

**EXPLANATORY MEMORANDUM TO  
THE INFORMATION AND CONSULTATION OF EMPLOYEES  
(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2006  
2006 No. 86**

1. This explanatory memorandum has been prepared by the Department for Employment and Learning and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the House of Lords Select Committee on the Merits of Statutory Instruments.

2. **Description**

- 2.1 These Regulations amend the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (S.R. 2005 No. 47) (“the I&C Regulations”).
- 2.2 The Regulations ensure that employers making certain changes to occupational and personal pension schemes are not required to consult employees or their representatives about these changes under the I&C Regulations, if they are complying with obligations to inform and consult about them in accordance with the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 48) (“the Pensions Regulations”).
- 2.3 The Regulations will achieve this in two ways. Firstly, they will allow employers to whom standard information and consultation provisions apply the opportunity to give their employee representative written notice that they will be consulting under the Pensions Regulations. Secondly, where a negotiated agreement exists which contains requirements to consult on listed pensions changes, an employer may give written notice to employee representatives or individuals that he will be consulting under the Pensions Regulations instead (provided that the agreement was made before 6 April 2006).
- 2.4 These Regulations and the Pensions Regulations are due to come into operation on 6 April 2006.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 During the current period of suspension of the Northern Ireland Assembly this Statutory Rule is required to be laid before Parliament under the negative resolution procedure (see paragraph 7(3) of the Schedule to the Northern Ireland Act 2000 (2000 c.1)).

4. **Legislative Background**

- 4.1 Section 43 of the Employment Relations Act 2004 contains a power to amend the I&C Regulations.
- 4.2 The Pensions Regulations, which are made under Articles 2(5)(a) and (6), 7(5)(a), 236(1), 238(2) and (4) and 287(1) and (3) of the Pensions (Northern Ireland) Order 2005, require employers to consult with employees who will be affected by a proposal to make certain changes to employees' pension arrangements. The detailed requirements are contained in the Pensions Regulations.
- 4.3 The I&C Regulations impose general obligations to inform and consult on employers.
- 4.4 The modification in these Regulations will provide employers with an opportunity to ensure that obligations arising under the I&C Regulations to consult employees or their representatives on certain pension issues do not apply where the information and consultation obligations in the Pensions Regulations apply.

## **5. Extent**

- 5.1 These Regulations apply to Northern Ireland only. The corresponding GB Regulations are The Information and Consultation of Employees (Amendment) Regulations 2006 (S.I. 2006 No. 514).

## **6. European Convention on Human Rights**

- 6.1 As the statutory rule is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 Following the consultation in GB by the Department for Work and Pensions, which was also issued in NI by the Department for Social Development, on "Simplicity, security and choice: Working and saving for retirement", the Government gave a commitment to make it a requirement on employers to consult before making changes to pensions schemes. Regulations giving effect to this commitment will be enacted simultaneously in NI and GB on 6 April 2006. As a consequence of the responses received, the Government has decided to make a small, technical amendment to the GB and NI I&C Regulations.

## **8. Impact**

- 8.1 This measure is intended to remove the potential for an employer being bound by both the Pensions Regulations and the I&C Regulations. Employers would not, therefore, bear the cost of having to defend separate actions before the Pensions Regulator and the Industrial Court in the event of a failure to consult employees on listed changes on pension schemes. The Regulations also

prevent an employer from potentially being liable to pay two fines for a single failure. The administrative process of notifying representatives of the intention to comply with the obligations in the Pensions Regulations will have a negligible impact on business. Therefore, no Regulatory Impact Assessment has been prepared.

8.2 There is no impact on the public sector.

## **9. Contact**

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