

*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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 1 – Pension Scheme Membership for Jobholders

CHAPTER 3 - Safeguards: Employment and pre-employment

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.