EXPLANATORY MEMORANDUM TO

THE STATE PENSION (AMENDMENT NO. 3) REGULATIONS (NORTHERN IRELAND) 2016

S.R. 2016 No. 100

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 the powers conferred by sections 22(5ZA), and (5ZB) and 171(1), (4) and (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ("the 1992 Act") and is subject to the negative resolution procedure before the Assembly.

2. Purpose

2.1 These Regulations support the introduction of a new State pension for people reaching State pension age on or after 6 April 2016. They provide for the crediting arrangements for the new scheme, including new arrangements relating to National Insurance credits for the spouses and civil partners of Armed Services personnel.

3. Background

3.1 The main features of the new State pension are set out in Part 1 of the Pensions Act (Northern Ireland) 2015 ("the 2015 Act"). More detailed provisions are contained in the State Pension Regulations (Northern Ireland) 2015 ("the 2015 Regulations").

3.2 These Regulations insert a new Part 8 into the 2015 Regulations to specify the circumstances in which a person may qualify for National Insurance credits for the purposes of entitlement to a new State pension. These include new credits for past periods since 1975 during which a person was accompanying their HM Forces spouse or civil partner on assignment outside the UK.

3.3 National Insurance credits are available in certain circumstances where people are unable to work or where opportunities to work are limited and therefore earnings are not enough to pay or be treated as paying National Insurance contributions. These include people who are unemployed and actively seeking employment; those who are unable to, or have limited capacity for, work on health grounds; and those with caring responsibilities. Credits protect a person's National Insurance record so that their future entitlement to certain contributory benefits is not jeopardised.

3.4 There are two main classes of National Insurance credits. Class 1 can help a person satisfy the conditions of entitlement to all contributory benefits while Class 3 count only for the purposes of the basic State pension and bereavement benefits. Currently "earnings factor" credits can be awarded to carers and the long-term disabled for the purpose of establishing entitlement to State Second Pension. Earnings factors are the currency used to convert National Insurance contributions into benefit entitlement.

3.5 Class 1 and Class 3 National Insurance credits will count in the new State pension scheme in the same way that they count for the old scheme basic State pension. Earnings factor credits will not be required from 6 April 2016 as there will be no State Second Pension in the new scheme.

3.6 The main regulations that provide for credits to be awarded are the Social Security (Credits) Regulations (Northern Ireland) 1975 (“the 1975 Regulations”). Section 23A of the 1992 Act and regulations made under it provide for credits for parents and carers from April 2010 which count for the purposes of entitlement to the existing State pension.

3.7 The intention is to provide for all the rules that underpin the new State pension, including the crediting arrangements, in a single statutory instrument. The new regulations, in the main, are to ensure that the existing crediting arrangements are carried forward into the new State Pension scheme. To this end, the policy on the conditions to be satisfied and the circumstances in which a credit will be awarded remain broadly the same. Regulation 2 adds Part 8 (Regulations 24 – 39) into the 2015 Regulations to provide for credits for new State pension purposes.

Chapter 1 general rules

3.8 Paragraph 2 of regulation 24 contains a general rule that credits are to be awarded in respect of events that occur from 6 April 2016 only. Chapter 2 provides for exceptions to this rule to ensure that credits awarded for periods before April 2016 continue to count for the purpose of establishing entitlement to the new State pension and to provide credits for past periods for the husbands, wives and civil partners of military personnel.

Chapter 2 pre-commencement qualifying years

3.9 Regulations 26 and 27 ensure that credits awarded under the 1975 Regulations, section 23A of the 1992 Act and regulations made under that section prior to April 2016 are kept alive for the purposes of calculating entitlement to a new State pension. Entitlement to a credit for the purposes of the State pension only crystallises at State pension age. Therefore, in order to engage the rules that allow the Department to value the contribution record on 6 April 2016 when working out a person’s starting amount, the legislation treats them as having attained State pension age on that date. As a result where a person who would have been entitled to be credited with contributions or earnings for the purposes of establishing entitlement to a Category A retirement pension had the old State pension scheme continued to apply they will be so credited for the purposes of entitlement to the new State pension.

3.11 Regulation 28 is a new provision designed to assist those who have been unable to build up sufficient qualifying years for the new State pension because of time spent overseas with a spouse or civil partner who is a member of Her Majesty’s Forces by providing them with National Insurance credits to cover past periods. This is because entitlement to the new State pension will be based on a person's own National Insurance contributions record, unlike the old State pension scheme where it is possible to qualify for State pension based on a spouse or civil partner's contributions (derived rights). The credits will be available (by application) for each week the spouse or civil partner was on the accompanied assignment for periods between the tax years 1975/76 and 2015/2016. It will apply equally to those who are now widowed, divorced or who have had their civil partnership dissolved provided they were married or in a civil partnership at the time of the accompanied assignment.

3.12 Paragraph (3) contains an additional requirement which the member of Her Majesty's forces must satisfy. This is that the member paid or was credited with, UK National Insurance contributions in excess of the qualifying earnings factor for the period in question. This provision has been included to prevent the applicant being treated more advantageously than their service spouse or civil partner. In common with the majority of credits, they will not be available to women who had an election to pay National Insurance contributions at the reduced-rate in force during the period in question. Provisions in the 2015 Act already protect the derived basic pension position of women who had a reduced-rate election in force at any time in the 35 year period prior to the start of the tax year in which they reach State pension age.

Chapter 3 post commencement qualifying years

3.13 Regulation 29 provides that credits awarded under the listed provisions of the 1975 Regulations count for establishing entitlement to the new State pension for periods from April 2016.

3.14 Regulations 30 and 32 replicate the provisions in the 1975 Regulations with some technical changes to take account of the new self-assessment process for self-employed people to determine their liability to pay Class 2 contributions; the new State pension scheme; and the acceleration of the timetable for the equalisation of women's State pension age.

3.15 Regulation 33 replicates the provisions at regulation 28 in respect of 2016/17 and subsequent tax years.

3.16 Regulations 34 to 38 broadly replicate the caring provisions in the 1975 Regulations, section 23A of the 1992 Act and regulations made under that section with some technical changes to distinguish between the class of case covered under regulations 34 and 35. The residence conditions for the credits provided for caring for young children will be subject to European Union rules on the coordination of social security systems. These have the effect of ensuring that, in certain limited circumstances, child-raising periods undertaken following a move from the UK to another EEA State may continue to be credited for State Pension purposes.

3.17 Regulation 39 specifies the time limits that are to be applied to applications for credits in respect of caring.

4. Consultation

4.1 There is no requirement to consult on this Rule.

5. Equality Impact

5.1 The provisions of the 2015 Act were the subject of a full Equality Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has screened these proposals and has concluded that they do not have any additional implications for equality of opportunity.

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 regulations (S.I. 2016 No. 240) will come 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.