

EXPLANATORY MEMORANDUM

THE PENSIONS REGULATOR (DELEGATION OF POWERS) REGULATIONS (NORTHERN IRELAND) 2009

S.R. 2009 No. 294

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 paragraph 2(1)(d) of Schedule 1 to the Pensions (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations will allow the Pensions Regulator (“the Regulator”) to outsource certain compliance powers in order to ensure that the compliance regime is delivered uniformly in Great Britain and Northern Ireland in the most efficient and cost-effective way. The Regulator will be able to determine the circumstances and arrangements under which these powers may be delegated and the persons to whom they may be delegated.

3. Background

- 3.1 The Pensions Act 2004 established, on a United Kingdom-wide basis, the Regulator to protect the benefits of members of work-based pensions, reduce the risk of situations arising which may result in calls on the Pension Protection Fund and promote and improve understanding and good administration of work-based pensions. The Regulator’s approach is risk-based focusing on education and enablement, with enforcement where appropriate.
- 3.2 Section 67 of the Pensions Act 2008 established the United Kingdom-wide personal accounts scheme. Chapter 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 places a number of duties on employers relating to securing pension scheme membership for eligible jobholders. The Act requires employers to automatically enrol eligible jobholders into qualifying workplace pension saving, with a minimum employer contribution. Individuals who decide that they do not want to participate in pension saving will have the right to opt out. It is intended that the reforms will begin to be implemented from October 2012. The initial focus will be on educating and enabling employers to meet their new duties.
- 3.3 The Pensions (No. 2) Act (Northern Ireland) 2008 provides the Regulator with powers to take proportionate, graduated compliance action where

education and enabling activities fail. Action to combat non-compliance will usually start with a statutory notice and can move to fixed penalties or escalating penalties if non-compliance persists. Criminal prosecution will only be an option for the most serious cases of deliberate non-compliance with key employer duties.

3.4 Section 108 of the Pensions (No. 2) Act (Northern Ireland) 2008 amends paragraph 2 of Schedule 1 to the Pensions (Northern Ireland) Order 2005 to allow the Department to make regulations permitting the Regulator to delegate certain functions. The functions which may be delegated are set out in that Schedule.

3.5 The functions which can be delegated are limited to those needed to deliver the new regime. These are—

- the issue of compliance notices, fixed penalty notices and escalating penalty notices;
- the imposition of civil penalties under Article 10 of the Pensions (Northern Ireland) Order 1995;
- the ability to require information under Article 67 of the Pensions (Northern Ireland) Order 2005 which may be used in conducting enquiries and gathering evidence in connection with enforcement processes;
- the review notices under section 43 of the Pensions (No. 2) Act (Northern Ireland) 2008.

3.6 Safeguards will be put in place to ensure delegation is appropriate—

- the Regulator may only delegate the powers to exercise compliance functions specified in the Regulations. For example, the decision whether to launch a criminal prosecution will be retained by the Regulator. In addition, whilst a supplier may be authorised to determine whether to issue a penalty, and to issue the penalty, it will not have discretion to change the penalty levels which will be set out in regulations;
- decisions taken by a supplier to take enforcement action will be based on a set of strictly defined business rules, written and owned by the Regulator. Decisions which fall outside the existing business rules, or where there is a particularly complex set of circumstances, will be referred to the Regulator;
- individuals will have the same right of appeal against decisions taken by a supplier as they would in relation to a decision made by the Regulator itself;

- ultimately the Regulator will retain accountability for any functions it chooses to delegate and this will be assured through stewardship of the Regulator by the Department for Work and Pensions.

4. Consultation

- 4.1 There is no requirement to consult on these Regulations as they make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain.

5. Equality Impact

- 5.1 Proposals for the Pensions (No. 2) Bill were subject to a full Equality Impact Assessment. 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 these Regulations. As the proposals are of a technical nature they have little implication for any of the section 75 categories. In light of this, the Department has concluded that the proposals would 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, or only negligible, 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 these Regulations—
- (a) are not incompatible with any of the Convention rights,
 - (b) are not incompatible with Community law,
 - (c) do not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - (d) do 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 Pensions Regulator (Delegation of Powers) Regulations 2009 (S.I. 2009/1888) which come into force on 13th November 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.