

*These notes refer to the Pensions (No. 2) Act (Northern Ireland) 2008 (c.13) which received Royal Assent on 15 December 2008*

# Pensions (No. 2) Act (Northern Ireland) 2008

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## EXPLANATORY NOTES

### INTRODUCTION

1. These explanatory notes relate to the Pensions (No. 2) Act (Northern Ireland) 2008. They have been prepared by the Department for Social Development in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section (or Schedule) does not seem to require an explanation or comment, none is given.

### BACKGROUND AND POLICY OBJECTIVES

3. The independent Pension Commission's 2005 report, *A New Pension Settlement for the Twenty-First Century*, contained a series of recommendations regarding the pensions system. This report formed the basis for the White Paper *Security in Retirement: towards a new pensions system* (Command Paper 6841), published in May 2006. The [Pensions Act \(Northern Ireland\) 2008 \(c. 1\)](#) made provision for the first part of the reform of the pensions system in Northern Ireland.
4. A second White Paper, *Personal Accounts: a new way to save* (Command Paper 6975), published in December 2006, contained further proposals, with an emphasis on private saving, and forms the basis for measures contained in this Act. The main policy objective is to increase income in retirement.
5. The Act makes provision for Northern Ireland corresponding to provision contained in the [Pensions Act 2008 \(c. 30\)](#), and to provisions of the [National Insurance Contributions Act 2008 \(c. 16\)](#).

### CONSULTATION

6. The majority of the provisions of the Act were discussed in the White Paper *Personal Accounts: a new way to save*, which was the subject of a consultation exercise carried out between 18 December 2006 and 20 March 2007. A total of 283 copies were issued in Northern Ireland; three responses were received, two of which were substantive and in favour of the proposals.

7. Issues arising from the consultation were addressed in the White Paper *Personal Accounts: a new way to save – Summary of responses to the consultation* (Command Paper 7172), published in June 2007.
8. A further proposal to update and strengthen the Pensions Regulator's anti-avoidance powers was the subject of a consultation carried out between 2 May 2008 and 20 June 2008. The consultation paper, *The powers of the Pensions Regulator*, was issued to financial institutions and professional bodies in Northern Ireland. No responses were received.
9. A number of measures are intended to reduce the regulatory burdens on employers in order to encourage them to continue to provide good pension schemes for their employees. A review of the rules governing private pensions was announced in May 2006 and a report, *Deregulatory Review of Private Pensions*, was published by the Department for Work and Pensions on 22 October 2007.
10. Twenty eight copies of the paper were issued in Northern Ireland. No substantive responses were received.

## **OPTIONS CONSIDERED**

11. Full details of the options considered are addressed in the Regulatory Impact Assessment for the Act.

## **OVERVIEW**

12. The Act has six parts:
  - Part 1 sets out the new duties on employers to automatically enrol eligible jobholders into a qualifying pension scheme and to contribute to those arrangements. It also makes provision for a regime to ensure compliance and for the protection of employment rights. There are also provisions to broaden the functions of the Personal Accounts Delivery Authority to enable it to take forward the implementation work necessary to establish the Personal Accounts scheme. The duty on employers to make a stakeholder pension available to employees is removed;
  - Part 2 contains measures to simplify and amend existing private and State pensions legislation. It reduces burdens relating to private pension schemes by simplifying the treatment of contracted-out rights for the purposes of pension sharing on divorce etc. and by establishing new rules for the revaluation of accrued rights. A new method of assessing certain components of the State Pension is introduced to provide a single consolidated Additional Pension. The State Pension Credit assessed income period is extended for persons aged 75 and over;
  - Part 3 makes provision for compensation paid by the Pension Protection Fund to be shared on divorce etc. Changes are also made to the

compensation provisions of the Pension Protection Fund to improve the Fund's operation;

- Part 4 brings forward the introduction of the Upper Accrual Point, which replaces the Upper Earnings Limit as the weekly upper cap on earnings for determining entitlement to the State Second Pension, from 2012 to April 2009 and sets it at £770 per week;
- Part 5 contains a number of miscellaneous provisions. The powers of the Pensions Regulator are strengthened to ensure that they offer sufficient protection to scheme members and the Pension Protection Fund. The Regulator's power to delegate certain functions is widened to provide greater flexibility. Provision is made for the charge of a prescribed rate of interest on late payments to the Pension Protection Levy, the Fraud Compensation levy, the Pension Protection Fund Administration Levy, the Pension Protection Fund Ombudsman Levy and the General levy used to fund the Pensions Regulator and the Pensions Ombudsman;
- Part 6 contains technical provisions.

## **COMMENTARY ON SECTIONS**

### **PART 1 – Pension Scheme Membership for Jobholders**

#### ***CHAPTER 1 – Employers' Duties***

##### ***Section 1: Jobholders***

This section defines “jobholder” for the purpose of the employer duty as a worker who ordinarily works in Northern Ireland, is aged between 16 and 75 and who earns qualifying earnings (as defined in [section 13](#)). This section also provides that where a jobholder has more than one employer, the employer duty provisions apply separately in relation to each employment.

##### ***Section 2: Continuity of scheme membership***

This section prevents an employer in any way facilitating the end of a jobholder's active membership of a qualifying scheme or causing a scheme to cease to be a qualifying scheme (by action or omission) without putting the member into another qualifying scheme (within a time period to be prescribed by the Department). This means that employers have an ongoing duty to ensure that jobholders always have access to a qualifying scheme. This duty does not apply if the jobholder ends membership of their own accord and the duty only applies so long as the jobholder is employed by the employer.

##### ***Section 3: Automatic enrolment***

[Section 3](#) introduces the employer obligation to automatically enrol jobholders aged between 22 and state pension age into a scheme that fulfils the criteria for an “automatic enrolment scheme” (see [section 17](#)). Automatic enrolment must

take place when the individual first meets the relevant criteria (i.e. is a jobholder, is over 22 and is paid qualifying earnings) in that employment. This is known as the “automatic enrolment date” (*subsection (7)*).

The section contains a power which allows the Department to set out in regulations the steps the employer must take to arrange for the jobholder to be automatically enrolled (*subsection (2)*).

This obligation does not apply if, within a prescribed period, the jobholder has been an active member of a qualifying scheme in that employment, but chose to end membership (*subsection (4)*). This is to prevent jobholders being automatically enrolled into a scheme soon after they decided to leave.

The employer may be required, as part of the regulated automatic enrolment process, to provide prescribed information to any person, in particular the trustees or managers of an occupational pension scheme or the provider of a personal pension scheme (*subsection (5)*). This will enable the provision of information about a jobholder to the scheme to enable their enrolment.

There is a power which enables the Department to make regulations to deem an agreement to exist between the jobholder and the provider for the purposes of *subsection (2)* where the employer fulfils their employer duty obligation by automatically enrolling the jobholder into a personal pension scheme that meets prescribed conditions (*subsection (6)*).

#### ***Section 4: Postponement of automatic enrolment***

*Section 3* establishes that the effective date of automatic enrolment must be the first day on which the jobholder becomes eligible. *Section 4*, however, provides for the possibility of delaying initial automatic enrolment in circumstances prescribed in regulations. The period of permitted deferral will be established in regulations.

Employers that are permitted to delay automatic enrolment may be required to ensure that members remain in such a scheme for a prescribed period of time, unless the jobholder leaves that employment or chooses to leave the scheme. This will enable the member to make up pension savings foregone during the initial delay period.

*Section 4* will operate as part of the ongoing duty and not just during the implementation period.

#### ***Section 5: Automatic re-enrolment***

This section sets out the duty on employers to periodically automatically “re-enrol” into an automatic enrolment scheme jobholders who are aged at least 22 and under pensionable age who are not already members of a qualifying scheme.

As with automatic enrolment, this obligation does not apply if the jobholder chose to end membership, in that employment, within a prescribed period before

the re-enrolment date (*subsection (4)*). This is to prevent re-enrolment soon after the jobholder has chosen to leave the scheme.

There is a power which enables the Department to make regulations to deem an agreement to exist between the jobholder and the provider for the purposes of *subsection (2)* where the employer fulfils their employer duty obligation by automatically enrolling the jobholder into a personal pension scheme that meets prescribed conditions (*subsection (7)*).

### ***Section 6: Timing of automatic re-enrolment***

*Section 6* provides that regulations will determine that re-enrolment will not occur more frequently than once every three years for either the jobholder or the employer. It then sets out exceptions whereby regulations may be made to enable re-enrolment to take place more frequently than once in a three year period.

### ***Section 7: Jobholder's right to opt in***

There may be jobholders who are not participating in workplace saving because they opted out or cancelled their active membership, or do not qualify for automatic enrolment because they are aged between 16 and 22 or between pensionable age and age 75.

*Section 7* allows such jobholders to require their employer to make arrangements to enrol them into an automatic enrolment scheme by giving them notice. The jobholder can give notice to opt in under this section more than once in a 12 month period, although the employer is not obliged to accept more than one notice in 12 months. Therefore, employers are not required to keep enrolling a jobholder who has opted out a number of times in the same year.

This process, the details of the notice required and the date from which membership must be effected are to be prescribed in regulations (*subsection (4)*).

### ***Section 8: Jobholder's right to opt out***

This section establishes the right of a jobholder who has been automatically enrolled (or re-enrolled) into an automatic enrolment workplace pension scheme to opt out of that membership by providing a signed notice to their employer within a prescribed period indicating that they choose not to participate. The form and content of this notice will be set out in regulations, as will the period during which they can choose to opt out, to whom the jobholder must give notice of opt-out and arrangements which must be made to give effect to an opt out decision. The opt-out notice must include information relating to the effect of opting out on the jobholder. Opting out in this context refers to the specific decision not to participate in a pension scheme from the point of enrolment. Once in a scheme, an active member is subsequently free to cancel membership at any time and this section does not interfere with that established right.

Once a jobholder has opted out they will be treated as if they had never been a member of that qualifying scheme. In effect this means that they will not have

any rights in the scheme and any contributions collected from the jobholder and the employer will be refunded (*subsection (2)(b)*).

Regulations will also establish how and by when refunds must be made and how they are calculated.

### ***Section 9: Workers without qualifying earnings***

There may be people who do not qualify for automatic enrolment and who are not participating in workplace saving. Although they ordinarily work in Northern Ireland and are aged at least 16 and under 75 (two of the three qualifying conditions for a jobholder in *section 1*) they do not have qualifying earnings, as defined in *section 13*.

*Section 9* allows workers without qualifying earnings to require their employer to make arrangements to enrol them into a pension scheme by giving notice. The worker may give notice to opt in under this section more than once in a 12 month period, although the employer is only obliged to act on one request in a 12 month period. This doesn't prohibit the employer allowing workers to join the scheme at other times by agreement. An employer is not obliged to make any matching contribution but may choose to do so.

The enrolment process, the details of the notice required and the date from which membership must be effected are to be prescribed in regulations (*subsection (3)*).

For the purposes of this section a pension scheme may be either an occupational pension scheme, or a personal pension scheme registered under the Finance Act 2004. Also, a personal pension scheme must have direct payment arrangements, within the meaning of section 107A of the Pension Schemes (Northern Ireland) Act 1993, between the worker and the employer. "Direct payment arrangements" are either where the employer makes a contribution and sends it to the worker's scheme or where the employer deducts contributions from the worker's earnings and forwards these to the worker's scheme on behalf of the worker.

### ***Section 10: Information to be given to workers***

This section provides that regulations must require information to be given to the jobholder about the effect on them of automatic enrolment, re-enrolment, postponement of automatic enrolment, giving notice to opt in and the right to opt out. This might include, for example, information about the scheme into which they have been enrolled, what will happen next and their right to opt out of pension saving. The regulations will also prescribe who must provide the information and when it must be provided.

### ***Section 11: Information to be given to the Pensions Regulator***

*Section 11* gives the Department power to make regulations requiring employers to provide information to the Pensions Regulator about how they are complying, or intend to comply, with the employer duties, including information relating to

the pension schemes that are to be used. An example of information that may be required is information about the scheme into which an employer will be automatically enrolling jobholders.

This section works with the provisions in Chapters 2 and 4 of this Part, by enabling the Regulator to obtain the information needed to support the compliance regime.

### ***Section 12: Introduction of employers' duties***

This section provides the Department with a power to make regulations permitting employers of any description to start discharging their duties (including those on continuity of scheme membership, automatic enrolment and re-enrolment, and allowing opt-in and opt-out) after other employers. This will allow the introduction of the employer duties to be staged over a period of time.

### ***Section 13: Qualifying earnings***

This section defines qualifying earnings, by reference to an earnings band, with lower and upper limits of £5,035 and £33,540 per annum (in 2006/07 earnings terms), on which pensions contributions will be calculated for money purchase schemes. Having qualifying earnings (i.e. above £5,035) is a criterion of being a “jobholder” and so is a factor in determining whether a worker is to be automatically enrolled.

The section defines “earnings” as monetary sums comprising: wages/salary, commissions, bonuses, overtime and certain statutory benefits. It also enables the Department to set out in regulations other sums that can be considered as part of “earnings”.

### ***Section 14: Review of qualifying earnings band***

Section 14 of the Pensions Act 2008 requires the Secretary of State to review annually the value of the qualifying earnings lower and upper limits and amend them to maintain their value. *Section 14* enables the Department to make corresponding provision for Northern Ireland.

### ***Section 15: Pay reference period***

The pay reference period is the period of earnings over which the calculation is made to (a) determine whether the jobholder should be automatically enrolled (i.e. with earnings more than £5,035 per annum) and (b) calculate the level of contributions that the jobholder and employer need to pay for money purchase schemes. While the qualifying earnings band established in *section 13* is expressed in annual terms (and 12 months is the default pay reference period), this section allows the Department to prescribe alternative periods because of the different types of workers and different pay periods used by employers. There is a need to enable the pay reference period to be tailored to specific worker and payment type. For example, agency workers might require a much shorter calculation period than salaried employees.

### ***Section 16: Qualifying schemes***

This section defines a qualifying scheme. Qualifying schemes are those that meet minimum standards and quality requirements, which can be used by employers in discharging their obligations under [section 2](#).

A qualifying scheme can be either an occupational pension scheme or a personal pension scheme. Qualifying schemes must meet the quality requirement for the scheme type (see [sections 20 to 27](#)). They must also be registered under Chapter 2 of Part 4 of the Finance Act 2004, which means that they are registered for tax relief.

*Subsection (2)* enables regulations to dis-apply the requirement to be tax registered for schemes based outside of the United Kingdom if they meet further requirements to be prescribed in regulations. The further requirements are likely to refer to schemes operating outside the United Kingdom with members who will receive United Kingdom tax relief on their contributions.

The Department may by regulations set out the circumstances in which a scheme, that would otherwise qualify, is not a qualifying scheme. This can be where the payments and contributions – for example annual management charges - that must be made to the scheme exceed a prescribed amount (*subsection 3(a)* and *(b)*); or the scheme provides average salary benefits and contains prescribed features (*subsection 3(c)*).

### ***Section 17: Automatic enrolment schemes***

There will be additional requirements on schemes that are used for the purposes of automatic enrolment, automatic re-enrolment and allowing opt-in. These schemes must be qualifying occupational pension schemes or qualifying personal pension schemes and must also enable automatic enrolment to take place. An automatic enrolment scheme must not require jobholders who are enrolled to express a choice, or provide information, in order to remain active members. For example, a jobholder will not be required to make a choice about the fund into which their contributions may be invested. Nor can the scheme refuse membership on the grounds that the jobholder does not provide information. An automatic enrolment scheme must also satisfy any further conditions that may be prescribed in secondary legislation.

### ***Section 18: Occupational pension schemes***

For the purposes of this Part, occupational pension schemes are those which fall within the definitions set out in *paragraphs (a)* and *(b)* or are of a prescribed description if they are based outside the European Economic Area.

### ***Section 19: Personal pension schemes***

Personal pension schemes are defined as those that fall outside the definition of an occupational pension scheme (see [section 18](#)).

***Section 20: Quality requirement: UK money purchase schemes***

In order to be deemed a qualifying scheme, a United Kingdom occupational money purchase scheme must have rules that assure an employer contribution of at least 3% of qualifying earnings and total contributions paid by the employer and jobholder of at least 8% (including tax relief).

The Pensions Act (Northern Ireland) 2008 legislates for the repeal of contracting out arrangements for money purchase schemes currently provided for under the Pension Schemes (Northern Ireland) Act 1993. However, in the event that this has not occurred when the employer duties commence, *subsection (2)* enables regulations to be made to modify the contributions required for money purchase schemes with members whose employment is contracted-out of the State Second Pension Scheme.

*Section 20* also contains a regulation-making power that allows the Department to set an amount below which trustees and employers could choose to decline to accept contributions. This could be used, for example, to enable schemes to not have to deal with such minor amounts of contributions which are uneconomic to administer.

***Section 21: Quality requirement: UK defined benefits schemes***

***Section 22: Test scheme standard***

***Section 23: Test scheme***

*Section 21* provides that the quality requirement for defined benefits schemes depends on whether or not the jobholder is in contracted-out employment, as defined under the Pension Schemes (Northern Ireland) Act 1993.

If a jobholder is in contracted-out employment, evidenced by a certificate issued under section 3(1) of the Pension Schemes (Northern Ireland) Act 1993, the scheme satisfies the quality requirement in relation to that jobholder. *Subsection (3)* enables the Department to change, by order, the quality requirement so that a scheme does not qualify on the evidence of contracting out alone, but is required to meet a modified version of the test scheme standard (see *sections 22* and *23*) with an accrual rate of no more than 1/80<sup>th</sup> rather than 1/120<sup>th</sup> as set out in *section 23(4)(a)*.

For jobholders who are members of a defined benefits scheme and are not in contracted-out employment, the scheme must meet the test scheme standard (see *section 22*).

*Section 22* provides that a scheme satisfies the test scheme standard if it provides benefits for the relevant members of the scheme that are broadly equivalent to, or better than, the benefits provided by a model test scheme – set out in *section 23*. Relevant members are (*subsection (2)*):

- for a jobholder who is not in contracted-out employment, the jobholder and all active members who are not in contracted-out employment and are jobholders of the same employer;
- for a jobholder who is in contracted-out employment, the jobholder and all active members who are in contracted-out employment and are jobholders of the same employer.

In making a comparison when applying this section, the pensions of relevant members must be considered as a whole (*subsection (3)*). A regulation-making power enables the Department to set out detail on how comparison with the model test scheme will be done (*subsection (4)*). Regulations under *subsection (4)* may provide for the determination to be made in accordance with guidance issued by the Department (*subsection (5)*).

Under *subsection (6)*, the Department may provide, by regulations, that an actuary will be required to confirm that a scheme meets the test.

The model test scheme on which the comparison is made is set out at [section 23](#). It provides a pension for life based on a maximum of 40 years of accruals at an annual rate of 1/120<sup>th</sup>.

#### ***Section 24: Quality requirement: UK hybrid schemes***

Hybrid schemes have a mix of defined benefits and money purchase elements. In order to qualify they will be required to satisfy the quality requirement for either money purchase schemes ([section 20](#)) or defined benefits schemes ([sections 21 to 23](#)). The quality requirements set out in *subsections (1)(a)* and *(1)(b)*, which are those for money purchase schemes and defined benefits schemes, respectively, can be modified by regulations in their application to certain hybrid schemes.

Employers will be directed to the quality requirement they should use for a hybrid scheme in rules made by the Department (*subsection (2)*).

#### ***Section 25: Quality requirement: non-UK occupational pension schemes***

[Section 25](#) enables the Department to regulate for the quality criteria of non-United Kingdom based occupational pension schemes.

#### ***Section 26: Quality requirement: UK personal pension schemes***

[Section 26](#) provides the conditions which a United Kingdom personal pension scheme must meet in order to satisfy the quality requirement. In order to qualify, personal pension schemes must only provide money purchase benefits (*subsection (3)*). The employer must be required to contribute at least 3% of qualifying earnings (*subsection (4)*) and the jobholder must be required to make up any shortfall in contributions up to a contributions total of 8% (to include 1% tax relief) of qualifying earnings in the pay reference period (*subsections (5) and (6)*). There will need to be agreements between the scheme, the employer and the jobholder confirming the contributions required. The employer must be

required to pass over contributions to the scheme on the basis of direct payment arrangements within the meaning of section 107A of the Pension Schemes (Northern Ireland) Act 1993 (*subsection (7)*).

As with money purchase schemes (*section 20*) there is also a provision to alter contribution levels should the repeal of contracting-out for money purchase schemes not have occurred by the time these duties commence.

*Subsection (9)* contains a regulation-making power that allows the Department to set an amount below which trustees and employers could choose to decline to accept contributions. This could be used, for example, to enable schemes to not have to deal with minor amounts of contributions which are uneconomic to administer.

***Section 27: Quality requirement: other personal pension schemes***

This section allows the Department to prescribe quality requirements for non-United Kingdom personal pension schemes.

***Section 28: Sections 20, 24 and 26: certification that quality requirement is satisfied.***

This section confers a power on the Department to make regulations which will enable employers to certify that a scheme satisfies the relevant quality requirement under *sections 20, 24 or 26*. This is subject to any provision made by the regulations as to cases where the requirements of a scheme, and any agreement under section 26, for payment of contributions did not satisfy prescribed conditions.

***Section 29: Transitional periods for money purchase and personal pension schemes***

This section sets out how employers operating qualifying occupational money purchase schemes and personal pension schemes will be able to phase in their contributions over two transitional periods.

This is achieved by setting lower contributions in the quality requirements over two transitional periods. Both transitional periods shall last at least 1 year and the exact duration of both will be prescribed in regulations.

In the first period, scheme rules must require employer contributions of at least 1% and a total contribution of at least 2% of the jobholder's qualifying earnings in the pay reference period. For the second period, the minimum contributions will increase to 2% from the employer and 5% overall.

***Section 30: Transitional period for defined benefits and hybrid schemes***

This section sets out the phasing arrangements for employers operating defined benefits or hybrid schemes. It enables those employers to delay automatic enrolment, for a specific group of jobholders for a transitional period to be prescribed in regulations.

*Subsection (2)* defines the conditions which must be satisfied for inclusion in this group of jobholders. They must be existing jobholders of the employer who have previously been, and remain, able to join a qualifying defined benefits or hybrid scheme.

The employer must automatically enrol such jobholders into a qualifying defined benefits or hybrid scheme by the end of the transitional period. If, before the transitional period ends, a jobholder ceases to be able to join a defined benefits or hybrid scheme or if the scheme they are eligible for ceases to qualify (*subsection (4)*), then the employer must automatically enrol the jobholder into alternative qualifying provision.

If the alternative scheme is another defined benefits or hybrid scheme, the employer must ensure membership is effective from the date on which the original scheme ceased to qualify or be available for the jobholder (i.e. the scheme closure date) (*subsection (5)*). *Subsection (6)* provides that if the alternative scheme is a money purchase scheme, then the employer must make membership effective from the original automatic enrolment date by paying backdated employer contributions.

### ***Section 31: Effect of freezing order or assessment period***

This section provides that active membership of a qualifying scheme does not cease for a jobholder or worker (this includes where a worker has opted in to the scheme under *section 9*) for the purposes of the employer duties when the accrual of benefits in that scheme has been frozen either by an order imposed by the Pensions Regulator or because of an assessment by the Pension Protection Fund. Nor will the scheme cease to be a qualifying scheme in such circumstances.

### ***Section 32: Power of trustees to modify by resolution***

*Subsection (1)(a)* enables trustees to make changes to a scheme necessary to comply with the conditions in *section 17(2)* (automatic enrolment schemes), for example, making a scheme suitable for automatic enrolment by removing any condition of membership which requires a choice of investment to be made.

*Subsection (1)(b)* allows changes to enable contributions payable to a scheme to be increased to comply with *section 20* or *section 24(1)(a)*. The permitted changes are to increase the contribution rate, the basis on which it is calculated or the frequency of its payment (*subsection (2)*). However, changes cannot be made without consent of the employer (*subsection (3)*).

*Subsection (4)* makes separate provision for those schemes where there is more than one employer.

Regulations may provide that this section does not apply to prescribed occupational pension schemes (*subsection (5)*).

### ***Section 33: Deduction of contributions***

An employer who automatically enrolls, re-enrolls or arranges opt in for a jobholder into a scheme is permitted to deduct the jobholder's contributions from the jobholder's remuneration and pay them to the scheme.

Regulations may require the employer to make such a deduction at any time on or after the date from which the jobholder becomes a scheme member (*subsection (2)*).

## ***CHAPTER 2 – Compliance***

### ***Section 34: Effect of failure to comply***

*Section 34* provides that no private right of action for breach of statutory duty arises against an employer who has failed to comply with requirements set out in the employer duty provisions (*sections 2 to 11* or regulations under those sections). Under the Act the Pensions Regulator is the sole body responsible for taking action against such breaches.

*Subsection (2)* provides that nothing in Chapter 2, or in the employer duty provisions, is intended to affect any right of action which might arise otherwise than under these provisions.

### ***Section 35: Compliance notices***

#### ***Section 36: Third party compliance notices***

This Act introduces powers for the Pensions Regulator to issue compliance notices. Where the Regulator is of the opinion that a contravention of the employer duties has occurred, a compliance notice will be the formal method of communicating the actions that should be taken to comply, and the consequences of not doing so. Compliance notices will generally be the first step in the graduated compliance regime.

*Section 35* gives the Pensions Regulator the power to issue a compliance notice to a person who has breached an employer duty. Employer duties will generally apply to employers, but may also apply to other persons specified in regulations. A compliance notice will direct the recipient to put right their breach of the employer duty.

A compliance notice may require the recipient to take specific steps to place the jobholder in the same position, as nearly as possible, as if the breach had not occurred (*subsections (4) and (5)*).

*Section 36* provides that a “third party compliance notice” can be issued to a person (the third party) if the Pensions Regulator is of the opinion that a person has contributed to a breach of the employer duties by someone else who is subject to the duties. A third party compliance notice will direct the recipient to put right the action or inaction that contributed to the breach of the duty.

An example of where a third party compliance notice might be issued is where a scheme or pension provider has failed to process the enrolment information it has received from the employer and this prevents the employer from meeting the enrolment duty.

### ***Section 37: Unpaid contributions notices***

In addition to compliance notices, *section 37* provides the Pensions Regulator with the power to issue an unpaid contributions notice to an employer if it is of the opinion that an employer has failed to pay the required contributions on time.

*Section 37* makes provision for what an unpaid contributions notice is, to which contributions it is applicable and what information may be included in the notice.

### ***Section 38: Calculation and payment of contributions***

*Section 38* makes provision for the calculation of unpaid contributions in respect of (*subsection (1)*):

- a compliance notice issued for contravention of section 2(1), or a failure to comply with, an enrolment duty; or
- an unpaid contribution notice.

*Subsection (2)* provides that a notice may require the employer to calculate the amount of contributions that have not been paid into the scheme. The notice may also require that, where contributions are made within a prescribed period after a certain date, the employer must pay their own contributions with the worker having the option to pay their own, but not being obliged to do so. However, where contributions are not made during that prescribed period of time, the employer must pay all outstanding contributions.

*Section 38* also enables the Pensions Regulator to estimate the amount of unpaid contributions using information other than that provided by the employer (for example, information held by Her Majesty's Revenue and Customs or the employee's scheme) and to require employers to pay interest on unpaid contributions (*subsections (3) and (4)*).

### ***Section 39: Meaning of "relevant contributions"***

*Section 39* provides that "relevant contributions", for the purposes of *sections 37 and 38*, includes both contributions payable directly by an employer into a scheme and contributions payable by an employer on behalf of a worker out of deductions from the worker's earnings. The section also provides that the definition applies for both jobholders and for workers without qualifying earnings under *section 9*.

### ***Section 40: Fixed penalty notices***

### ***Section 41: Escalating penalty notices***

### ***Section 42: Penalty notices: recovery***

*Sections 40 to 42* provide the Pensions Regulator with powers to issue penalty notices where the Regulator is of the opinion that there has been a failure to comply with a compliance notice, a third party compliance notice, an unpaid contributions notice, a notice requiring certain information (Article 67 of the Pensions (Northern Ireland) Order 2005) or any of the provisions listed in *section 40(2)*.

A fixed penalty notice (*section 40*) will require the person to whom it is issued to pay a penalty of up to £50,000 within a specified timeframe. Regulations will set out the actual penalty rate.

An escalating penalty notice (*section 41*) can be issued in cases where there is continuing failure to comply – such as where a fixed penalty notice has been ignored. The penalty will escalate at a rate prescribed in regulations but will not exceed £10,000 per day.

An escalating penalty notice cannot be issued if the Regulator is in the process of undertaking a review of a compliance notice, a third party compliance notice or an unpaid contributions notice, following an application for review by the person to whom such a notice was issued. The Regulator may not issue an escalating penalty notice if the person has exercised his right to make a referral (appeal) to the Pensions Regulator Tribunal against a fixed penalty notice and the referral has not yet been determined (*subsection (2)*).

The Regulator can recover any penalty payable under *sections 40* or *41*. Any such penalties recovered by the Regulator must be paid into the Consolidated Fund (*section 42*).

### ***Section 43: Review of notices***

*Section 43* provides that the Pensions Regulator may review a notice issued under Chapter 2 if it is asked to do so by the person to whom the notice was issued, or if the Regulator considers it to be appropriate (*subsection (1)*).

Regulations may prescribe the time period in which the person to whom the notice was issued can apply for review of the notice and the period in which the Regulator may otherwise review the notice (*subsection (3)*).

*Subsections (4)* and *(5)* provide that the effect of a notice is suspended until a review is completed, and must take into consideration any representations made by the person to whom the notice was issued.

*Subsection (6)* sets out the Regulator's powers in reviewing a compliance notice. The Regulator may confirm, vary or revoke the notice, or it can choose to replace the notice with a different one.

#### ***Section 44: References to the Pensions Regulator Tribunal***

*Section 44* provides that a person who has received a fixed or escalating penalty notice may submit an appeal to the Pensions Regulator Tribunal against the issue of the notice and/or the amount of the penalty (*subsection (1)*).

*Subsection (2)* provides that a person making a reference (appeal) must first request a formal review by the Pensions Regulator, unless the Regulator itself initiates a review. The Regulator may, however, decide not to undertake a review.

*Subsection (3)* provides that the effect of a notice is suspended on a reference to the Pensions Regulator Tribunal and sets out the period of suspension.

*Subsection (5)* amends Article 97 of the Pensions (Northern Ireland) Order 2005 to provide for the period within which a reference to the Tribunal must be made.

#### ***Section 45: Offences of failing to comply***

#### ***Section 46: Offences by bodies corporate***

#### ***Section 47: Offences by partnerships and unincorporated associations***

*Sections 45* to *47* make it a criminal offence for employers to wilfully fail to comply with specified duties.

These duties are automatic enrolment (*section 3(2)*), re-enrolment of eligible jobholders into an automatic enrolment scheme (*section 5(2)*) and the requirement to enrol jobholders into an automatic enrolment scheme at the jobholders' request (*section 7(3)*).

*Section 45(2)* provides that a person who commits such an offence could face imprisonment for up to two years and/or a fine on conviction on indictment. On summary conviction, they are liable for a fine not exceeding the statutory maximum.

*Sections 46* and *47* and section 20 of the Interpretation Act (Northern Ireland) 1954 enable the following to be prosecuted for the *section 45* offence:

- specified individuals within a body corporate, as well as the body corporate itself (*section 46*);
- partnerships and individual partners; unincorporated associations and officers within these (*section 47*).

#### ***Section 48: Offences of providing false or misleading information***

*Section 48* extends Article 75(1)(a) of the Pensions (Northern Ireland) Order 2005, which deals with offences of providing false or misleading information, to include the offence of providing the Pensions Regulator with false or misleading information about the actions taken by the employer for the purpose of complying with the employer duties (under regulations under *section 11*).

### ***Section 49: Monitoring of employers' payments to personal pension schemes***

Section 107A of the Pension Schemes (Northern Ireland) Act 1993 makes provision about monitoring arrangements under which an employer pays contributions to personal pension schemes in respect of an employee. It also provides that fraudulent evasion of such arrangements is an offence. *Section 49* extends that section to apply to arrangements in respect of jobholders, defined in this Act, who would not otherwise fall within the definition of "employee", but who fall under the definition of "workers".

### ***CHAPTER 3 - Safeguards: Employment and pre-employment***

*Sections 50* to *58* represent a package of pre-employment and employment safeguards to ensure that individuals' entitlements under the Act can be protected. The package contains three key elements. *Sections 50* to *53* introduce a prohibition on employers attempting to screen out job applicants on the basis that they want to be a member of a pension scheme. *Section 54* introduces a prohibition on employers acting (or attempting) to induce employees to opt out from, or cease, membership of a qualifying workplace pension scheme. Both these prohibitions will be enforced by the Pensions Regulator. *Sections 55* to *58* provide employees with a range of employment rights to enable them to present a complaint to an industrial tribunal if they feel they have been put at a disadvantage or dismissed as a result of their pension choices. The Regulator will not have a role in the enforcement of these rights.

#### ***Section 50: Prohibited recruitment conduct***

#### ***Section 51: Compliance notices***

#### ***Section 52: Penalty notices***

#### ***Section 53: Review of notices and references to the Pensions Regulator Tribunal***

*Sections 50* to *53* introduce a prohibition on certain recruitment conduct and provide the Pensions Regulator with powers to notify employers of breaches of this prohibition and, subsequently, to issue penalties. *Section 50* provides that the prohibition is contravened if, in an application for employment, an employer makes a statement or asks a question that indicates that the application might be conditional on whether or not an applicant might opt out of auto-enrolment. A typical example would be if a job advertisement indicated that the applicant might stand more chance of success if he was prepared to opt out of auto-enrolment.

*Section 51* enables the Pensions Regulator to issue a compliance notice to an employer where it is of the opinion that the employer has contravened *section 50* and outlines what the notice may contain. Notices may inform the employer what it must do in order to remedy their non-compliance with *section 50* or prevent it

re-occurring. For example, an employer might be required by a notice to change the wording of an application form or other recruitment material for the future.

The notice may also set out the time periods within which employers have to take certain actions such as provide information about the contravention of the prohibition and how they have now complied with the notice. Compliance notices may also state that if an employer fails to comply with the requirements of the notice, the Regulator may issue a penalty notice.

*Section 52* provides that the Pensions Regulator may issue penalty notices in respect of *section 50* and failure to comply with compliance notices issued under *section 51*. The penalty must not exceed £50,000 and the person to whom the notice is issued (the employer) must pay the penalty within a specified period. *Subsection (4)* sets out what information must be in the penalty notice.

The Regulator will have the power to recover any penalties payable and any penalty recovered must be paid into the Consolidated Fund (*subsection (5)*).

*Section 53* provides that the Pensions Regulator will have the ability to review both compliance and penalty notices, issued under *sections 51* and *52*, in respect of the recruitment conduct prohibition in *section 50*.

As with penalty notices issued under *section 40* or *41*, an employer will have the right of appeal to the Pensions Regulator Tribunal in respect of the issue of a penalty notice in relation to the recruitment conduct prohibition, or the amount of the penalty payable under that notice.

#### ***Section 54: Inducements***

*Section 54* introduces a prohibition on employers attempting to induce their workers to opt out from, or cease membership of, a qualifying workplace pension scheme and gives the Pensions Regulator the power to take compliance action against a contravention. An employer contravenes this prohibition if they take any action for the sole or main purpose of inducing a worker or jobholder to give up membership of a relevant scheme, without becoming an active member of another relevant scheme within the prescribed period under *section 2(3)*.

The Regulator may issue a compliance notice under *section 35* if it believes that the employer has contravened *section 54*.

A compliance notice cannot be issued unless the contravention occurred within a prescribed period before (i) a complaint to the Regulator was made about the contravention of the provision or (ii) the time when the Regulator informed the employer of an investigation of a contravention.

#### ***Section 55: The right not to suffer detriment***

#### ***Section 56: Enforcement of the right***

*Section 55* provides a statutory right for workers not to be subjected to any detriment on specified grounds. For example, this right would protect a worker

who might be denied promotion or training opportunities because of their decision not to opt out of pension scheme membership.

*Subsection (4)* provides that if the detriment in question amounts to dismissal, this section does not apply (but see *section 57*).

*Section 56* provides that workers have a right to bring claims that they have been subjected to a detriment to an industrial tribunal. If the tribunal upholds a claim, it can make an award of compensation to be paid by the employer to the worker.

#### ***Section 57: Right of employee not to be unfairly dismissed***

*Section 57* inserts a new Article 135D into the Employment Rights (Northern Ireland) Order 1996, which protects an employee from being dismissed on grounds mirroring those specified in the right not to suffer detriment (*section 55*), for example, where an employee is dismissed for refusing to opt out of pension scheme membership.

As with the right not to suffer detriment, an employee who is dismissed on these specified grounds shall be regarded as having been unfairly dismissed, regardless of whether the employee concerned actually meets the eligibility criteria for the employer duty.

#### ***Section 58: Restrictions on agreements to limit operation of this Part***

*Subsection (1)* renders void any agreement between a worker and their employer to either (a) exclude or limit the operation of any provision in Part 1 of this Act or (b) preclude a person from bringing proceedings under *section 56* (i.e. enforcement of the right not to suffer detriment) before an industrial tribunal.

Under the terms of this provision, an agreement between the worker and employer will be void and unenforceable by the employer, who will be further restricted (under *subsection (2)*) from recovering the financial or other benefit given in exchange for it.

*Subsections (3)* and *(4)* provide that *subsection (1)* will not apply where an employer and a worker have entered into any agreements under conciliation arrangements dealt with by a conciliation officer or under a compromise agreement (the conditions for which are listed in *subsection (5)*). These subsections ensure that *subsection (1)* does not undermine any conciliation process by inadvertently voiding any agreement made as part of the conciliation process.

### ***CHAPTER 4 – Supplementary provision about compliance and information-sharing***

#### ***Section 59: Requirement to keep records***

*Section 59* permits the Department to make provision requiring any person to keep records in a prescribed form for a prescribed period, not exceeding 6

years. Regulations may require the provision of such records, on request, to the Pensions Regulator.

The regulations may provide for the Regulator to apply penalties under Article 10 of the Pensions (Northern Ireland) Order 1995 where a person fails to comply with this requirement.

***Section 60: Powers to require information and to enter premises***

This section gives the Pensions Regulator powers to require information and to enter premises to ensure compliance. It amends Article 67 of the Pensions (Northern Ireland) Order 2005 to permit the Regulator to require any person who holds or is likely to hold information relevant to the exercise of the Regulator's functions to provide an explanation of a document requested, at a specified time and place.

The Regulator will not be able to require anyone to answer any question or provide any information that might incriminate themselves or their partner or spouse (*subsection (2)*).

This section also amends Article 69 of the Pensions (Northern Ireland) Order 2005 to allow an inspector, appointed by the Regulator, to enter premises liable to inspection to investigate whether an employer is complying with requirements under Chapter 1 of Part 1, *section 50* or *54* or any corresponding provision in force in Great Britain (*subsection (3)*).

***Section 61: Disclosure of tax information etc.***

This section substitutes a new Article 83 of the Pensions (Northern Ireland) Order 2005. It allows Her Majesty's Revenue and Customs to disclose information on specified matters to the Pensions Regulator to enable the Regulator to discharge its functions (*subsection (2)*). The section allows Her Majesty's Revenue and Customs to share any information it holds in relation to tax or duty (including income tax), national insurance contributions or the national minimum wage (*subsection (1)*).

*Section 61* also places controls on the Regulator's ability to disclose this information. Any information the Regulator receives from Her Majesty's Revenue and Customs under this section must be treated as restricted information (*subsection (3)*), and can only be disclosed if one of the following exceptions applies:

- Her Majesty's Revenue and Customs has authorised the disclosure (or the disclosure is back to Her Majesty's Revenue and Customs);
- it is needed for criminal proceedings;
- it is needed for civil proceedings started by the Regulator;
- it is needed for the Regulator to carry out its functions; or
- the data has been anonymised.

Information received by the Regulator from Her Majesty's Revenue and Customs under this section is specifically excluded from some of the grounds on which the Regulator can normally disclose information it holds. These are set out in Articles 77, 78 and 80-82 of the Pensions (Northern Ireland) Order 2005. This includes, for example, disclosure with the consent of the person to whom the information relates, or where necessary to help other specified regulatory bodies exercise their functions.

### ***Section 62: Penalty for disclosure***

*Section 62* increases the maximum sentence on summary conviction for officials, contractors or any other people who directly or indirectly receive restricted information from the Pensions Regulator and who disclose such information without authorisation. Such unauthorised disclosure is already a criminal offence under Article 77 of the Pensions (Northern Ireland) Order 2005. This section makes anyone who is convicted of this offence liable, on summary conviction, to a prison term of up to six months and/or a fine not exceeding the statutory maximum.

### ***Section 63: Objectives of the Regulator***

*Section 63* provides a new statutory objective for the Pensions Regulator. In addition to those listed at Article 4(1) of the Pensions (Northern Ireland) Order 2005, the Regulator's objectives will now include maximising compliance with the new duties being placed on employers under Chapter 1 of Part 1, and the safeguards in *sections 50* (prohibited recruitment conduct) and *54* (inducements).

### ***Section 64: Functions of the Pensions Ombudsman***

*Section 64* gives the Pensions Ombudsman a new function, alongside his functions under section 142 of the Pensions Schemes (Northern Ireland) Act 1993, to investigate complaints relating to a jobholder opting out of a pension scheme. This clarifies that people who have opted out will be able to bring a complaint to the Ombudsman.

## ***CHAPTER 5 – Personal Accounts Delivery Authority***

### ***Section 65: Functions and winding up***

This section makes provision for broadening the Personal Accounts Delivery Authority's functions. It provides that section 16 of the Pensions Act (Northern Ireland) 2008, which sets out the initial functions of the Authority in Northern Ireland, shall cease to have effect (*subsection (1)*). It allows for the Authority not only to advise and prepare but also to take forward the implementation work to establish the Personal Accounts scheme and to work with the Pensions Regulator to create the infrastructure to enable employers to register and comply with their new duties.

Specifically, this section provides for the Authority to give any assistance or advice on the establishment and operation of the scheme that the Department might require, and any advice that the Authority considers it appropriate to provide. Similarly, it also provides for the Authority to provide such assistance or advice on arrangements to enable employers to comply with their new duties (in Chapter 1).

This section provides the Authority with an ancillary power which will allow it to do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions. For example, this will allow the Authority to enter into formal negotiations and to finalise contracts.

Where the Secretary of State makes an order under section 23(7) of the Pensions Act 2007 repealing provisions relating to the Personal Accounts Delivery Authority subsection (6) enables the Department to make corresponding provision for Northern Ireland.

### ***Section 66: Principles***

This section requires the Personal Accounts Delivery Authority to consider a number of guiding principles when carrying out its functions. The Authority must have regard to those principles and consider how they apply in relation to the advice or assistance it provides. The main effect of these principles is that the Authority will consider in carrying out its functions how to encourage those people with moderate to low incomes, who are not currently saving for a pension, to make provision for their retirement (*subsection (2)*).

All the principles are of equal importance and relate to the manner in which the Authority will discharge its functions. The principles are not the only matters which the Authority will have to consider, neither will the principles necessarily be determinative of the choices the Authority makes, but they are matters to which the Authority will have express regard.

This section also requires the Authority to do anything it considers appropriate to engage in discussion with relevant stakeholders about its functions and how it discharges its functions (*subsection (3)*).

### ***Section 67: Directions and guidance***

This section allows the Department to give directions and guidance to the Personal Accounts Delivery Authority on anything to do with the discharge of its functions. In turn, the Authority is required to consider any guidance and comply with any direction. If the Department gives a direction it must be made in writing. The Department must publish any direction issued under this section.

### ***Section 68: Disclosure of information by the Pensions Regulator***

*Section 68* amends Article 79 of the Pensions (Northern Ireland) Order 2005 to enable the Pensions Regulator to disclose restricted information to the Personal

Accounts Delivery Authority in order to enable the Authority to provide assistance or advice to the Regulator.

## **CHAPTER 6 – Stakeholder Pension Schemes**

### **Section 69: Stakeholder pension schemes**

*Section 69* amends the Welfare Reform and Pensions (Northern Ireland) Order 1999 to remove the statutory duty on employers to have a designated stakeholder pension scheme, and all but one of the detailed related requirements (consultation, provision of information etc).

From the date these changes come into effect, the payroll deduction requirement (Article 5(5) of the Welfare Reform and Pensions (Northern Ireland) Order 1999) will continue as a transitional provision. Under this provision, those employees who are making regular contributions into their stakeholder pension through their employer’s payroll, will continue to be able to do so until they stop making these contributions or leave the employer’s employment.

This recognises that in making their decision to contribute into a stakeholder pension, employees did so in the knowledge that they could make their contributions via their employer’s payroll. This transitional provision only applies if the request to deduct these contributions from the employee’s pay was made prior to the date when these changes take effect, and the employee is making regular contributions into their stakeholder pension.

## **CHAPTER 7 – Application and interpretation**

### **Section 70: “Employer”, “worker” and related expressions**

This section defines the terms “employer”, “worker” and other related expressions for Part 1 of the Act.

### **Section 71: Agency workers**

This section provides that agency workers, who would not otherwise fall within the definition of “worker”, are considered as workers for the purposes of the employer duty (automatic enrolment, automatic re-enrolment and opting in). The agency will be the relevant “employer” for agency workers for the purposes of the employer duty, or as a fall-back, either the agent or principal responsible for paying the worker, or if that cannot be determined, whichever one actually pays the worker.

### **Section 72: Directors**

This section specifies the circumstances in which a company director is a worker for the purposes of this Part.

***Section 73: Crown employment***

***Section 74: Armed Forces***

***Section 75: Police***

These sections clarify how the provisions in Part 1 of the Act impact on some specific types of worker or employer.

*Sections 73* and *75* set out specific classes of people who fall to be treated as workers for the purposes of these provisions. As such, the employer duty will apply to these specific groups in the same way as it applies in relation to other employment and other workers. The only exception is for employment by or under the Crown, where there is no criminal liability placed on the Crown. However, the Pensions Regulator is enabled to apply to the High Court for a declaration that there has been a failure by the Crown to comply with duties in *section 45(1)* which, although not giving rise to criminal liability, is unlawful.

*Section 74* sets out the specific exclusion of the armed forces from these provisions.

***Section 76: Persons working on vessels***

*Section 76* initially excludes all persons employed in any capacity on board a ship from the provisions of the Act. This is subject to the power of the Secretary of State to make affirmative regulations under section 96 of the Pensions Act 2008 setting out those persons employed on a ship who will be included under this Part or the Pensions Act 2008.

***Section 77: Extension of definition of worker***

This section provides that the definition of “worker” may be extended to include individuals who are not currently caught. Such individuals would be deemed to be subject to a worker’s contract of a prescribed kind and working for a person of a prescribed description, who would be deemed to be the employer for the purposes of automatic enrolment.

***Section 78: Interpretation of Part***

This section sets out the meaning of particular words and phrases used throughout this Part.

**PART 2 - Simplification**

***Section 79: Abolition of safeguarded rights***

Where, on divorce or dissolution of a civil partnership, rights to a pension are shared and those rights include contracted-out rights, the law as it stands treats the contracted-out rights in a different way from the other shared rights. They are known as “safeguarded rights” and are subject to various restrictions. *Section 79*

abolishes these restrictions. Shared rights that derive from contracted-out rights will in future be treated in the same way as other shared rights.

***Section 80: Revaluation of accrued benefits etc***

This section introduces *Schedule 1* which amends the method of revaluing the accrued pension benefits of deferred members in certain occupational pension schemes and also amends related arrangements applying to pension compensation payable by the Pension Protection Fund.

The amended revaluation arrangements do not apply to revaluation periods ending before the section comes into operation.

***Section 81: Consolidation of additional pension***

*Sections 81* to *83* and *Schedules 2* and *3* change the method of calculating earnings-related components of the Additional State Pensions for people who reach State Pension age after 5 April 2020. In addition to their basic State Pension, pensioners can have accrued rights under three earnings-related state schemes:

- the Graduated Retirement Benefit scheme – from 1961 to 1975;
- State Earnings Related Pension Scheme – from 1978 to 2002;
- State Second Pension – accrued from 2002.

State Second Pension was reformed by the Pensions Act (Northern Ireland) 2008. From the Flat Rate Introduction Year, State Second Pension will start to accrue on a flat-rate basis – the earnings-related element will be gradually phased out and will cease to accrue from around 2030.

*Section 81* amends section 45 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to provide the mechanism by which Additional Pension in respect of years before the Flat Rate Introduction Year will be calculated for people reaching State Pension age after 5 April 2020. *Subsection (4)* provides that their weekly rate of Additional Pension will be the consolidated value of their Graduated Retirement Benefit, State Earnings Related Pension and State Second Pension accruals, “the consolidated amount”, plus any flat rate accruals built up after the Flat Rate Introduction Year.

*Subsection (5)* introduces *Schedule 2*. This inserts new Schedule 4C into the Social Security Contributions and Benefits (Northern Ireland) Act 1992 which sets out how the consolidated amount is to be calculated.

*Subsection (6)* provides for the Graduated Retirement Benefit element of the consolidated pension to be omitted when carrying out the calculation to offset Additional Pension from incapacity age addition entitlement. This arises where a person was getting an age addition of incapacity benefit before they reach pension age.

*Subsection (7)* restricts the calculation of Graduated Retirement Benefit under existing rules to those who reach state pension age before 6 April 2020.

***Section 82: Effect of entitlement to guaranteed minimum pension***

*Section 82* amends the Pension Schemes (Northern Ireland) Act 1993 to cater for those who have been in contracted-out employment for all or part of the period up until 5 April 1997 and are entitled to one or more Guaranteed Minimum Pensions. It introduces a method for calculating the reduction to be made from Additional Pension in respect of the years before the Flat Rate Introduction Year for those who reach State Pension age after 5 April 2020.

*Subsection (2)* amends section 42 of the Pension Schemes (Northern Ireland) Act 1993, inserting new subsections (1A) and (1B), so that the method of calculating a reduction under the provisions in section 42(1), do not apply where someone reaches State Pension age after 5 April 2020.

*Subsection (3)* inserts a new section 42A into the Pension Schemes (Northern Ireland) Act 1993.

Subsection (1) of new section 42A provides for the method of calculating the reduction from Additional Pension where someone reaches State pension age after 5 April 2020 and is entitled to one or more Guaranteed Minimum Pensions.

Subsection (2) of new section 42A provides that the calculation should be made in accordance with regulations.

Subsection (3) of new section 42A specifies that the reduction calculated under the regulations should not exceed the amount of the Additional Pension attributable to periods before the principal appointed day.

Subsection (4) of new section 42A provides that the effect of the reduction made under the regulations should be actuarially equivalent to the effect of the reduction that would have been made under section 42(1) of the Pension Schemes (Northern Ireland) Act 1993 had section 42(1A) not been inserted.

Subsection (5) of new section 42A requires the Department to make corresponding provision for Northern Ireland where the Secretary of State makes regulations under section 46A(8) of the Pension Schemes Act 1993 specifying how actuarial equivalence is to be determined.

***Section 83: Additional State Pension etc: minor and consequential amendments***

*Section 83* introduces *Schedule 3* which contains minor and consequential amendments relating to the Additional Pension.

***Section 84: State pension credit: extension of assessed income period for those aged 75 or over***

An assessed income period is a specified period during which time the State Pension Credit customer does not need to report changes to his or her retirement provision. Currently the maximum length of an assessed income period is five years (except under transitional provisions).

*Subsection (2)* substitutes subsection (1) in section 9 of the State Pension Credit Act (Northern Ireland) 2002 so that, from 6 April 2009, claimants aged 75 or over will generally be given an indefinite assessed income period. Exceptions to this general rule are set out in section 9 so that, for example, an indefinite assessed income period may be brought to an end early on the occurrence of certain circumstances, such as where the claimant ceases to be treated as a member of a couple.

Under *Subsection (4)*, which inserts a new subsection (6) into section 9, if the claimant has an assessed income period of five years or more which expires when he or she is aged 80 or over, then the assessed income period will also be extended indefinitely. Again, this indefinite assessed income period may be brought to an end early in certain circumstances. This provision is temporary as five years after its coming into force every assessed income period that has been set for a claimant over 80 will be an indefinite assessed income period.

***Section 85: Contracting-out: abolition of all protected rights***

*Section 85* repeals the main sections of the Pension Schemes (Northern Ireland) Act 1993 which deal with protected rights. This includes sections that were inserted by the Pensions Act (Northern Ireland) 2008 which provide for survivor benefits. The Pensions Act (Northern Ireland) 2008 repealed several sections of the Pension Schemes (Northern Ireland) Act 1993 which dealt with protected rights; *section 85* repeals most of the remainder. This section, taken with the Pensions Act (Northern Ireland) 2008 changes and *section 113(2)*, will ensure that all rules for past protected rights are removed at the same time as contracting out on a defined contribution basis is abolished.

**PART 3 – Pension Compensation**

***Chapter 1 - Pension compensation on divorce etc.***

***Section 86: Scope of mechanism***

This section sets out the scope of the pension compensation sharing mechanism that will enable compensation paid by the Pension Protection Fund to be shared on divorce or dissolution of a civil partnership.

*Subsection (2)* sets out that pension compensation rights will be shareable subject to certain exceptions that will be set out in regulations.

### ***Section 87: Interpretation***

This section sets out the meaning of particular words and phrases used throughout Chapter 1 of Part 3.

### ***Section 88: Activation of pension compensation sharing***

This section provides that orders made by a court under the Matrimonial Causes (Northern Ireland) Order 1978, the Civil Partnership Act 2004, the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 and corresponding Great Britain provisions, upon taking effect, trigger the new pension compensation sharing regime.

### ***Section 89: Creation of pension compensation debits and credits***

Pension compensation sharing will be initiated by an order of the court specifying a percentage of the compensation rights which are to be “shared” (i.e. transferred). The effect of this section is that the rights to compensation are valued for the purpose of the transfer on “valuation day” – a day during the “implementation period” (see [section 93](#)).

*Subsection (4)* provides a regulation-making power to enable any description of payment to be disregarded for the purposes of the compensation sharing calculation. For example, benefits due to a survivor as a consequence of a previous marriage or civil partnership.

### ***Section 90: Cash equivalents***

This section allows the Department to establish, in regulations, the method for the calculation of the cash equivalent in pension compensation sharing cases. It is intended that this will broadly reflect the principles set out for calculating cash equivalents for early leavers.

### ***Section 91: Reduction of compensation***

This section provides for the reduction of the transferor’s pension compensation payments by the percentage specified in the pension compensation sharing order (or qualifying agreement). *Subsection (3)(b)* provides for the calculation of a percentage, where the order has specified an amount.

### ***Section 92: Time for discharge of liability***

### ***Section 93: “Implementation period”***

[Section 92](#) provides that the Board of the Pension Protection Fund must implement the order conferring rights to compensation on the beneficiary of a pension compensation sharing order during the implementation period. [Section 93](#) defines the implementation period as 4 months beginning on the date on which the sharing order takes effect or, if later, the date on which the Board receives the relevant documents.

Regulation making powers are provided to allow the Department to define the parameters of this requirement. Regulations may provide for:

- the circumstances where the implementation period can be extended;
- the information required (for example, addresses, ages, National Insurance numbers);
- the procedure for notifying the transferor and transferee of the day on which the implementation period begins; and
- the effect on the implementation period where the pension compensation sharing order is the subject of an application for leave to appeal out of time.

#### ***Section 94: Discharge of liability***

*Section 94* sets out the procedure which the Board of the Pension Protection Fund must follow in order to discharge its liability in respect of a pension compensation credit. The beneficiary of a pension compensation order will in the first place receive a notice stating that they are entitled to periodic compensation and setting out the initial annual amount of that compensation (*subsections (2) and (7)*). The initial annual amount will have been calculated by the Board (*subsection (4)*) and will reflect the value of the rights transferred by the court (*subsection (5)*). The timing of payments and, calculation of their amounts in the future, is set out in *Schedule 4. Subsection (8)* provides a power to make provision for what is to happen if the person dies before the Board makes its calculation and sends out the notice. For example, regulations will provide for survivors' benefits to be paid where appropriate.

#### ***Section 95: Charges in respect of pension compensation sharing costs***

The purpose of this section is to enable provision to be made to allow the Board of the Pension Protection Fund to recover from the transferor and transferee prescribed charges in respect of pension compensation sharing activity.

#### ***Section 96: Supply of information about pension compensation in relation to divorce etc.***

#### ***Section 97: Supply of information about pension compensation sharing***

These sections allow the Department to make regulations relating to the Board of the Pension Protection Fund releasing information on pension compensation sharing cases.

*Section 96* provides for the Department to make regulations requiring information to be supplied by the Board, or about the calculation and verification of compensation rights, in connection with proceedings for divorce or dissolution of a civil partnership. It also enables regulations to be made imposing charges for the provision of such information.

*Section 97* allows the Department to make regulations requiring the Board to provide prescribed persons with information regarding the implementation of pension compensation sharing. For example, regulations would prescribe that the parties to the divorce or dissolution of a civil partnership are provided with information about their future entitlements to compensation.

***Section 98: Pension compensation sharing and attachment on divorce etc.***

This section gives effect to *Schedule 5* which amends matrimonial and civil partnership legislation for Northern Ireland so that the court can make pension compensation sharing orders and orders for the attachment of pension compensation.

***Chapter 2 – other provision about pension compensation***

***Section 99: Charges in respect of pension sharing etc.***

This section inserts a new Article 152A into the Pensions (Northern Ireland) Order 2005 to give the Department the power to make provision through regulations for the purpose of enabling the Board of the Pension Protection Fund to recover charges, including allowing the Board to offset charges against Pension Protection Fund compensation.

***Section 100: Amendments of Schedule 6 to the Pensions (Northern Ireland) Order 2005***

This section gives effect to *Schedule 6* which amends Schedule 6 to the Pensions (Northern Ireland) Order 2005 (pension compensation provisions).

***Section 101: Consequential amendments***

This section makes amendments to the Pensions (Northern Ireland) Order 2005 consequential on the creation of pension compensation sharing.

**PART 4 – Additional Pensions**

***Section 102: Additional pension: upper accrual point to replace upper earnings limit from 2009-10.***

*Section 102* makes provision for Northern Ireland corresponding to measures contained in the National Insurance Contributions Act 2008 regarding the replacement of the upper earnings limit by the upper accrual point from 2009.

The Pensions Act (Northern Ireland) 2008 introduced an upper accrual point to replace the upper earnings limit as the weekly upper cap on earnings for determining entitlement to the State Second Pension. The upper accrual point was to be determined by reference to the upper earnings limit and frozen on introduction to facilitate the phasing-out of the earnings-related element of the State Second Pension by around 2030, making it fully flat-rate.

The effect of measures announced as part of the 2007 Budget was to raise the upper earnings limit beyond its anticipated level, allowing high earners to accrue more additional pension than intended. The upper accrual point will, therefore, be introduced from April 2009 and set at £770 per week.

*Subsections (2) and (3)* amend sections 22(2B) and 44(7)(c) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 respectively to substitute “2009-10” for “the flat rate introduction year”.

*Subsection (4)* amends section 121 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to fix the upper accrual point at £770 per week. A new subsection (6A) is inserted to enable the Department to make corresponding provision for Northern Ireland whenever the Treasury makes regulations under section 122(6A) of the Social Security Contributions and Benefits Act 1992 in relation to earners paid other than weekly.

*Subsection (5)* provides that section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, which is concerned with the referral of regulations to the Social Security Advisory Committee, does not apply to regulations made under section 121(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Consequential amendments are set out in [Schedule 7](#).

## **PART 5 - Miscellaneous**

### ***Section 103: Amendments of provisions of the 2005 Order relating to contribution notices or financial support directions.***

*Section 103* gives effect to [Schedule 8](#) which amends the Pensions (Northern Ireland) Order 2005 in relation to contribution notices and financial support directions.

### ***Section 104: Interest on late payment of levies***

This section gives effect to [Schedule 9](#) which provides the Department with a power to make regulations allowing for a prescribed rate of interest to be charged on late payment of a range of levies.

### ***Section 105: Payments to employers***

This section amends Article 37 of the Pensions (Northern Ireland) Order 1995, which imposes conditions which must be satisfied before trustees can authorise a payment to the sponsoring employer from the funds of a trust-based occupational pension scheme. Article 37 was amended by the Pensions (Northern Ireland) Order 2005, but that amendment inadvertently did not carry forward an exemption from the strict conditions of Article 37 which previously existed for certain administrative and other payments.

Article 37 is primarily intended to ensure that funds cannot be removed from a defined benefit scheme unless it is sufficiently well funded, and the trustees

are satisfied that a payment is in the interests of the scheme's members. The exemption introduced by this section broadly replicates the payments which were previously exempt from Article 37 before it was revised by the Pensions (Northern Ireland) Order 2005. The exemption covers payments which are exempt from the tax charge which normally applies to authorised surplus payments to an employer from the funds of a scheme (for example, the payment of wages to the people who administer the scheme).

### ***Section 106: Appointment of trustees***

Article 7 of the Pensions (Northern Ireland) Order 1995 allows the Pensions Regulator to take action to appoint trustees where it is satisfied that this is necessary and only in certain specific circumstances. Where appropriate these trustees can be independent, that is, professional trustees that are fully independent of the employer or any other interest in the scheme. Examples of the circumstances in which this can be done are if the Regulator is of the opinion that the existing trustees of a scheme do not have the necessary knowledge for proper administration or if there isn't a sufficient number of trustees.

This section extends this power to allow the Regulator to appoint trustees in circumstances where it is reasonable to do so, instead of necessary. The "necessary test" means that the Regulator may only appoint a trustee if it is satisfied that there is no other option available and it must act almost as a last resort. A "reasonable test" would enable the Regulator to appoint a trustee where there are a range of options available but the appointment is the most appropriate action for the scheme.

It also amends Article 7(3) of the Pensions (Northern Ireland) Order 1995 to extend the circumstances in which this power may be exercised, to enable the Regulator to appoint trustees in order to protect the interest of the generality of scheme members. It also makes a change consequential on the addition of a further sub-paragraph to Article 7(3).

### ***Section 107: Intervention by the Regulator where scheme's technical provisions improperly determined***

Article 201(4)(c) of the Pensions (Northern Ireland) Order 2005 requires trustees to follow prescribed principles when determining the actuarial methods and assumptions to be used in the calculation of a scheme's technical provisions. These are prescribed in regulation 5(4) of the [Occupational Pension Schemes \(Scheme Funding\) Regulations \(Northern Ireland\) 2005 \(SR 2005/568\)](#). of the principles is that the methods and assumptions must be chosen prudently by the trustees. The requirement for prudence implements obligations under the European occupational pensions directive (Directive [2003/41/EC](#)).

Article 201(4)(c) of the Pensions (Northern Ireland) Order 2005 is not currently included in the circumstances, set out in Article 210(1), in which the Pensions Regulator can exercise its powers (set out in Article 210(2)) in respect of the scheme funding provisions. The Regulator cannot therefore make use of the

powers in Article 210(2) if the sole ground of concern is that the actuarial methods or assumptions used in the calculation of the technical provisions do not appear to have been chosen prudently.

The actuarial assumptions used in a valuation of a pension scheme are critical in establishing a scheme's correct funding position and, therefore, an appropriate level of contributions to the scheme. This section ensures that the Regulator can use the powers in Article 210(2) (such as issuing directions on the scheme's actuarial calculations or imposing a schedule of contributions) where the sole ground of concern is that the actuarial methods or assumptions do not appear to be prudent.

### ***Section 108: Delegation of powers by the Regulator***

*Section 108* amends the Pensions (Northern Ireland) Order 2005 to extend the power of the Pensions Regulator to contract out its functions. Paragraph 2 of Schedule 1 to the Pensions (Northern Ireland) Order 2005 enables regulations to be made permitting the Regulator to contract out its functions. This section enables the Regulator to delegate both the power to determine whether to exercise its functions and its power to exercise them. It also limits the functions to be contracted-out to those specified – that is functions which relate to the compliance regime – or such other functions that may be prescribed.

### ***Section 109: Exclusion of transfers out in certain cases***

This section will enable the Department to make regulations preventing individuals, in prescribed circumstances, from taking advantage of a right under existing legislation to transfer funds from a prescribed pension scheme to another scheme.

The power in this section can be used in particular to prevent transfers out of the Personal Accounts scheme. Certain transfers out of the scheme may be allowed (because the Regulations do not have to ban all transfers out). For example, small 'stranded pots' and where someone is over 55 and wants to aggregate all of their pension pots in different schemes into one pension fund in order to purchase an annuity.

### ***Section 110: Official pensions: adjustment of increases in survivors' pensions***

Article 69 of the Social Security Pensions (Northern Ireland) Order 1975 deals with the index-linking of public service pensions. Paragraph (5ZA) was inserted in 1990 to prevent an element of "double indexation" arising in relation to the guaranteed minimum pension payable to survivors of members of public service pension schemes. Double indexation of the guaranteed minimum pension might occur if it is increased by both legislation relating to public service pension schemes and by legislation which provides for index-linking of State Pensions.

A guaranteed minimum pension arises where a pension scheme member was contracted out of the additional State Pension for service between tax years

1978/79 and 1996/97. When a public service pension scheme member dies, a member's widow is entitled to half of a member's guaranteed minimum pension accrued since 1978/79, and the member's widower is entitled to half of the member's guaranteed minimum pension accrued since 1988/89.

Article 69(5ZA) fails to take account of the difference in guaranteed minimum pension entitlement between widows and widowers and it does not cover civil partners.

This section amends Article 69(5ZA) so that it reflects the different guaranteed minimum pension entitlements of widowers when compared to widows. It also extends the operation of Article 69(5ZA) so that it will apply to future payments of pensions to surviving civil partners.

***Section 111: Disclosure of information relating to state pension credit recipients***

This section enables the Department to make regulations to supply social security information about State Pension Credit recipients to energy suppliers, or persons providing services to the energy suppliers or the Department.

The regulations may authorise energy suppliers to share their customer information with the Department or a service provider. This is intended to enable either the Department or a third-party to match departmental and energy supplier data to identify the relevant State Pension Credit recipients.

The regulations may also set out a number of matters including the purposes for which information may be supplied and used, and provide for a criminal offence to penalise the unauthorised disclosure of this information.

The regulations will be subject to the confirmatory procedure.

**PART 6 – General**

***Section 112: Orders and regulations***

Most statutory instruments containing an order or regulations under this Act will be subject to the negative resolution procedure.

The exceptions are:

- the power to prescribe features of an average salary scheme that may prevent it from being treated as a qualifying scheme (*section 16(3)(c)*);
- the power to establish further conditions for automatic enrolment schemes (*section 17(1)(c)*);
- the power to extend the definition of worker (*section 77*);
- powers relating to the disclosure of information relating to State Pension Credit recipients (*section 111*);

- the powers relating to the role of the employer with regards to the employer duties when first exercised:
  - arrangements to auto-enrol (*section 3(2) or (6)*);
  - arrangements to auto re-enrol (*section 5(2) or (7)*);
  - arrangements to allow opt-in (*section 7(4)(b) or (6)*);
  - arrangements for workers without qualifying earnings (*section 9(3)(b)*);
- an order under *section 114* amending or repealing any relevant statutory provision;
- an order under *paragraph 9(7) of Schedule 4* regarding commutation of shared pension compensation;
- an order under *section 118* enabling the Department to appoint commencement dates.

The last of these is not subject to Assembly control. The others are subject to the confirmatory procedure – that is, they must be confirmed by resolution of the Assembly within a period of six months from the date on which they come into operation.

### ***Section 113: Orders and regulations: supplementary***

*Section 113* permits an order or regulations under powers conferred by the Act to include consequential or transitional provision, etc. It also makes other provision about how those powers may be exercised.

### ***Section 114: Further provision etc.***

*Section 114* makes further provision in connection with giving the Act full effect and, in particular, allows the Department to amend primary or secondary legislation in connection with the abolition of protected rights for contracting out under *section 85*.

### ***Section 115: Pre-consolidation amendments***

This section, in association with the repeal of Article 294 of the Pensions (Northern Ireland) Order 2005 contained in Part 5 of *Schedule 10*, re-enacts a pre-consolidation order making power so that legislation made subsequent to the passing of the Pensions (Northern Ireland) Order 2005 can also be included within the scope of such an order.

*Subsection (1)* provides a power to modify statutory provisions listed in *subsection (2)* where in the opinion of the Department such modifications facilitate, or are desirable in connection with, the consolidation of any of those statutory provisions.

### ***Section 116: Repeals***

This section introduces *Schedule 10* which lists the statutory provisions repealed by this Act.

### ***Section 117: Interpretation***

This section defines words and phrases used in the Act.

### ***Section 118: Commencement***

The provisions of this Act will be brought into operation by an order or orders to be made by the Department with the following exceptions:

In Part 1, *sections 65 to 68* (provisions relating to the Personal Accounts Delivery Authority), come into operation on Royal Assent.

*Section 84* (extension of assessed income period for those aged 75 or over) comes into operation on 6 April 2009.

*Section 102* (and *Schedule 7* and Part 6 of *Schedule 10* and *section 116* so far as relevant) come into operation on Royal Assent.

*Section 108* (delegation of powers by the Pensions Regulator) comes into operation on Royal Assent.

*Section 109* (exclusion of transfers out in certain cases) comes into operation on Royal Assent.

*Section 111* (disclosure of information relating to state pension credit recipients) comes into operation on Royal Assent.

Part 6 (except Parts 1 to 5 of *Schedule 10* and *section 116*, so far as relating thereto) comes into operation on Royal Assent.

*Paragraph 6(3)* of *Schedule 7* and Part 6 of *Schedule 10* so far as relating to the repeals mentioned in that sub-paragraph come into operation on the day appointed by an order under section 21(1) of the Pensions Act (Northern Ireland) 2008 for the coming into operation of paragraph 44(2) of Schedule 4 to that Act.

### ***Section 119: Short title***

This section provides that the Act may be cited as the Pensions (No. 2) Act (Northern Ireland) 2008.

### ***Schedule 1: Revaluation of accrued benefits etc.***

#### **Part 1**

*Paragraphs 2 and 3* of *Schedule 1* amend the provisions in the Pension Schemes (Northern Ireland) Act 1993 for revaluing deferred members' benefits in final salary occupational pension schemes.

The overall effect of the amendments is to provide that accrued benefit attributable to pensionable service on or after the commencement day is to be revalued by the rate of inflation over the relevant revaluation period, capped at 2.5% per annum. Accrued benefit attributable to service before the commencement day is to be unaffected by the amendments and a cap of 5% per annum is to continue to be applied to accrued benefits for service between 1985 and the commencement day. Where the time period between the end of pensionable service and the beginning of pension payments is longer than a year, the caps are applied to the rate of inflation as averaged over that time, and are calculated on a compound basis.

“Accrued benefit” is defined as the amount of benefit accrued at the date pensionable service was terminated, excluding any guaranteed minimum pension rights (to which separate provisions apply). “Pensionable service” continues to include any notional pensionable service which is credited to the member by the scheme.

## **Part 2**

Part 2 ensures Pension Protection Fund compensation is paid based on revised revaluation rates as set out in Part 1 of this Schedule.

*Paragraph 7* makes a consequential amendment to the provision allowing the Board of the Pension Protection Fund to alter the maximum revaluation rate.

## **Part 3**

*Paragraphs 8* and *9* make consequential amendments to Articles 51ZA and 54(3) of the Pensions (Northern Ireland) Order 1995 which insert references to the new revaluation rate cap for accrued benefits.

### ***Schedule 2: Additional Pension Consolidation***

*Schedule 2* inserts a new Schedule 4C into the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Paragraph 1 of the inserted Schedule 4C specifies that the consolidation date will be a fixed date, the first day of the Flat Rate Introduction Year, regardless of the date when the person reaches state pension age.

Paragraphs 2 and 3 of the inserted Schedule 4C stipulate that a person’s consolidated amount must be calculated before they reach state pension age.

Paragraph 4 of the inserted Schedule 4C ensures that the existing appeals process under Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998 is applied to the consolidated amount.

Paragraph 5 of the inserted Schedule 4C defines the consolidated amount as the sum of the person’s Graduated Retirement Benefit and Additional Pension accruals.

Paragraphs 6 to 8 of the inserted Schedule 4C specify that Graduated Retirement Benefit and Additional Pension will be calculated using legislation in force at the time consolidation takes place.

Paragraph 9 of the inserted Schedule 4C provides that the consolidated amount, including Graduated Retirement Benefit, will be revalued annually by earnings.

***Schedule 3: Additional State Pension etc: minor and consequential amendments***

*Paragraph 2* amends section 21(5A)(c) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to correct an omission from the Pensions Act (Northern Ireland) 2008. It provides for all earnings below the upper earnings limit for National Insurance to be taken into account for basic pension purposes where a person reaches State Pension age on or after 6 April 2010, maintaining parity with the current position.

*Paragraphs 3 and 4* make minor technical amendments to sections 39 and 39C of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to make provision for tidying up and inserting cross references consequential to the introduction of new section 45AA and the consolidated amount as set out in new Schedule 4C.

*Paragraph 5* inserts new section 45AA in the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to restore the rules, that allow a person's working families' and disabled person's tax credit entitlement and the predecessors to these benefits to count for State Earnings Related Pension Scheme purposes, which had been erroneously repealed as part of the tax credit changes.

*Paragraph 6* amends section 46 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to update cross references consequential to the introduction of the consolidated amount. In addition, the amendment allows for the consolidated amount to be dis-applied in specific cases to be defined in regulations, for example, where a person dies before State Pension age and the inherited additional pension calculation needs to be modified to reflect that fact.

*Paragraphs 7 to 11* amend respectively sections 48A, 48B, 48BB, 48C and 51 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to insert the necessary references to the consolidated amount and ensure that the inherited additional pension is calculated correctly where the late spouse's or civil partner's entitlement had been adjusted as part of a financial settlement on divorce.

*Paragraph 12* amends Schedule 4B to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to clarify provision in respect of the level of earnings, following the introduction of the flat rate amount, on which the residual earnings-related element of the state second pension would accrue.

*Paragraph 13* amends paragraph 3(3) of Schedule 7 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to insert the necessary reference to new section 42A to ensure the consolidated contracted-out deduction is taken into account.

*Paragraph 14* inserts new section 130AB in the Social Security Administration (Northern Ireland) Act 1992 enabling the Department to make corresponding provision for Northern Ireland where the Secretary of State makes an order under section 148AB of the Social Security Administration Act 1992 for earnings-linked revaluation of the consolidated amount.

*Paragraphs 15 to 22* amend the Pension Schemes (Northern Ireland) Act 1993 to insert the necessary references to new section 42A in sections 42, 43, 44, 45, 160, 161 and 163 to ensure the consolidated contracted-out reduction is taken into account where appropriate.

#### ***Schedule 4: Pension compensation payable on discharge of pension compensation credit***

*Schedule 4* makes detailed provision concerning the calculation of compensation payable to the transferee (former spouse or civil partner). The way the compensation is calculated depends upon the status of the transferee at the date the transfer takes place.

The Schedule is accordingly divided into four parts:-

- Part 1 is introductory, covering interpretation and the determination of a pension compensation age;
- Part 2 makes provision where transferees attain pension compensation age before or on transfer day;
- Part 3 makes provision where transferees attain pension compensation age after transfer day; and
- Part 4 provisions apply irrespective of the age of the transferee on transfer day.

The Schedule is intended to operate in a similar way to the corresponding provisions of Schedule 6 of the Pensions (Northern Ireland) Order 2005 (pension compensation provisions) as they apply to the calculation of pension compensation generally.

*Paragraph 3* makes provision about the age at which the transferee is to start receiving periodic compensation under the Schedule (the transferee's "pension compensation age"). In the usual case this will be when they reach the age at which the transferor starts to receive pension compensation payments.

#### **Part 2: Transferee attains pension compensation age before or on transfer day**

Where the transferee is, at the point the pension compensation order takes effect, over the pension compensation age they will receive periodic compensation

for life (*paragraph 4*). This compensation starts from the transfer day, and comprises the initial annual rate of the compensation plus any annual increases due to inflation under *paragraph 17*. It is subject to any regulations applying the compensation cap made under *paragraph 18*.

*Paragraph 5* provides that 50% of the pension compensation in payment, or payable, will be paid to the transferee's widow, widower or surviving civil partner ("the surviving partner") after the death of the transferee. Regulations may set out when the surviving partner will not be entitled to compensation. This will allow provision to be made for cases where the scheme rules under which the transferor's compensation is calculated do not provide for pensions to a surviving partner.

### **Part 3: Transferee attains pension compensation age after transfer day**

Where the transferee has not reached the pension compensation age at the point of transfer they will become entitled to receive compensation payments for life starting from when they do reach the pension compensation age (*paragraph 6*). That compensation will comprise the initial annual rate, adjusted by any increases for inflation, up until the point when they reach pension compensation age under *paragraph 8*, plus any annual increases due to inflation under *paragraph 17*. The compensation will be subject to the provisions for commutation (*paragraph 9*), early payment (*paragraph 10*), deferred payment (*paragraph 11*) and the compensation cap (*paragraph 18*).

*Paragraph 7* provides that 50% of the pension compensation in payment or payable, plus increases for inflation under *paragraph 17* will be paid to the transferee's widow, widower or surviving civil partner after the death of the transferee. Regulations may set out exceptions. This will allow provision to be made for cases where the scheme rules, under which the transferor's compensation is calculated, did not provide for pensions to a widow, widower or surviving civil partner.

*Paragraph 8* provides for the initial rate of compensation to be increased to take account of the increases in prices, subject to a cap equal to inflation running at 2.5% every year, between the transfer day and the day before the day the transferee becomes entitled to payment. This is subject to the power in *paragraph 20* for the Board of the Pension Protection Fund to alter the maximum rate of revaluation from 2.5% (as established in *Schedule 1*).

*Paragraph 9* provides that the transferee can commute part of their pension compensation as a lump sum in prescribed circumstances, up to a maximum of 25%. The amount paid as a lump sum must not exceed 25% of the pension compensation payable after reductions are made to take account of the compensation cap. The lump sum payable will be the actuarial equivalent of the commuted portion of the pension compensation calculated from tables designated for this purpose by the Board of the Pension Protection Fund. Regulations may set out the manner in which the option to commute may be exercised. The intention is that regulations will prescribe that the transferee can

exercise the right to commute where the transferor had such a right and has not already exercised it before the transfer day. This paragraph also allows the Department to change the maximum sum commuted by order.

*Paragraph 10* provides that regulations may prescribe when the transferee may receive pension compensation and lump sum compensation before their normal pension age. This applies to transferees under pension compensation age. The Board of the Pension Protection Fund will determine the actuarial reduction to be applied to compensation paid early.

*Paragraph 11* will enable transferees in prescribed circumstances to delay receipt of the pension compensation until a date after they would reach the pension compensation age. The Board of the Pension Protection Fund will determine the amount by which the compensation will increase to take account of the delayed payment. This provides for the transferee to defer compensation in the same way as the transferor will be entitled to do once the amendment of Schedule 6 to the Pensions (Northern Ireland) Order 2005, made by *paragraph 13* of *Schedule 6* to the Act, comes into operation.

*Paragraph 12* will enable transferees who have a progressive disease in consequence of which death can reasonably be expected in the following six months, and who are not already receiving compensation in respect of a particular pension scheme, to apply for a lump sum equal to twice the annual rate of compensation to which they would have been entitled had they reached normal pension age.

*Paragraph 13* sets out the manner in which an application can be made, and provides for the Board of the Pension Protection Fund to require certain information, for example, concerning the transferee's illness.

*Paragraph 14* sets out how the Board of the Pension Protection Fund must respond to an application, and provides for applications to be held over and determined at a later date where the transferee does not satisfy the conditions relating to their terminal illness, but may satisfy the conditions in the next six months.

*Paragraph 15* provides that a successful applicant will receive a lump sum calculated in accordance with *sub-paragraph (2)* in lieu of future rights to compensation.

*Paragraph 16* provides for the Board of the Pension Protection Fund to have access to certain information held by the Department or the Secretary of State to assist in dealing with applications for terminal illness lump sums.

The provisions in *paragraphs 12* to *16* make corresponding provision in respect of transferees as the new paragraphs 25B to 25F (inserted into Schedule 6 of the Pensions (Northern Ireland) Order 2005 by *Schedule 6* to this Act) make in respect of Pension Protection Fund members more generally.

#### **Part 4: Provisions applicable irrespective of age on transfer day**

*Paragraph 17* provides for the amount of compensation derived from the transferor's service after 1997 to be increased every year in line with the increase in prices, subject to a maximum increase of 2.5% a year. This provides for the transferee to receive increases due to take account of inflation in the same way as the transferor. This is subject to the power in *paragraph 20* for the Board to alter the maximum rate of increase from 2.5% (as established in Part 1 of this Schedule).

*Paragraph 18* allows the Department to set out in regulations how the compensation cap under paragraph 26(7) of Schedule 6 to the Pensions (Northern Ireland) Order 2005 will apply to the compensation payable to the transferee. The intention is that the cap will apply in a way that ensures that both the transferee and transferor receive the appropriate levels of compensation without creating additional liabilities for the Board of the Pension Protection Fund or opportunities for evasion of the cap.

*Paragraph 19* provides that regulations may provide for compensation to be payable to partners and dependants of prescribed descriptions.

*Paragraph 20* provides that the Board of the Pension Protection Fund may determine the maximum indexation rates for the purposes of *paragraphs 8* and *17*. For the purposes of *paragraph 17* this can only apply to future increases and can apply to all cases or those cases where entitlement arose after the determination. The Board of the Pension Protection Fund must consult anyone it considers appropriate and publish details of the proposed determination as it considers appropriate. The Board must consider any representations made. This is an equivalent power to that which applies in respect of the rates of revaluation and indexation in paragraph 29 of Schedule 6 to the Pensions (Northern Ireland) Order 2005.

#### ***Schedule 5: Pension compensation on divorce etc.***

*Schedule 5* makes various amendments to family legislation to enable the courts to make pension compensation sharing orders and attachment orders in respect of pension compensation paid by the Pension Protection Fund.

Part 1 amends the Matrimonial Causes (Northern Ireland) Order 1978.

New Article 26D (Pension compensation sharing orders in connection with divorce proceedings) sets out the circumstances in which a pension compensation sharing order may be made. The effect of this provision is that pension sharing will not be available in relation to rights which have already been shared between parties. Nor will it be available in relation to rights which are the subject of attachment (whether in favour of one of the parties or in favour of a third party).

New Article 26E (pension compensation orders: duty to stay) provides powers to the Lord Chancellor to specify in regulations when the implementation of a sharing order is delayed.

New Article 26F (pension compensation sharing orders: apportionment of charges) provides that a court order may provide for the apportionment of any charge made by the Board of the Pension Protection Fund under [section 95](#) (charges in respect of compensation sharing costs).

[Paragraphs 4 to 6](#) of the Schedule make consequential amendments to other provisions in the Matrimonial Causes (Northern Ireland) Order 1978 following from the other amendments in the Schedule, such as adding necessary cross-references.

[Paragraph 7](#) makes provision in the Matrimonial Causes (Northern Ireland) Order 1978 allowing for the making of attachment orders by inserting new Articles 27F and 27G. These ensure that the court may make attachment orders in respect of Pension Protection Fund compensation in a similar way to the making of attachment orders in respect of pensions under the current provisions of Article 25B and 25D of the Matrimonial Causes (Northern Ireland) Order 1978.

An attachment order is an alternative to a pension sharing order that will be available to the court on divorce etc. where one of the parties has rights to pension compensation. An attachment order simply requires the Board of the Pension Protection Fund to subtract a specified amount from each payment it makes to one party and send it instead to the other party.

New Article 27G (pension compensation: supplementary) allows the Lord Chancellor, through regulations, to specify in relation to the implementation of an attachment order under Article 27F the manner in which the Pension Protection Fund discharges its liability, the manner in which payment is calculated and is made, and the information to be provided in relation to payments.

[Paragraph 8](#) makes consequential amendments to Article 33 of the Matrimonial Causes (Northern Ireland) Order 1978 (variation, discharge etc of certain orders for financial relief) to reflect the amendments made to that Order by this Schedule, such as inserting necessary cross-references to the new Articles and references to compensation sharing orders.

[Paragraph 9](#) inserts a new Article 42B into the Matrimonial Causes (Northern Ireland) Order 1978 (appeals relating to pension compensation sharing orders which have taken effect). This new Article allows the court to make such further orders as required to put the parties, including the Board of the Pension Protection Fund, in the appropriate position following a successful appeal.

Part 2 of the Schedule makes amendments to the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 so that the provisions of that Order relating to the making of financial provision after overseas settlements on

divorce, such as the making of interim orders and orders relating to financial provision and property adjustment also apply to, and enable the making of, orders in relation to Pension Protection Fund compensation under the various provisions inserted into the Matrimonial Causes (Northern Ireland) Order 1978 by this Schedule.

Part 3 amends civil partnership legislation. The amendments correspond to those made to matrimonial legislation by Part 1.

### ***Schedule 6: Amendments of Schedule 6 to the Pensions (Northern Ireland) Order 2005***

This Schedule makes amendments to Schedule 6 to the Pensions (Northern Ireland) Order 2005 (pension compensation provisions) which relates to the calculation of pension compensation with the aim of improving the way it works.

The amendments in *Schedule 6* are intended to—

- clarify, through the amendments made in *paragraphs 2,3,17 and 18*, the interpretation of admissible rules in paragraph 35 of Schedule 6 to the Pensions (Northern Ireland) Order 2005. Both rule changes and discretionary increases made, in relation to the scheme, in the period immediately before the insolvency event are ignored for the purposes of calculating pension compensation under that Schedule, and
- provide, through the amendments made in *paragraphs 4 to 9 and 14*, for a terminal illness lump sum to be paid to members, on application, who have a progressive disease in consequence of which death can reasonably be expected in the following six months.

The main provisions for the new terminal illness payment are as follows:

- New paragraph 25B inserted into Schedule 6 to the Pensions (Northern Ireland) Order 2005 will enable members who have a progressive disease, and who are not already receiving compensation in respect of a particular pension scheme, to apply for a terminal illness lump sum payment.
- New paragraph 25C sets out the manner in which an application must be made and allows the Board of the Pension Protection Fund to require the application to include certain information. The Board could use this power, for example, to obtain information concerning the member's illness.
- New paragraph 25D sets out how the Board of the Pension Protection Fund must respond to an application, and allows for applications to be held over and determined at a later date where the member does not satisfy the conditions relating to their terminal illness, but may satisfy the conditions in the next six months.
- New paragraph 25E means that a successful applicant will receive a lump sum calculated in accordance with subparagraph (2) (twice the annual rate of

compensation which they would have been entitled to had they reached normal pension age) in lieu of future rights to compensation.

- New paragraph 25F gives the Board of the Pension Protection Fund access to certain information held by the Department or the Secretary of State to assist in dealing with applications for terminal illness lump sums.

*Paragraphs 10 to 12* remove an anomaly in the treatment of pension credit members of schemes which enter the Pension Protection Fund. Where a pension credit member (i.e. a member whose rights derive from a pension sharing order or qualifying agreement) was entitled to revaluation under the scheme in which they were a pension credit member, they will be entitled to receive a revaluation addition under paragraph 21 of Schedule 6 to the Pensions (Northern Ireland) Order 2005 like other scheme members.

*Paragraph 13* inserts powers to specify in regulations when a person may choose to delay receipt of pension compensation and to receive an adjusted amount from a later date. The regulations allow such a delay, for example, when a person has several small tranches of entitlement under their scheme rules payable at different dates, but would rather delay receipt of the earlier tranches and receive a higher income at a later time.

*Paragraph 15* makes amendments which deal with schemes whose rules would provide for a higher, or lower, rate of pension payment after a period of time, for example, upon the pensioner reaching a certain age. Currently, the compensation provisions in Schedule 6 to the Pensions (Northern Ireland) Order 2005 specify that compensation is calculated based on the rate of pension a person would be entitled to on the assessment date, or on reaching their normal pension age. The provisions introduced by this paragraph will enable regulations to provide that a different amount of compensation is to be paid. For example, the compensation could reflect the level of pension which would have been payable at the time the compensation is paid.

*Paragraph 16* removes an anomaly when determining normal pension age.

### ***Schedule 7: Additional Pension: Consequential Amendments***

*Schedule 7* contains consequential amendments arising as a result of the introduction of the upper accrual point.

*Paragraphs 1 to 6* amend the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

*Paragraph 2* adds new section 22(9). This is a minor technical change providing that, when calculating earnings factors derived from an employee's earnings for an employee paid other than weekly, any reference to earnings not exceeding the upper earnings limit, or from 2009-10 the upper accrual point, is to be read as a reference to earnings that do not exceed the prescribed equivalent.

*Paragraph 3(3)* inserts new section 23(3A) which provides that, for the purpose of calculating additional pension from the tax year 2009-10 onwards, the upper accrual point replaces the upper earnings limit as the cap on earnings factors.

*Paragraph 4* amends section 44A by replacing the reference to the upper earnings limit, as the ceiling on deemed earnings factors for State Second Pension purposes, with a reference to the “applicable limit” provided in section 44.

*Paragraph 5* amends section 44B(2)(a) by replacing the superfluous reference to the applicable limit with a reference to the upper accrual point. As the upper accrual point will be introduced from 2009-10, it will be the only ceiling relevant for earnings factors derived under the new deeming provisions for State Second Pension that take effect from 2010-11 onwards.

*Paragraph 6* makes amendments to paragraph 1 of Schedule 1, which deals with the calculation of National Insurance contributions where an earner is employed in more than one employment, to reflect the introduction of the upper accrual point. The amendment ensures that where earnings from two or more employments are aggregated after 6 April 2009, any contracted-out rate contributions are assessed on contracted-out earnings up to the upper accrual point.

*Paragraphs 7 to 13* amend the Pension Schemes (Northern Ireland) Act 1993.

*Paragraphs 8, 11 and 12* cover changes required to the contracting-out arrangements for defined contribution (money purchase) schemes as a consequence of the changes to the State Second Pension. The amendments have the effect of mirroring the change to the band of earnings on which State Second Pension accrues (i.e. the upper accrual point replacing the upper earnings limit as the maximum amount of earnings on which State Second Pension accrues) in certain calculations connected with the contracted-out rebate. The amendments ensure this change is reflected in:

- the definition of “minimum payments”;
- the band of earnings on which reduced rates of Class 1 contributions and rebates are paid in respect of members; and
- the band of earnings on which “minimum contributions” are paid to members of appropriate personal pension schemes.

*Paragraphs 9, 10 and 13* cover the changes required to the arrangements for defined benefits (salary related) schemes. These amendments revise those made by the Pensions Act (Northern Ireland) 2008 when the upper accrual point introduction date was planned for 2012. The amendments ensure that the change is reflected in:

- the calculation of reference scheme test benefits;

- the band of earnings on which reduced rates of Class 1 contributions are paid in respect of members of salary related contracted-out schemes; and
- the band of earnings on which the rebate is paid in cases of bankruptcy where the employer must make, as a priority, a payment to the scheme of outstanding contributions in relation to the rebate.

***Schedule 8: Contribution notices and financial support directions under 2005 Order***

Schedule 8 amends the Pensions (Northern Ireland) Order 2005 in relation to contribution notices and financial support directions to strengthen the Pensions Regulator’s anti-avoidance powers.

*Paragraph 2(1)* amends Article 34(5)(a) to enable the Regulator to issue a contribution notice if it is of the opinion that the material detriment test is met in relation to an act or failure to act.

*Sub-paragraph (2)* inserts Articles 34A and 34B.

Article 34A provides the meaning of “material detriment test” and related terms. It provides that the test is met if the Regulator is of the opinion that an act or failure to act has detrimentally affected in a material way the likelihood of accrued scheme benefits being received.

Article 34B provides a statutory defence in relation to the material detriment test. This allows the relevant party to demonstrate with evidence that they considered the impact of the act or failure to act on the scheme as part of the normal due diligence process and that where (i) it was not likely that the effect would be materially detrimental, (ii) or the detriment was minimised and (iii) it was reasonable for the party to do the act or fail to act, the contribution notice would not apply.

*Paragraph 3* amends Article 85(2) to place a requirement on the Regulator to set out in a statutory Code of Practice the circumstances in which it intends to use this power.

*Paragraph 4* amends Article 91 to provide that, where warning notice is given in respect of a contribution notice under Article 34, and the contribution notice would be issued wholly or partly as a result of the Regulator’s opinion that the material detriment test is met, the standard procedure must provide for an explanation of the statutory defence under Article 34B and provide an opportunity to exercise that right.

*Paragraph 5* amends Article 288(3) to provide that regulations made under Article 34A(10) or 34B(13) in relation to the material detriment test and contribution notices shall be subject to the confirmatory procedure.

*Paragraph 6* amends Article 34(5) to remove the words “otherwise than in good faith”. The current test sets an inappropriate evidential hurdle; requiring the Regulator to prove that a person was acting in bad faith.

*Paragraph 7* amends Article 34 to clarify the circumstances in which it is reasonable for the Regulator to issue a contribution notice and require it to consider any detriment to the scheme in the context of the value of any benefits the person receives, or is entitled to receive, under the scheme and the likelihood of relevant creditors being paid and the extent to which they are likely to be paid.

*Paragraph 8* amends Article 34 to provide that, where a person was party to a series of acts or failures to act, the series of acts or failures to act is to be regarded as an act or failure to act.

*Paragraphs 9 and 10* insert Articles 35A, 35B, 39A and 39B which deal with transfers of members of a scheme. These provisions apply where the Regulator has met the relevant tests for issuing a contribution notice or a financial support direction, but the member of the occupational pension scheme to which the tests have been satisfied have been transferred to a different scheme. Under current rules, the Regulator can issue a contribution notice or financial support direction only to the original scheme.

Articles 35A and 39A permit the Regulator to issue a contribution notice or a financial support direction to require the support for which the employer is liable to be directed to the pension scheme(s) to which affected members have been transferred. These provisions also permit support to be directed to the appropriate scheme in circumstances where there are multiple transfers of some or all of the members of the original scheme to one or other work-based schemes, including onward transfers.

Articles 35B and 39B provide that Articles 35A and 39A apply in circumstances where the original scheme has been wound up. Articles 35B(8) and 39B(8) provide regulation making powers to permit the application of Articles 35B and 39B to arrangements other than the standard transfers from one scheme to another. This will enable the Regulator to continue to protect member's benefits where the transfer or other arrangement could put those benefits at risk.

### ***Schedule 9: Interest on late payment of levies***

*Schedule 9* provides the Department with a discretionary power to make regulations allowing for a prescribed rate of interest to be charged on late payment of: the general levy (*paragraph 1*) (charges to cover the costs of running, amongst other things, the Pensions Regulator and the Pensions Ombudsman); the Pension Protection Fund administration levy (*paragraph 3*); the pension protection levy (*paragraph 4*); the fraud compensation levy (*paragraph 5*); and the Pensions Protection Fund Ombudsman levy (*paragraph 6*).

Interest will be due to the creditor of the debt, which is the Department except in the cases of the pension protection levy and the fraud compensation levy, where the debts payable in relation to these levies are debts to the Board of the Pension Protection Fund.

There is provision for the Regulator to collect interest in respect of all of the levies in the Schedule, on behalf of the Department or the Board of the Pension Protection Fund.

There may be circumstances in which it would be inappropriate to charge interest on late payment of levies. For example, a scheme may have been incorrectly billed and the review of its invoice might lead to a delay. This Schedule therefore includes a power to prescribe in regulations circumstances in which interest may be waived.

### ***Schedule 10: Repeals***

This Schedule lists the statutory provisions repealed by the Act.

### **HANSARD REPORTS**

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Northern Ireland Assembly.

<i>STAGE</i>	<i>DATE</i>
First Stage	17 November 2008
Accelerated Passage Motion	25 November 2008
Second Stage	25 November 2008
Consideration Stage	2 December 2008
Further Consideration Stage	8 December 2008
Final Stage	9 December 2008
Royal Assent	15 December 2008.