

*These notes refer to the Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c.4) which received Royal Assent on 12th February 2010*

# Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 which received Royal Assent on 12th February 2010. They have been prepared by the Department for Social Development in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section (or Schedule) does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Pensions Regulator Tribunal is established under section 102 of the Pensions Act 2004. The Tribunal hears appeals against determinations of the Pensions Regulator. Both the Pensions Regulator and the Pensions Regulator Tribunal operate on a UK-wide basis. The functions of the Pensions Regulator Tribunal are conferred by both Great Britain and Northern Ireland legislation.
4. The [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#) (“the 2007 Act”) provides a power to enable the Lord Chancellor to transfer by way of an order (“the Transfer Order”) existing tribunals’ functions, including those of the Pensions Regulator Tribunal, to a new tribunal structure. The new tribunal structure has two tiers, the First-tier Tribunal and the Upper Tribunal. The 2007 Act does not allow the Lord Chancellor to transfer functions which are within the legislative competence of the Assembly.
5. The Act transfers the functions of the Pensions Regulator Tribunal, in so far as they relate to Northern Ireland, to the First-tier Tribunal and the Upper Tribunal. It therefore makes provision for Northern Ireland corresponding to provision contained in the Transfer Order made by the Lord Chancellor in relation to Great Britain.

## **CONSULTATION**

6. The tribunal reform provisions were the subject of extensive consultation both within government and with wider stakeholders prior to the introduction of the Tribunals, Courts and Enforcement Bill. There were two formal consultation exercises, with the White Paper *Transforming Public Services: Complaints, Redress and Tribunals* and the earlier consultation that accompanied the publication of Sir Andrew Leggatt’s report *Tribunals for Users: One System, One Service* in August 2001.

## **OPTIONS CONSIDERED**

7. Do nothing – this was not a viable option. The existing Pensions Regulator Tribunal structure will not be retained as the Lord Chancellor is transferring the functions and members of the Pensions Regulator Tribunal to the new tribunal structure.

Abolition of the right of appeal to an independent tribunal was not an option. Article 6(1) of the European Convention on Human Rights requires an “independent and impartial tribunal established by law”. It is important that people in Northern Ireland continue to have the right of appeal to an independent tribunal in relation to determinations of the Pensions Regulator.

Tribunal members are required to have special experience of the financial regulatory environment and/or the operation of pension schemes. To date no appeals from Northern Ireland have been made to the Pensions Regulator Tribunal. Given the specialised nature of the subject matter and the very small number of appeals UK-wide, it would not be practical to have a separate Tribunal for Northern Ireland only. The only viable option was the transfer of the Tribunal functions to the new structure from April 2010 in line with Great Britain.

## **OVERVIEW**

8. The Act contains 6 sections and 3 Schedules—
- Transfer of functions of the Pensions Regulator Tribunal
  - Power to make ancillary provisions etc.
  - Consequential, transitional and saving provisions etc.
  - Interpretation
  - Commencement
  - Short title

## **COMMENTARY ON SECTIONS**

### ***Section 1: Transfer of functions of the Pensions Regulator Tribunal***

*Section 1* provides for the functions of the Pensions Regulator Tribunal to be transferred to the First-tier Tribunal and the Upper Tribunal. The question as to which Tribunal is to exercise the functions in a particular case will be determined by, or under, Tribunal Procedure Rules made by the Tribunal Procedure Committee under section 22 of the Tribunals, Courts and Enforcement Act 2007.

### ***Section 2: Power to make ancillary provisions etc.***

*Section 2* provides a power for the Department to make ancillary provision by order, subject to the confirmatory procedure. For example, this will enable the Department to make the necessary consequential amendments to subordinate legislation.

### ***Schedule 1 - Amendments***

Schedule 1 makes amendments to primary legislation, in so far as it applies in Northern Ireland, consequential upon the transfer of the Pensions Regulator Tribunal into the new structure. In particular, Schedule 1 provides for offences, for example, where a person refuses to produce documents to the new tribunals. This merely re-enacts provisions of the Pensions Act 2004 which extend to Northern Ireland but are now being repealed.

### ***Schedule 2 - Transitional and saving provisions***

Schedule 2 makes transitional and saving provisions for the treatment of cases which had been dealt with by the Pensions Regulator Tribunal or were underway or pending at the transfer date.

Cases which have been started in the Pensions Regulator Tribunal will be transferred to the Upper Tribunal and in such cases the following will apply—

- a hearing which has already been commenced but not completed will be completed in the Upper Tribunal but comprised of the same members;
- directions and orders made before the transfer date will continue in force as if they were directions or orders of the Upper Tribunal;
- Tribunal Procedure Rules applicable to the Upper Tribunal will apply to all cases from the date of transfer. However, to ensure that proceedings are dealt with fairly, the Upper Tribunal will be able to disapply provisions of those rules or apply the procedural rules which applied to the Pensions Regulator Tribunal prior to the transfer;
- time limits which begin to run before the date of transfer continue to apply after that date; and

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- the Upper Tribunal will only be able to make an order for costs if and to the extent that the Pensions Regulator Tribunal could have made such an order before the date of transfer.

Schedule 2 also provides that if a right of appeal to the court has not been exercised before the date of transfer and the time for doing so has not expired, an appeal is to be treated as if it were an appeal against a decision of the Upper Tribunal.

## **HANSARD REPORTS**

9. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Northern Ireland Assembly.

<i>STAGE</i>	<i>DATE</i>
Introduction	30 November 2009
Accelerated Passage Motion	8 December 2009
Second Stage	8 December 2009
Consideration Stage	12 January 2010
Further Consideration Stage	18 January 2010
Final Stage	19 January 2010
Royal Assent	15 February 2010