EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2015

S.R. 2015 No. 155

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 sections 8C(1)(c), 67(6), 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993 and Articles 67(3)(b), 68(2)(e), 89(5)(c)(iii) and 166(2) and (3) of the Pensions (Northern Ireland) Order 1995 and is subject to the negative resolution procedure.

2. Purpose

2.1 These Regulations amend existing Regulations to ensure that the pension flexibilities introduced by the Taxation of Pensions Act 2014 and the Pension Schemes Act 2015 are reflected in pension law and that the two bodies of law remain compatible and that appropriate safeguards are in place.

3. Background

3.1 Part 4 of the Finance Act 2004 (“the 2004 Act”) sets out the tax rules in relation to pension schemes. It provides the requirements for registration of a pension scheme so as to be eligible for tax reliefs under the Act, and the circumstances and form in which a registered pension scheme is authorised to pay pension benefits. The Taxation of Pensions Act 2014 (“the 2014 Act”) amends, with effect from 6 April 2015, the rules in the 2004 Act on the authorised payments that can be paid in respect of money purchase arrangements (including cash balance arrangements), significantly increasing the flexibility of access to pension savings. The changes, known as the ‘pension flexibilities’, include the introduction of a new type of authorised lump sum payment (an ‘uncrystallised funds pension lump sum’) under section 166 of the 2004 Act, which can be paid in respect of part or all of a member’s rights to money purchase benefits under a scheme.

3.2 The pension flexibilities include a relaxation of restrictions on the payment of drawdown pensions, allowing part or all of a person’s accumulated pension fund under a money purchase arrangement to be designated as a flexi-access drawdown fund from which uncapped income can be drawn. The term money purchase benefits as defined in tax law includes a much broader range of benefit types (including cash balance benefits) than it does as defined in pensions law (where it excludes cash balance benefits).

3.3 The Pension Schemes Act 2015 ("the 2015 Act") includes provision to support the pension flexibilities and creates a new term "flexible benefits" which covers the types of benefits to which the pension flexibilities apply. The 2015 Act includes provision to ensure that a person receives independent advice before transferring their rights from a defined benefits arrangement to an arrangement which provides flexible benefits, and about how the pension flexibilities work in relation to cash balance benefits under occupational pension schemes (including a provision limiting the designation of assets held in respect of money purchase benefits). The Regulations amend sets of existing Regulations in consequence of the changes.

The Occupational Pension Schemes (Preservation of Benefits) Regulations (Northern Ireland) 1991 ("the Preservation Regulations")

3.4 Where a member of an occupational pension scheme ceases to be a member of that scheme before reaching the scheme's normal pensionable age, that scheme is required to take steps to preserve the member's accrued benefits (their "short service benefits"). The Preservation Regulations set out those steps and how this short service benefit is to be paid, including the conditions under which it may be paid as a lump sum. The amendment to the Preservation Regulations adds the uncrystallised funds pension lump sum to the list of lump sums that may be paid.

The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 ("the Contracting-out Regulations")

3.5 Occupational pension schemes can be 'contracted-out'. Both the sponsoring employer and employees pay lower National Insurance contributions, but employees have their entitlement to the additional state pension adjusted to reflect the lower National Insurance contributions. Since April 1997, a scheme can be contracted out if it complies with the requirements of section 5(2B) of the Pension Schemes (Northern Ireland) Act 1993. Regulations may specify when benefits accrued in a scheme contracted-out under section 5(2B) may be paid as a lump sum instead of as a pension.

3.6 The Contracting-out Regulations set out the circumstances in which such a lump sum can currently be paid. The amendment adds an uncrystallised funds pension lump sum to the list of lump sum payments that may be made. This is to enable pension schemes which were contracted out after April 1997 and are offering flexible benefits to provide such a lump sum, if they so wish.

The Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 2006 ("the Modification Regulations")

3.7 Occupational pension schemes which want to offer some or all of the new pension flexibilities may not have the power to change their rules in order to do so. The amendments to the Modification Regulations give the trustees of such a scheme the power to change the scheme's rules for the purpose of offering the pension flexibilities. The consent of the scheme's employer to the change is required, and the scheme may impose conditions (such as payment of a fee) on the flexibilities offered.

3.8 Where the rules of a scheme do provide a power to amend the rules, there are restrictions in legislation on any use of that power which affects existing rights under the scheme in certain ways, including a change which would or might result in any right to non-money purchase benefits under the scheme being converted into a right to money purchase benefits (as narrowly defined in pension legislation). The amendments to the Modification Regulations provide that, where the rules of a scheme are changed to enable a person to convert their benefits under the scheme into money purchase benefits in order to designate assets as a flexi-access drawdown fund, the restrictions do not apply.

3.9 The purpose of these amendments is to enable relevant schemes to offer the pension flexibilities if they wish to do so. In some cases the amendments will also allow scheme rules to be changed for this purpose more quickly and at less cost than would otherwise be the case.

3.10 The amendments to the Modification Regulations also allow the trustees of a scheme to change the scheme's rules to take account of a new requirement placed on trustees by the 2015 Act. Where a person with rights to defined benefits under a scheme wants to transfer the value of those rights to buy rights to flexible benefits under another scheme, the 2015 Act requires trustees to check, before carrying out the transaction, that the person has received independent advice. The Modification Regulations are amended so that the trustees can change a scheme rule which would otherwise require them to carry out a transfer in circumstances where they have not been able to establish that the person requesting the transfer has received independent advice. The purpose of this amendment is to enable trustees to change their scheme rules to remove a potential conflict with the requirements of the 2015 Act.

4. Consultation

4.1 There is no requirement to consult on these Regulations. The Regulations 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 these legislative proposals for these Regulations. As the amendments are in consequence of provisions in the Pension Schemes Act 2015 which support the pension flexibilities introduced by the Taxation of Pensions Act 2014 and are 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 These Regulations do not require a Regulatory Impact Assessment as they have no significant 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 (Consequential and Miscellaneous Amendments) Regulations 2015 (S.I. 2015/493) which come into force on 6th April 2015. 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.