These notes refer to the Pensions Act (Northern Ireland) 2012 (c.3) which received Royal Assent on 1 June 2012

Pensions Act (Northern Ireland) 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Occupational Pension Schemes

Section 20: Indexation and revaluation

Section 20 amends three provisions concerning the indexation of defined benefit pensions in payment and the revaluation of the deferred pensions of early leavers from occupational pension schemes following the Westminster Government's decision to use the Consumer Prices Index (CPI) as the measure of increase in the general level of prices in place of the Retail Prices Index (RPI).

Subsections (1) to (3) amend section 80 of the Pension Schemes (Northern Ireland) Act 1993 ("the Pension Schemes (NI) Act") so that schemes which provide full uncapped revaluation of deferred members' preserved pensions (including Guaranteed Minimum Pension rights) may do so without reference to the statutory revaluation requirements contained in section 80 provided they maintain, the value of pensions by reference to the rise in the general level of prices.

Subsections (4) to (6) make consequential amendments to Schedule 2 to the Pension Schemes (NI) Act which sets out methods for revaluing accrued benefits for the purposes of section 80. In particular, where scheme rules continue to require revaluation by reference to the RPI, the scheme will not also have to consider the statutory revaluation addition calculated using the CPI.

Subsections (7) and (8) amend Article 51 of the 1995 Order to allow schemes to continue increasing pensions in payment under provisions in scheme rules rather than under the statutory requirement contained in Article 51(2). In place of increasing by reference to the RPI, schemes will be able to increase by the RPI, the CPI or a combination of the two, depending on the rules of the individual scheme. Where schemes continue to increase pensions by the RPI and have done so continuously from January 2011 (or when the pension first comes into payment if later), the amendments will ensure they will not have to carry out an annual comparison of the RPI under scheme rules and the CPI under the statutory requirements and pay the higher of the two.

Subsections (9) to (11) amend Article 37 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 to allow the Department to prescribe that (as a minimum) pension credit benefit (arising from a pension share on divorce) paid by an occupational pension scheme must be increased by reference to the percentage increase in the general level of prices determined by the Secretary of State for the purpose of the statutory revaluation requirements under the Pension Schemes Act 1993.

Section 21: Indexation requirements for cash balance benefits

Section 21 removes the requirement for cash balance benefits to be indexed under Article 51 of the 1995 Order. Cash balance benefits are benefits which the member accrues in the form of a lump sum or fund, the level of which can be determined in advance, is guaranteed to reach a particular minimum, or is determined by the application of a notional accrual rate or rate of interest. The fund is then used to buy an annuity or to provide a pension from scheme funds.

Current legislation requires that members with cash balance benefits buying or receiving an annuity or being paid a scheme pension must receive Limited Price Indexation. This means that accruals between 1997 and 2005 must be indexed to at least the lower of the RPI or five per cent and accruals post 2005 must be indexed at the lower of the RPI or 2.5 per cent.

Pensions or annuities already in payment prior to this section coming into force will continue to be indexed and will not be affected by the changes.

Section 22: Pension Protection Fund

Section 22 gives effect to Schedule 4.

Section 23: Payment of surplus to employer: transitional power to amend scheme

Section 23 amends Article 228 of the 2005 Order. Article 228 provided trustees with a transitional power to confirm or amend powers in scheme rules to make payments to the employer in the light of changes to the taxation regime for pension schemes, and to the requirements relating to payments of surplus to employers as stated in Article 37 of the 1995 Order.

Article 228 came into operation from 6th April 2006. It specifically allowed trustees to pass a resolution to confirm or amend powers in their scheme's rules to make payments to the employer, or allow them to cease to be exercisable. Trustees were required to pass a resolution within five years of the commencement of the provision (before 6th April 2011) and to satisfy prescribed requirements for notifying scheme members.

This section ensures that Article 228 does not apply to payments which trustees can make without having to satisfy the general requirements relating to payments of surplus in Article 37 of the 1995 Order. It extends the transitional period during which Article 228 will apply to 6th April 2016. This will allow trustees more time to review any powers in their scheme's rules to make payments to the employer, decide how such powers should be exercised in the future, and take whatever action they consider is necessary under Article 228.

Section 24: Contribution notices and financial support directions

Section 24 amends Articles 34, 39 and 91 of the 2005 Order. Article 34 provides the Pensions Regulator with the power to issue a contribution notice where certain conditions are satisfied. Article 39 provides the Pensions Regulator with the power to issue a financial support direction where certain conditions are satisfied. Article 91 describes the standard procedure for consideration of certain of the Pensions Regulator's functions.

At present the Regulator must determine to exercise its regulatory functions to issue a contribution notice or a financial support direction within certain statutory periods. The amendments to Articles 34 and 39 provide that those periods end with the Regulator giving a warning notice of its intention to exercise its regulatory functions instead of ending with the determination to exercise the relevant regulatory function. The amendment to Article 91 also creates a power to prescribe a period after giving a warning notice beyond which the Regulator cannot exercise the relevant regulatory function.

Section 25: Technical amendment to Schedule 4 to the Pensions Act (Northern Ireland) 2008

Section 25 amends a consequential amendment made to Schedule 3 to the Pension Schemes (NI) Act and contained within paragraph 59 of Schedule 4 to the Pensions Act (Northern Ireland) 2008.

Where an employer becomes bankrupt, the amount of debt (in respect of the contributions owed to a salary-related contracted out pension scheme) is calculated according to the rebate percentages specified in Schedule 3 to the Pension Schemes (NI) Act. The consequential amendment as currently drafted would substitute out of date rebate percentages into Schedule 3 to the Pension Schemes (NI) Act. This amendment will ensure the most recent rebate percentages are retained in that Schedule.

Section 26: Technical amendment to section 38(2) of the Pension Schemes (Northern Ireland) Act 1993

Section 26 amends an inaccurate cross-reference in section 38(2) of the Pension Schemes (NI) Act. The power specified previously allowed the percentages stated in Schedule 3 to that Act (in respect of contributions owed by bankrupt employers of salary-related contracted-out schemes) to be changed in line with changes to the rebate percentages. The amendment refers to the correct paragraph in Schedule 3 which contains the rebate percentages.