

EXPLANATORY MEMORANDUM TO
THE PENSIONS REGULATOR (CONTRIBUTION NOTICES)
(SUM SPECIFIED FOLLOWING TRANSFER) REGULATIONS
(NORTHERN IRELAND) 2010

S.R. 2010 No. 250

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 35A(5) and 287(2) of the Pensions (Northern Ireland) Order 2005 and is subject to the confirmatory procedure.

2. Purpose

- 2.1 These Regulations set out how the Regulator will calculate the amount in a contribution notice where the grounds for issuing such a notice have been met and a transfer of two or more members to a work-based, defined contribution scheme has occurred.

3. Background

- 3.1 The Pensions Act 2004 established, on a UK-wide basis, the Pensions 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 The Pensions (Northern Ireland) Order 2005 gave the Pensions Regulator a number of 'anti-avoidance' tools to protect pension scheme members' benefits, and to protect the Pension Protection Fund against abuse, such as where employers sponsoring defined benefit pension schemes seek to avoid their obligations. One of the Regulator's anti-avoidance powers is the ability to issue contribution notices – to companies or to individuals – requiring money to be put into pension schemes under certain conditions. The Pensions (No. 2) Act (Northern Ireland) 2008 amended those powers in the light of the Regulator's experience and changes in the pensions market, and to address the unforeseen effect of the legislation whereby an employer could avoid a contribution notice by transferring the members of the scheme to a different scheme. The amendments

closed that loophole and specified how the Regulator could act in those circumstances.

- 3.3 These Regulations provide the technical details for the change by setting out how the Pensions Regulator must calculate the amount to be specified in the contribution notice issued, where the transfer is to a defined contribution scheme – a scheme in which the benefits payable are based on the amount of contributions made to it rather than on a member’s salary and length of service. The existing method for calculating the amount in a contribution notice is based on the defined benefit funding rules and the relevant deficit in a defined benefit scheme. The intention is to provide a calculation which offers the equivalent protection as the existing provision, but is applicable where there is a transfer to a defined contribution scheme.

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. However, the Department issued the document “*The powers of the Pensions Regulator: Amendments to the anti-avoidance measures in the Pensions Act 2004*”, published by the Department for Work and Pensions, in May 2008 for local consultation including key players such as lawyers, employers and trade unions.

5. Equality Impact

- 5.1 Proposals for the Pensions (No. 2) Act (Northern Ireland) 2008 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 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 Pensions Regulator (Contribution Notices) (Sum Specified following Transfer) 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.