**EXPLANATORY MEMORANDUM TO**

# THE OCCUPATIONAL PENSION SCHEMES (LEVIES) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010

**S.R. 2010 No. 249**

## 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 Articles 103(1) and 287(3) of the Pensions (Northern Ireland) Order 2005 and is subject to the confirmatory procedure.

## 2. Purpose

2.1 These Regulations amend the Occupational Pension Schemes (Levies) Regulations (Northern Ireland) 2005 to ensure that where a scheme with either a full or partial guarantee from a relevant public authority does not pay the full Pension Protection Fund administration levy in circumstances where that constitutes unlawful State aid, the scheme is liable to pay the full levy. They also make a consequential amendment.

## 3. Background

3.1 The Pensions Act 2004 set up, on a UK-wide basis, the Pension Protection 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 compensation is funded through annual pension protection levies imposed by the Fund and charged to all qualifying defined benefit occupational pension schemes. A limited number of schemes have the benefit of a guarantee which means that that scheme will only pay levies in respect of the liabilities which the guarantee does not cover and compensation will only be paid by the Fund in respect of that part.

3.2 Partially guaranteed schemes are schemes in respect of which a relevant public authority (such as a government department) has given a guarantee that the liabilities relating to part of the scheme will be met in full. An example would be a privatised industry where government guarantees pension accrued up to privatisation. In such cases the legislation is modified so that the Pension Protection Fund only takes into account the assets and liabilities of the unsecured part (ie the part not covered by government) of such a scheme and can only assume responsibility for that part. In the case of the British Telecommunications

Pension Scheme, a partial exemption from the levy applied to those individuals who were members of the scheme at the time of privatisation in 1984, as those members have additional protection by virtue of a guarantee.

3.3 These Regulations implement the European Commission's decision of 11th February 2009 (C(2009) 685 final) that the exemption from the payment of a levy to the Pension Protection Fund corresponding to the pension liabilities covered by a Crown guarantee constitutes incompatible State aid (within the meaning of the Treaty establishing the European Community) in respect of the British Telecommunications pension scheme. In essence, the issue of incompatible State aid would only arise where the sponsor of a particular scheme with a guarantee operates as a commercial undertaking in a competitive environment and does not pay the levy.

3.4 These Regulations are necessary in order to comply with the Commission's decision as it relates to the administration levy. The decision was implemented in all other respects by the Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2010 (S.R. 2010 No. 32).

3.5 These Regulations ensure that where a partially guaranteed pension scheme is treated as two separate eligible schemes where it would otherwise give rise to (incompatible) State aid, both the part of the scheme with the guarantee and the part without the guarantee must pay the full Pension Protection Fund administration levy.

## 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 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 amendments are largely technical in nature the proposals would 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 Most pension schemes with a government guarantee are public sector schemes and therefore the issue of incompatible State aid does not apply. These Regulations are therefore of very limited extent and are expected to have only a 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 Occupational Pension Schemes (Levies) (Amendment) Regulations 2010 which come into force on 29th July 2010. 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.