

EXPLANATORY MEMORANDUM

THE PENSION PROTECTION FUND (ENTRY RULES) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2009

S.R. 2009 No. 245

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 Article 118(2)(d) of the Pensions (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005 to allow the Board of the Pension Protection Fund to issue a direction in respect of an amendment to the scheme rules during an assessment period if it is concerned that the amendment would increase the scheme's protected liabilities.

3. Background

- 3.1 The Pensions Act 2004 set up, on a United Kingdom-wide basis, the Pension Protection Fund ("the Fund") to provide compensation for members of eligible occupational pension schemes, where the sponsoring employer is insolvent and the scheme has insufficient assets to pay benefits at the Fund compensation levels. The Fund is funded through an annual levy charged to all qualifying defined benefit occupational pension schemes.
- 3.2 If a qualifying insolvency event occurs in relation to an employer of a pension scheme eligible for protection by the Fund, the scheme will enter an assessment period to enable the Fund to assess whether or not the scheme is eligible to transfer into the Fund. During this period the scheme continues to be administered by its trustees.
- 3.3 During the assessment period the Fund undertakes a review of any recent rule changes to a scheme or discretionary increases. The purpose of this review is to ensure that the rules of the scheme have not recently been changed in a way that increases the scheme's liabilities on the basis that the costs would fall to be picked up by the Fund rather than the scheme. If this review establishes that the aggregate effect of recent rule changes or recent discretionary increases results in an overall increase in the scheme's liabilities, the current legislation provides for those rules and increases to

be disregarded when calculating eligibility for the Fund and the amount of any payments under the Fund.

- 3.4 A potential loophole in the existing legislation has come to light whereby an amendment to the rules of an eligible scheme agreed upon and made during an assessment period could have a retrospective effect. There is some doubt whether the existing legislation adequately covers such a situation, and there is the potential for a scheme to change the rules in this way leading to increased costs to be picked up by the Fund.
- 3.5 The Board of the Pension Protection Fund (“the Board”) already has powers to make directions in respect of schemes in an assessment period. In particular the Board may issue directions with a view to ensuring a scheme’s protected liabilities do not exceed its assets, or if they do, that the excess is kept to a minimum. The directions cover matters such as the investment of the scheme’s assets, the incurring of expenditure and the instigation or conduct of legal proceedings.

4. Consultation

- 4.1 There is no requirement to consult on these Regulations as they are made within 6 months of the coming into operation of the provision of the Pensions (Northern Ireland) Order 2005 under which they are made.

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 these legislative proposals. The Department has concluded that the proposals do 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 no 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 the Rule—
 - (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 are the Pension Protection Fund (Entry Rules) (Amendment) Regulations 2009 and come into force on 21st July 2009. 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. Additional Information

11.1 Not applicable.