

EXPLANATORY MEMORANDUM TO
THE PAYMENT OF PENSION LEVIES FOR PAST PERIODS
REGULATIONS (NORTHERN IRELAND) 2015

S.R. 2015 No. 402

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 44(1) and (2)(b) and 51(6) of the Pensions Act (Northern Ireland) 2015 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations, which are in consequence of the Pensions Act (Northern Ireland) 2015, further implement the European Commission's decision of 11 February 2009 (C(2009) 865 final) that where an issue of incompatible State aid arises, there is no exemption for an occupational pension scheme covered by a Crown guarantee from payment of pension protection levies. They provide that the scheme must pay pension levies in respect of past periods from the time of the Pension Protection Fund's inception.

3. Background

- 3.1 The Pension Protection Fund provides 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 compensation is funded through annual pension protection levies imposed by the Fund and charged to all qualifying defined benefit occupational pension schemes. The pension protection levy is comprised of 2 parts – a scheme-based levy and a risk-based levy. The risk-based levy is calculated by reference to scheme underfunding and the likelihood of employer insolvency. A limited number of schemes (including the BT pension scheme) have the benefit of a Crown guarantee, meaning that if a scheme has an insolvent employer and becomes underfunded government will meet the liabilities of the scheme or employer in respect of the whole or part of the scheme. Pension schemes with a Crown guarantee are generally exempt from the risk-based levy, on the basis that such schemes would not need to call on the Fund.
- 3.2 On 11 February 2009, the European Commission ruled that the BT pension scheme's exemption from paying the levies constituted unlawful State aid. In 2010, Regulations implemented the European Commission's decision. In essence, the issue of incompatible State aid would only arise where the sponsor of a

particular scheme with a Crown guarantee operates as a commercial undertaking in a competitive environment and does not pay the protection levy.

3.3 The Regulations, which are in consequence of section 44 (power to require pension levies to be paid in respect of past periods) of the Pensions Act (Northern Ireland) 2015, deal with the period before 2010. They provide that the Pensions (Northern Ireland) Order 2005 and regulations made under it (the 2010 Regulations) have effect as if the amendments made by the 2010 Regulations have always had effect and provide for the appropriate interest to be paid.

3.4 The BT scheme is the only scheme which has come to light as meeting the criteria, and has been aware for some time of its liability and had already made financial provision to cover it.

4. Consultation

4.1 There is no requirement to consult on these Regulations. 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) 2015 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. They are technical in nature and have little implication for any of the section 75 categories. The Department has concluded that they would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 Most pension schemes with a government guarantee are public sector schemes and therefore the issue of incompatible State aid does not apply. These Regulations are therefore of very limited extent and are expected to 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 Payment of Pension Levies for Past Periods Regulations 2014 (S.I. 2014/2939) which came into force on 8th December 2014.