EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2012

S.R. 2012 No. 270

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 127(3) to (5), 127A(5), 135(4), 140(1), 168(4)(a), 185(1), 189(1), (2) and (5)(a), 192(1) and (2)(b), 280(1)(b) and (2)(b) and 287(2) and (3) of 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 consequential on paragraphs 1 to 16 of Schedule 4 to the Pensions Act (Northern Ireland) 2012, which amend the Pensions (Northern Ireland) Order 2005 ("the Order") to enable the Board of the Pension Protection Fund ("the Board") –

- to determine the funding position of an eligible pension scheme without the need to obtain a fresh actuarial valuation, and
- to obtain its own valuation of the assets and protected liabilities of the scheme where it has been demonstrated that it is not possible to obtain a protected benefits quotation.

2.2 This means that if a scheme can demonstrate it has taken reasonable steps to obtain a protected benefits quotation from an annuity provider it can apply to the Board to assume responsibility for the scheme. A protected benefits quotation is a quotation from an insurance provider of the cost of purchasing annuities providing each scheme member with benefits equivalent to the lower of the compensation which they would receive if their scheme transferred to the Pension Protection Fund and their scheme benefits.

2.3 In summary, the Regulations –

- permit the Board to make a funding determination without requiring a new actuarial valuation for the types of multi-employer scheme for which the Board will have Article 162 valuations. Some multi-employer schemes are dealt with by splitting the scheme on an employer insolvency so the Board assesses only a part of the scheme for entry. For these schemes, the amendments modify the Order so that the Board will still be required to obtain a valuation;

- require an application that does not include a protected benefits quotation to provide evidence that all reasonable steps have been taken to try and obtain one;

- require the Board to provide a summary of a funding determination made containing the same information that the members and beneficiaries would have received had an Article 127 valuation been obtained from an actuary;

- set out how funding determinations are to be carried out. In particular, they provide that the Board must use information from the most recent Article 162 valuation or an appropriate alternative actuarial valuation and update this in accordance with the statement the Board will issue and the provisions of the regulations. The Order requires the Board to issue a statement, in line with the provisions of the regulations to set out how they will carry out funding determinations;

- specify the time limits for an application for review or reconsideration of a decision by the Board not to obtain a valuation and the issue of a funding determination (which are new "reviewable matters"), and the "interested persons" who may apply for a review of each of the new type of "reviewable matter" decisions the Board will be making;

- set the time limits for an applicant to refer an issue with one of the new reviewable matters to the Pension Protection Fund Ombudsman;

- make other minor consequential amendments.

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 Schemes that may be eligible to enter the Pension Protection Fund undergo regular valuations of their assets and liabilities (under Article 162 of the Order) to determine their level of funding. The information from the valuation is indicative of the likelihood of a scheme making a claim on the Pension Protection Fund and is used as part of the calculation of how much annual pension protection levy a scheme must pay.

3.3 In the event that the scheme's sponsoring employer becomes insolvent the scheme will enter an assessment period for entry to the Pension Protection Fund. As part of this process the Board is required to obtain an Article 127 valuation, undertaken by an actuary, of the scheme's assets and liabilities at the time of insolvency.

Producing a valuation includes producing a set of scheme accounts valuing each asset of the scheme - the detailed requirements are set out in the Pension Protection Fund (Valuation) Regulations (Northern Ireland) 2005. If there are insufficient assets in the pension scheme to cover the compensation the Pension Protection Fund would pay, the Board is required to assume responsibility for the scheme.

3.4 Practical experience has shown that in a number of cases, particularly where a scheme is significantly over or under funded at the time of the insolvency, there is already sufficient independent information held about a scheme to allow the funding position to be accurately assessed without requiring a further full actuarial valuation. In particular, when the Pension Protection Fund has valuations of the scheme prepared under Article 162.

3.5 The changes also enable the Board to assess a scheme that has been running as a closed scheme (i.e. that no longer has any active members accruing pension benefits) for entry without being required to obtain an actuarial valuation. A scheme may have been authorised to continue running as a closed scheme if, on an employer insolvency, the scheme applied to the Pension Protection Fund but did not transfer into the Fund because the scheme assets exceeded the amount required to pay pensions at compensation levels.

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 Act (Northern Ireland) 2012 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 A Regulatory Impact Assessment was carried out on the proposals for the Pensions Act (Northern Ireland) 2012. The impact on business and civil society organisations is small but beneficial. For those schemes where the Pension Protection Fund is able to make a funding determination, rather than requiring a new actuarial valuation, the decision as to whether the Pension Protection Fund will take responsibility for the scheme will be made more speedily, with both the Fund and the scheme incurring less cost.

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 Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/1688) which come into force on 23rd July 2012. 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.