalent value (CEV), calculated on the basis of factors provided by Government Actuary's Department (GAD), to enable the Courts to decide how to divide the assets built up during the marriage or civil partnership. The Courts may order a percentage split of the CEV or, in some circumstances, specify the amount to be transferred from one party to the other. A pension-sharing order creates a state scheme pension debit and credit: the debit is converted into a weekly reduction in the transferor's additional state pension and the credit becomes a weekly "shared additional pension" for the transferee. These amounts may not be the same.

3.27 Pension-sharing orders that take effect before 6 April 2016 will still be honoured to avoid disrupting financial settlements that had already been reached. The resulting state scheme debit and credit will be based on the value of the old scheme additional state pension the transferor had built up before 6 April 2016, irrespective of whether the parties are in the old or the new state pension scheme.

3.28 To reduce cliff edges between couples in the old and new state pension schemes, pension-sharing will continue to apply during the transition to the new state pension, but where the share order takes effect on or after the new state pension starts and the transferor is in the new state pension, simpler sharing arrangements will apply. Only the protected payment (see paragraph 3.4) will be shareable. Although the Department will provide CEVs of the protected payment to enable all the assets of the marriage or civil partnership to be considered on a like-for-like basis, pension-sharing orders will only have to specify the percentage split of the weekly rate of the protected payment.

3.29 Compared to the old scheme, these changes mean a lower amount available for potential sharing and eventually there will be no shareable state scheme rights. However, the courts have the power to consider a range of marital assets and can order compensatory provision from those other assets as they see fit.

3.30 To give effect to these changes, the Act amends the pension-sharing provisions of the 1999 Act to distinguish between an "old state scheme pension debit or credit" and a "new state scheme pension debit or credit".

3.31 The provisions at regulation 14 amend existing regulations that require the Department to provide information and valuations of shareable scheme rights to the Courts and parties involved. These amendments broadly replicate the existing requirements for the purposes of shareable new state scheme rights, including a requirement to provide a valuation for the purposes outlined in paragraph 3.26.

4. Consultation

4.1 There is no requirement to consult on this Rule.

5. Equality Impact

5.1 The Department carried out a full Equality Impact Assessment on the proposals for the pensions Act (Northern Ireland) 2015. 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 this Rule. The Department has concluded that those proposals would not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 The Rule does not require a Regulatory Impact Assessment as it does not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 The new State Pension has been designed to cost no more overall than the current system.

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 this Order –

(a) is not incompatible with any of the Convention rights,

(b) is not incompatible with Community law,

(c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and

(d) 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 corresponding Great Britain Instrument **is entitled the State Pension Regulations 2015 (S.I. 2015 No. 173)** which comes into force on 6 April 2016. 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.