

*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

### COMMENTARY ON SECTIONS

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

#### ***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

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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.