EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2010

S.R. 2010 No. 80

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 164A(1) and (5), 188(4)(a), 189(2) and 287(2) and (3) of, and paragraphs 25(1) and 33 of Schedule 6 to, the Pensions (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.

2. Purpose

2.1 These Regulations amend several sets of Regulations relating to the operation of the Pension Protection Fund. In summary, the Regulations -

- amend and modify existing primary and subordinate legislation governing the compensation paid by the Board of the Pension Protection Fund ("the Board") concerning the early payment of pension compensation and career average revalued earnings schemes;
- introduce provisions to require the Board to charge interest when the pension protection levy is paid late and allow the Board to waive that interest if appropriate; and
- amend existing primary and subordinate legislation to allow decisions about waiving interest to be challenged through the normal review processes.

3. Background

3.1 The Pensions Act 2004 set up, on a United Kingdom-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 Pension Protection Fund is funded through an annual levy charged to all qualifying defined benefit occupational pension schemes.

3.2 <u>Early payment of pension compensation</u>
Current pensions legislation reflects current tax legislation in that a person can apply for early payment of compensation from any age between 50 and their normal pension age. Such compensation is actuarially reduced to

reflect early payment. The Finance Act 2004 changes the tax legislation to increase the lower age limit from 50 to 55 from 6th April 2010 with transitional protection for individuals in specified circumstances.

3.3 Under the current provisions an application for early payment of compensation must be made at least six months before the requested payment date and certain information must be included in the application. Since the provisions were introduced it has become clear that the application could be processed in a much shorter period than six months, and that some of the information requested in the application is no longer needed.

3.4 The Regulations amend existing subordinate legislation to reflect the changes in tax legislation and to remove the six month notice period.

3.5 <u>Career average revalued earnings schemes</u>

The current provisions for assessing pension compensation in relation to active members at the assessment date reflect the way in which revaluation operates for final salary schemes, namely that whilst members are in active service there is no revaluation of benefits. By contrast in career average revalued earnings schemes the amount of pension accrued or earnings for each year of pensionable service is revalued from the end of that year of pensionable service until retirement.

3.6 The Regulations modify existing primary legislation to enable the Board to calculate pension compensation for members of schemes which calculate all or part of a person's pension on a career average revalued earnings basis.

3.7 <u>Interest charges for late payment of the pension protection levy</u>

The Pensions (No. 2) Act (Northern Ireland) 2008 introduced provisions to require the Board to charge interest when the pension protection levy is paid late, to set the rate of interest and to provide for a waiver of the interest in certain circumstances.

3.8 The Board is responsible for collecting the pension protection levy and invests the money collected to fund compensation to eligible members. While the majority of pension schemes pay the pension protection levy promptly, there are some schemes which delay payment without good reason. These Regulations will act as a deterrent to late levy payers and will be fairer to the schemes which pay on time. They will also decrease the risk to the Pension Protection Fund of lost revenue as a result of not being able to invest the levy at the earliest opportunity.

3.9 The Regulations set the interest at 5% above the Bank of England base rate accruing on a daily basis from the 29th day after the issue of a pension protection levy invoice. They also allow the Board to waive the collection of all or part of the interest in specified circumstances.

3.10 Reviewable matters

The Regulations make changes to existing primary and subordinate legislation for people who want to challenge the Board's decisions on waiving the collection of interest so that the normal procedures which apply to challenging decisions relating to the Pension Protection Fund (reviews, reconsiderations and the Pension Protection Fund Ombudsman) apply.

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) Act (Northern Ireland) 2008, which included charging interest on late payment of the pension protection levy, 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 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 An assessment of the impact of charging interest on late payment of the pension protection levy is included in the Regulatory Impact Assessment for the Pensions (No. 2) Act (Northern Ireland) 2008. Otherwise the proposals have only a negligible impact on costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 None for the Department. The introduction of interest on the late payment of the pension protection levy should encourage the prompt payment of the levy.

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 Pension Protection Fund (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/560) which come into force on 1st April 2010 and 6th April 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.