These notes refer to the Pensions Act (Northern Ireland) 2015 (c.5) which received Royal Assent on 23 June 2015

Pensions Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – State Pension

Section 1: State pension

Section 2: Entitlement to state pension at full or reduced rate

Section 3: Full and reduced rates of state pension

These sections create a benefit – referred to in the Act as "state pension".

Although the term "state pension" has been commonly used to refer to Category A to Category D contributory and non-contributory pensions paid since the 1970s (and now payable under the Contributions and Benefits Act) in current legislation these are referred to as "retirement pensions".

Those reaching pensionable age on or after the start date for the new state pension will not be eligible for the current retirement pension scheme. This start date is to be 6th April 2016. The current pension arrangements will continue for people who reach pensionable age before 6th April 2016.

The full rate of the new state pension which will be applicable for the first year will be set by regulations prior to the commencement of these sections. Thereafter, it will be up-rated each year. The basic conditions of entitlement for the new state pension at the full rate will be:

- that the person has attained pensionable age; and
- that the person has 35 or more 'qualifying years' of National Insurance contributions.

Where an individual has fewer than 35 qualifying years, his or her entitlement will be pro-rated and each qualifying year of National Insurance contributions will entitle him or her to one 35th of the full rate (section 3).

However, section 2 also sets out that entitlement will be subject to a minimum number of qualifying years, which will be specified in regulations but will be no more than ten years.

The Pensions Act 2014 contains provisions for the new state pension to be up-rated. The Secretary of State must increase the benefit by a percentage not less than the percentage annual increase in the general level of earnings. Whenever the Secretary of State makes such an order, the Department may make a corresponding order for Northern Ireland.

These sections apply to people who do not have any qualifying years for tax years before the new state pension start date.

Transitional arrangements apply to those who have qualifying years for tax years before 6th April 2016 and who attain pensionable age after that date– see commentary on sections 4 and 5.

Section 4: Entitlement to state pension at transitional rate

Section 5: Transitional rate of state pension

Section 6: Recalculation and backdating of transitional rate in special cases

Schedule 1: Transitional rate of state pension: calculating the amount

Schedule 2: Transitional rate of state pension: up-rating

These sections make transitional provision for pension entitlement for those who reach pensionable age on or after the date the new state pension is introduced and who have qualifying years attributable to tax years prior to introduction.

The provision is transitional because at some point in the future people will only have qualifying years attributable to the period after the new state pension is introduced and their entitlement will be calculated under the rules set out in sections 1 to 3. The persons unaffected by the transitional provision will be those who:

- are under the age of 16 when the new state pension is introduced, so they will not have yet entered the National Insurance scheme;
- arrive in the UK for the first time after the new scheme is introduced; or
- for some reason have not paid, or received credits, into the National Insurance scheme or have not made enough contributions to achieve a ‘qualifying year’ before the new scheme is introduced.

The calculation of the rate of state pension for people who have qualifying years attributable to tax years prior to introduction (called “transitional rate” here) is set out in Schedule 1. The calculation takes into account the National Insurance history of the person before the new state pension scheme starts when determining any future pension entitlement.

Under the current rules a person may become entitled to different components of retirement pension depending on when and at what level contributions have been made. Provided that sufficient contributions are made at the lower earnings limit for National Insurance in a tax year, that year will be a qualifying year for basic state pension purposes. Earnings-related contributions made between 1961 and 1975 provide entitlement to graduated retirement benefit. Since 1978 contributions that are made on earnings above the annual lower earnings limit in a tax year are relevant for entitlement to the additional pension.

The first step in the calculation of the transitional rate involves working out a person's entitlement under current scheme rules, as if he or she had reached pensionable age on the day the new state pension scheme is introduced. This provides a snapshot in time of any basic state pension, additional pension and graduated retirement benefit to which he or she would have been entitled.

The second step involves working out entitlement under the new state pension rules had they applied before the start date. This valuation is based on 'pre-commencement' qualifying years, i.e. any years that would have been qualifying years before the start date of the state pension. This includes pre-1978 reckonable years, as defined in the relevant transitional regulations *(section 4(4)(b))*. Where a person has 35 or more pre-commencement qualifying years at the start date the valuation would be based on the maximum state pension amount payable at that date. Otherwise it would be based on a reduced rate matching the number of pre-commencement qualifying years accrued at that date.

In both of these calculations an amount to reflect contracting-out under the current scheme is deducted. However, where after the start date a person leaves his or her contracted-out pension scheme and under the rules of the scheme is not entitled to a contracted-out pension, his or her transitional rate would be re-calculated as if he or she had never been contracted out (section 6).

The third step requires a comparison of the two calculations with the more beneficial used as the starting basis of a person's transitional rate (their foundation amount). This foundation amount may exceed the full rate of state pension. This will be the case where the person, but for the introduction of the new state pension, would have been entitled to a significant amount of additional pension.

If at the start date the person has a foundation amount lower than the full rate of state pension, he or she can continue to add qualifying years to his or her entitlement – even if he or she already had 35 or more qualifying years before the start date – up to a maximum number that would provide entitlement to the full rate of state pension.

A minimum number of qualifying years will also apply to the transitional rate. This number will be specified in regulations, and will not be more than ten years.

Schedule 1 also provides for the revaluation of the foundation amount prior to pensionable age. The value of the foundation amount up to the full rate of state pension is to be re-valued by earnings or higher (as with the state pension rate). Any excess over that rate will be re-valued in line with the annual increase in the general level of prices.

Schedule 2 provides for the up-rating of the transitional rate (annual increases to the pension in payment). The value of the transitional rate up to the full rate of state pension is to be up-rated by earnings or higher. Any excess will be up-rated in line with the annual increase in the general level of prices.

Section 7: Survivor's pension based on inheritance of additional old state pension

Schedule 3: Survivor's pension under section 7: inherited amount

Schedule 4: Survivor's pension under section 7: up-rating

In the current retirement pension scheme, a person who is, or who has been, married or in a civil partnership may be entitled to a state pension based on the National Insurance record of their spouse or civil partner. This will not be the case for those reaching pensionable age after the start date of the new state pension.

There are two exceptions: one set out in this section and one set out in sections 11 and 12.

Section 7 and Schedules 3 and 4 provide that a person will be entitled to an amount based on the additional pension that his or her late spouse or civil partner was or would have been entitled to in the current retirement pension scheme. Schedule 3 provides for the conditions of entitlement to this inherited state pension.

The amount that the survivor will be entitled to depends on whether his or her spouse or civil partner was in the current retirement pension scheme or in the new state pension scheme. That is, whether the spouse or civil partner either reached pensionable age, or died under pensionable age, before or after the new state pension start date.

In all cases, entitlement to an inherited amount under Schedule 3 will be conditional on the marriage or civil partnership existing before the new pension scheme is introduced. A person who becomes entitled to an inherited amount on or after reaching pensionable age will not lose it if he or she subsequently remarries or forms a civil partnership. However, as that marriage or civil partnership will have taken place after the new state pension is introduced, if the new spouse or civil partner dies, the existing inherited amount will not be replaced with an inherited amount from the most recent spouse or civil partner, even if it would have been a higher amount.

Where the survivor is in the new state pension scheme and the late spouse or civil partner was in the current retirement pension scheme, the survivor could be entitled to an inherited amount based on the amount of additional pension that person would have been entitled to under the current Category B retirement pension rules.

Where the survivor is in the new state pension scheme and the late spouse or civil partner was also in the new state pension scheme, the survivor could be entitled to an inherited amount of half of the amount by which the late spouse's or civil partner's transitional rate of pension exceeds the full state pension rate.

This Act will replace the existing range of bereavement benefits with a bereavement support payment (see 'Part 5 – Bereavement Support Payment'). The Category B pension rules are therefore modified to enable a person who is bereaved while under pensionable age on or after the date the new payment is introduced and whose spouse or civil partner reached pensionable age in the current retirement pension scheme to inherit additional pension if he or she qualified for bereavement support payment and satisfied the other rules for entitlement.

Schedule 4 provides for the up-rating (annual increases) of inherited amounts. The basic principle is that, as with the transitional rate, the survivor's pension (including inherited amount) up to the full rate of the state pension should be up-rated by reference to earnings and any excess by prices.

Section 8: Choice of lump sum or survivor's pension under section 9 in certain cases

Section 9: Survivor's pension based on inheritance of deferred old state pension

Section 10: Inheritance of graduated retirement benefit

Schedule 5: Survivor's pension under section 9: inherited deferral amount

In the current retirement pension scheme, individuals can choose not to claim their state pension at pensionable age and, as a consequence, will qualify for either an increase to their weekly pension (known as increments) or for a lump-sum payment from the point they claim (subject to some conditions). This is known as deferral.

These sections and Schedule 5 relate to the inheritance of deferred state pensions and deferral awards under the current retirement pension scheme (see sections 16 to 18 below for an explanation of how deferral will work under the new state pension scheme). Where a late spouse or civil partner reached pensionable age before the start date of the new state pension and deferred their state pension, the survivor can inherit the deceased's deferred pension (regardless of whether they reach pensionable age before or after the start date) as under the current rules. Regulations may also provide for the inheritance of deferred graduated retirement benefit. It is not, however, possible for a person who reaches pensionable age on or after the start date to pass on deferral increments to his or her spouse or civil partner.

However, unlike the current inheritance arrangements, the provisions in Schedule 5 mean that, for an individual who reaches pensionable age on or after the start date of the new state pension, it will no longer be possible to inherit increments that were accrued by his or her late spouse or civil partner's former spouse or civil partner, except for any increments that the individual's deceased spouse built up on any increments that he or she inherited. For example, B (who reached pensionable age before the start date) is deferring his pension (which includes increments accrued by his late wife, A) and is now married to his second wife, C (who reached pensionable age after the start date). B dies and C inherits increments from him that are paid with her pension. C cannot inherit increments from B that were originally accrued by A's period of deferral. C will, however, be able to inherit the increments that B may have built up on any increments that he inherited from A.

Section 11: Reduced rate elections: effect on section 4 pensions

Section 12: Reduced rate elections: pension for women with no section 4 pension

Schedule 6: Reduced rate elections: effect on rate of section 4 pension

Schedule 7: Reduced rate elections: basic amount of state pension under section 12

Until 1977, married women and widows in employment could opt out of any future entitlement to a state pension in their own right by paying National Insurance at a reduced rate. Women who were self-employed could choose not to pay the flat-rate self-employed stamp. This was referred to as a "reduced-rate election". Women who took a reduced-rate election gained entitlement to a state pension by relying on their spouse's National Insurance record.

For those reaching pensionable age on or after the start of the new scheme, the Act removes the option for an individual to rely on his or her spouse's or civil partner's National Insurance record (other than the provision for surviving spouses and civil partners to inherit pension, as described above) but does set out alternative arrangements for certain women who made reduced-rate elections.

These arrangements will apply if a reduced-rate election had still been in force at the start of the final 35 tax years before the tax year in which the woman reached pensionable age.

Where a woman meets the 35-year condition and has some qualifying years attributable to the period before the new state pension is introduced, section 11 and Schedule 6 provide for the state pension to be calculated in an alternative way if this is more beneficial than the transitional rate of pension to which she would otherwise be entitled. This alternative calculation provides a transitional rate of state pension at least equivalent to the combination of any additional pension based on her own National Insurance record and the equivalent of the current scheme's basic state pension. This will be either the rate applicable for a spouse or civil partner (currently approximately 60 per cent of the full rate basic state pension) payable when both she and her husband or civil partner have reached pensionable age, or the equivalent of the full basic state pension if she is widowed or divorced. As a simplification measure, the full standard rates will be used so the amounts will not be dependent on the spouse's or civil partner's National Insurance record.

Section 12 and Schedule 7 make comparable provision for a woman with no qualifying years for the period before the new state pension is introduced. In these circumstances, the state pension would comprise an amount equivalent to the appropriate standard rate of the current scheme's basic state pension for a married person, widow or divorcee, or civil partner, surviving civil partner, or person whose civil partnership has been dissolved.

Section 13: Shared state pension on divorce etc

Section 14: Pension sharing: reduction in the sharer's section 4 pension

Section 15: Pension sharing: amendments

Schedule 8: Pension sharing: appropriate weekly rate under section 13

Schedule 9: Pension sharing: up-rating state pension under section 13

Schedule 10: Pension sharing: appropriate weekly reduction under section 14

Schedule 11: Pension sharing: amendments

Since December 2000, financial settlements on divorce have been able to provide for one party to a divorce to split his or her current or prospective entitlement to additional pension with his or her former spouse. The rules on pension sharing have applied to civil partners since December 2005.

Where a pension sharing order is made, a court will order a percentage split or an amount to be transferred. The apportioned benefits are known as "pension debits" and "pension credits", created under the Welfare Reform and Pensions (Northern Ireland) Order 1999. The former spouse or civil partner ("the transferor") will have his or her prospective additional pension entitlement reduced by the value of a pension debit and the beneficiary ("the transferee") will gain entitlement to a pension credit that is equal to the amount of the debit. Pension sharing can be applied to current or prospective entitlement to additional pension or to shared additional pension from a previous divorce.

The Act does not affect the validity of a pension sharing order made against a person in the new state pension scheme before the Act comes into operation.

Although the new state pension will not comprise any additional pension, the Act does allow for pension sharing of the new state pension in certain limited cases.

It will still be possible in the future to make a pension sharing order against a person who has a transitional rate pension under section 4 that exceeds the full rate of the state pension. But the pension sharing order can only relate to the amount of that excess.

If a pension sharing order has been made against someone in the new state pension scheme, the rate of his or her state pension under section 4 may be reduced (see section 14).

A person in the new state pension scheme may also benefit from a pension sharing order made before the start date of the new state pension scheme, or made against a person in the current retirement pension scheme. In this case the person will be entitled to a state pension under section 13 based on the pension sharing credit. This will be paid in addition to any state pension the person is entitled to, based on his or her own National Insurance record. Calculating entitlement in this way means that a person is able to benefit from qualifying years obtained under the new state pension scheme notwithstanding the award of a state pension credit.

Schedule 8 sets out the rules for calculating the appropriate weekly rate where a pension sharing order has been made.

Schedule 9 provides for increases of shared state pension (state pension credit) once payment has started, as follows:

- if a person's total state pension including the state pension credit is equal to or less than the full rate of state pension the amount of the state pension credit will be up-rated in line with earnings in the same way as the full rate of state pension is up-rated;
- if a person's state pension is less than the full rate of the state pension but exceeds the full rate when the state pension credit is taken into consideration, the amount of the state pension credit up to the full rate of state pension will be increased in line with earnings (in the same way as the full rate of state pension is up-rated), and the excess of the state pension credit above the full rate will be increased in line with prices (in the same way as the excess of any transitional rate of pension under section 4 is up-rated); or
- if a person's state pension alone is equal to or higher than the full state pension, then any state pension credit will be increased in line with prices (in the same way as the excess of any transitional rate of pension under section 4 is up-rated).

Schedule 10 explains how a person's appropriate weekly deduction is calculated if a sharing order has been issued.

Schedule 11 amends existing legislation to take into account the introduction of the sharing of the new state pension. Among other things, it makes provision for those reaching pensionable age under the current scheme to receive shared additional pension in relation to an order made against someone in the new state pension scheme.

Section 16: Pensioner's option to suspend state pension

Section 17: Effect of pensioner postponing or suspending state pension

Section 18: Section 17 supplementary: calculating weeks, overseas residents, etc

Sections 16 to 18 provide for arrangements to defer the payment of a state pension under the new state pension scheme.

In the current retirement pension scheme, individuals can choose not to claim their state pension at pensionable age or to give up their state pension for a period of time after they have started to receive it. As a consequence, they will qualify for either an increase to their weekly pension (known as increments) or for a lump-sum payment from the point they claim (subject to some conditions). This is known as deferral.

The basic principle of deferral is being retained for the new state pension, but only the ability to accrue a weekly increase. Those who reach pensionable age on or after the new state pension start date will not be able to accrue a lump-sum. The accrual rate of the weekly increase will be set out in regulations (see section 17(4)). There will be no inheritance of a weekly increase accrued by the deferral of a new state pension.

Section 19: Prisoners

Section 20: Overseas residents

These sections provide regulation-making powers to set out the arrangements for prisoners and overseas residents.

For prisoners, regulations may provide that a person is not to be paid a state pension whilst they are imprisoned, detained in legal custody or unlawfully at large. This is the same as under the current scheme.

For overseas residents, regulations may provide that such a person is not entitled to up-rating. This will enable similar provision to be made as under the current retirement pension scheme. Regulations under this section will be made taking into account provision under relevant treaties, such as those in respect of the European Union, and bi-lateral treaties providing for reciprocity in social security matters and which cover up-rating.

Section 23: Amendments

Schedule 12: State pension: amendments

Schedule 12 provides for a number of amendments to other legislation relating to the introduction of the new state pension.

Schedule 12, Part 1 contains amendments that are related to the new state pension scheme. For example, Schedule 12, paragraphs 16 to 18 amend the general revaluation and up-rating provisions in the Social Security Administration (Northern Ireland) Act 1992.

Part 2 contains amendments to do with the current retirement pension scheme.

The amendments limit the current retirement pension scheme to those reaching pensionable age before 6th April 2016.

The amendments also provide that, where such a person is entitled to an old state pension based on the contributions of a spouse or civil partner who is in the new state pension scheme, that retirement pension will be based only on contributions the spouse or civil partner made for the period before the new state pension scheme was introduced.

Part 2 also removes several aspects of the current scheme for those reaching pensionable age after the new state pension start date:

- Category C pension. This category of pension was introduced to provide non-means tested pensions to those who had reached pensionable age before the National Insurance scheme started in 1948 and had not been insured under the pre-1948 provisions. Provision is removed for anyone reaching pensionable age on or after the new state pension start date. The only people who could now be entitled to a Category C pension are widows of individuals who reached pensionable age before 5th July 1948;
- Category D pension. Category D non-contributory pensions for those aged 80 and over were introduced to help a number of elderly people without access to a pension. Changes made to the retirement pension since then (largely the reduction of the number of qualifying years needed for a state pension and changes to National Insurance credits) mean that the number of recipients is declining and expected to decline further. Provision remains for those reaching pensionable age before the new state pension start date but is not replicated for those reaching pensionable age thereafter;
- The age addition. The age addition to contributory and non-contributory retirement pensions is paid to people aged eighty or over. It was introduced in 1971 but has never been increased from 25 pence. Provision remains for those reaching pensionable age before the new state pension start date but is not replicated for those reaching pensionable age thereafter.

Part 3 of Schedule 12 provides that the savings credit element of state pension credit is only payable (from the savings credit qualifying age) to those who have reached pensionable age before the start date of the new state pension scheme.

An individual who does not meet these criteria could still qualify if he or she is a member of a mixed age couple where the other member reached pensionable age before the start date of the new state pension scheme. However, a power is given to the Department to specify the circumstances in which entitlement is restricted for these mixed age couples. For clarity, an example is given of how the power might be used in regulations.

Part 4 contains miscellaneous amendments regarding the introduction of the new state pension. These include repealing provisions in the Pensions (No. 2) Act for consolidating the additional pension which are not required as a result of the introduction of the new state pension.

***Section 24*: Abolition of contracting-out for salary related schemes etc**

***Schedule 13*: Abolition of contracting-out for salary related schemes**

***Schedule 14*: Power to amend schemes to reflect abolition of contracting-out**

Since 1961 sponsoring employers of salary-related occupational pension schemes have been allowed to contract their employees out of the additional pension on the condition that they would provide an occupational pension meeting certain statutory requirements (these have changed over the years).

In return for the employer providing a pension meeting the statutory minimum, both the employer and employee pay reduced rates of National Insurance (employer contributions are currently reduced by 3.4 per cent and employee contributions by 1.4 per cent).

In 1988 it became possible for employers to contract out their employees into a defined contribution occupational pension scheme, and for individuals to contract out into a personal pension scheme. However, the 2008 Act abolished these options from 6th April 2012.

Introduction of the new state pension will abolish the additional pension for those reaching pensionable age after the start date. Section 24 and Schedules 13 and 14 make provision for the ending of the option for sponsoring employers of salary-related occupational pension schemes to contract their employees out of the additional pension. This option will end on the start date of the new state pension.

As well as removing redundant provisions, the amendments to the Pension Schemes Act and other pensions legislation in Section 24 and Schedules 13 and 14 are intended to serve two main purposes.

Firstly, to ensure that all contracted-out rights accrued by employees through salary related contracted-out schemes before the abolition of contracting-out are fully protected. To protect accrued rights, paragraph 13 of Schedule 13 inserts new section 8E into the Pension Schemes Act. Section 8E requires former salary-related contracted-out schemes to meet the requirements in the Pension Schemes Act in relation to Guaranteed Minimum Pensions ("GMPs"). Section 8E deems scheme rules to comply with all the requirements, overriding the rules if necessary. Paragraphs 16 and 38 of Schedule 13 amend sections 12 and 83 of the Pension Schemes Act (the revaluation requirements for GMPs for early leavers and the anti-franking rules) so that abolition of contracting-out does not trigger either of these requirements. This will ensure that someone who stays in a scheme at abolition will not be treated as having left simply because contracting-out has ended. Paragraph 17 of Schedule 13 amends section 13 of the Pension

Schemes Act to reflect the end of the current retirement pension scheme so that inherited GMPs will be payable in the same circumstances as now.

Secondly, to enable sponsoring employers of contracted-out schemes to change the rules of their pension schemes (where they are prevented from doing so) to adjust members' future pension accruals or pension contributions to take into account the loss of the employer's rebated National Insurance contributions. Section 24(2) and Schedule 14 provide a power for sponsoring employers to amend their scheme rules to decrease scheme costs in order to offset the increase in National Insurance contributions - for example, by reducing scheme benefits for future accruals or increasing member contributions. Following the end of contracting-out, employers and members of contracted-out salary-related schemes will have an increase in National Insurance contributions. They will pay the same rate of National Insurance as other employers and employees. This power will be available for five years (Section 24(8)). The power cannot be used to change the rules of public service pension schemes or other types of scheme (which may be prescribed in regulations under Section 24(4)(b)) or in relation to protected persons.