

EXPLANATORY MEMORANDUM TO
THE DIVORCE & DISSOLUTION ETC (PENSION PROTECTION FUND)
REGULATIONS (NORTHERN IRELAND) 2011

S.R. 2011 No. 244

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice (Northern Ireland Courts and Tribunals Service) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 26B(1), 27D(2)(a) to (ba), 33(4C) of the Matrimonial Causes (Northern Ireland) Order 1978, Article 25(4) of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 and paragraphs 14E(2), 29B(1)(a) to (d) and 50(3) of Schedule 15 and paragraph 14(4) of Schedule 17 to the Civil Partnership Act 2004 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Divorce and Dissolution etc (Pension Protection Fund) Regulations (Northern Ireland) 2011 make provision in relation to court orders for sharing or attachment of pension compensation on divorce or dissolution of a civil partnership, nullity of a marriage or a civil partnership or separation (including provision relating to such orders following proceedings overseas).
- 2.2. This provision corresponds to that made in relation to court orders for sharing or attachment of pension and covers:
 - (a) the approach to changes of circumstances affecting orders for attachment or pension compensation (for example, a remarriage), including the giving of notices, the person to whom the Board of the Pension Protection Fund should make a payment and the circumstances when the Board is discharged from liability under those orders; and
 - (b) a period of suspension during which pension compensation sharing orders and the variation of such orders cannot take effect, to allow for the possibility of appeal.

3. Background

- 3.1. The Pension Protection Fund (PPF) was established, on a UK-wide basis, by the Pensions Act 2004 ("the 2004 Act") and commenced operation on 5th April 2005. The PPF is a compensation scheme to provide compensation, in place of a pension, to pension members whose occupational pension schemes cannot afford to cover their liabilities (to the level of pension compensation that would be paid by the PPF) due to an 'insolvency event'. The PPF is administered by the PPF Board. The Board is a statutory corporation that falls under the responsibility of the Secretary of State for Work and Pensions. When an occupational scheme suffers the prescribed insolvency event, it enters into an 'assessment period' during which the assets of the scheme are examined to see if it is possible for the

scheme to cover its liabilities. If it is not possible for the scheme to cover its liabilities to the levels that the PPF would pay in compensation the scheme would be 'transferred' into the PPF.

- 3.2. As pension compensation from the PPF is not a pension, none of the legislation in place in relation to pensions would provide for sharing or attachment orders between spouses or civil partners on divorce or dissolution, etc., to be made in respect of it.
- 3.3. The context for this instrument is the commencement of provisions in the Pensions (No.2) Act (Northern Ireland) 2008 ('the 2008 Act') which enable the making of orders for attachment or sharing of pension compensation as between spouses or civil partners on divorce, dissolution, etc. Those provisions were commenced on 6th April 2011, together with two sets of regulations providing for their implementation. The Department for Social Development is responsible for those regulations - the Pension Protection Fund (Pension Compensation Sharing & Attachment on Divorce etc.) Regulations 2011 (S.R. 113) and the Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations (Northern Ireland) 2011 (S.R. 114) - which concern the operation of the Pension Protection Fund.
- 3.4. It is as part of the package of regulations and rules of court to implement the provisions in the 2008 Act that this instrument is being made, with the aim of enabling the court to consider the full value of rights to pension compensation, make orders accordingly and to assist the PPF in discharge of its liability in respect of any orders made in respect of pension compensation. This instrument is based on the corresponding regulations in relation to pension attachment and sharing, namely the Divorce etc (Pensions) Regulations (Northern Ireland) 2000 (S.R 2000 No. 210) which cover orders as between spouses on divorce, etc, and the Dissolution etc (Pensions) Regulations (Northern Ireland) 2005 (S.R. 2005 No. 484) which covers orders as between civil partners on dissolution, etc. It covers those aspects of the corresponding regulations in relation to pension attachment and sharing orders which are also relevant for pension compensation attachment and sharing orders. The necessary rules of court for applications for pension compensation attachment and sharing orders are contained in the Family Proceedings (Amendment No. 2) Rules (Northern Ireland) 2011 (S.R. 2011 No. 243) which will come into force on 25th July 2011.

4. Consultation

- 4.1. No formal consultation was deemed necessary in respect of these Regulations given that they are deemed technical in nature and make corresponding provision to that contained in Statutory Instruments made by the Ministry of Justice in relation to Great Britain.

5. Equality Impact

- 5.1. These Regulations have been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

6. Regulatory Impact

- 6.1. This Statutory Rule does not require a Regulatory Impact Assessment as it has a negligible impact on costs on business, charities or voluntary bodies.

7. Financial Implications

- 7.1. No financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. It is the view of the Northern Ireland Courts and Tribunals Service that this Statutory Rule is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. There are no EU implications associated with this Statutory Rule.

10. Parity or Replicatory Measure

- 10.1. In Great Britain the corresponding Statutory Instrument is the Divorce and Dissolution etc (Pension Protection Fund) Regulations 2011 (No. 780) which came into force on 6th April 2011. 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.