

EXPLANATORY MEMORANDUM TO
THE PENSIONS REGULATOR
(INFORMATION GATHERING POWERS AND MODIFICATION)
REGULATIONS (NORTHERN IRELAND) 2021

S.R. 2021 No. 243

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 67A(2), 72A(3)(a), 72B(5)(a) and 280(1)(b) of the Pensions (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations set out the minimum information which the Pensions Regulator must include in a notice which requires a person to attend an interview under extended provisions introduced by the Pension Schemes Act 2021 (“the 2021 Act”). They also modify the Regulator’s extended inspection powers so they apply to multi-employer schemes and set the level of the fixed and escalating civil penalties introduced by the 2021 Act.

3. Background

- 3.1 The Pensions Act 2004 established, on a UK-wide basis, the Pensions Regulator to protect the benefits of members of work-based pensions, reduce the risk of situations arising which may result in calls on the Pension Protection Fund and promote and improve understanding and good administration of work-based pensions. The Regulator’s approach is risk-based focusing on education and enablement, with enforcement where appropriate.
- 3.2 The 2021 Act extends the Pensions Regulator’s information gathering powers by inserting Article 67A into the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”) which will enable the Regulator to require a person to attend an interview. It also amends Article 68 of the 2005 Order to add new types of premises that the Regulator may enter. These Regulations list the minimum information which the Regulator must include in the notice requiring a person to attend an interview and provide for modifications to apply to schemes with more than one sponsoring employer.
- 3.3 Additionally, the 2021 Act introduces fixed and escalating civil penalties for not complying, without reasonable excuse, with the Pensions Regulator’s requests for information, similar to the penalties already

available for not complying with information requests in connection with automatic enrolment. These penalties will be an alternative to the current criminal offence and are inserted into the 2005 Order as new Articles 72A and 72B. Both new Articles provide that the level of the penalties will be set in regulations.

- 3.4 These Regulations cover three areas: they set out the minimum information which the Pensions Regulator must include in a notice which requires a person to attend an interview under Article 72A of the 2005 Order. They also modify the Regulator's extended inspection powers so they apply to multi-employer schemes and they set the level of the fixed and escalating civil penalties.

Interview provisions

- 3.5 To help the Pensions Regulator gather the information it needs to ensure compliance with pensions legislation, its power to call a person for an interview has been extended across all its functions. The 2021 Act requires the Regulator to issue a notice notifying the person of the interview and regulation 3(1) of the Regulations lists the minimum amount of information which must be included in the notice. The information set out in the notice will include details, for example, name, address and job title, to make it clear who is being called for an interview. The notice will also include information which will inform the interviewee as to when and where the interview will take place, why the Regulator wishes to conduct the interview, the interviewee's rights and responsibilities, and how the information obtained can be used. The notice will also list the potential consequences for the interviewee by way of sanction in the event of non-compliance.
- 3.6 Virtual meetings have become more common and regulation 3(2) of the Regulations therefore provides that if the interview is proposed to be conducted via an on-line communication platform, the notice must provide additional information as to how the on-line communication platform should be accessed.
- 3.7 Detailing the information required in the notice through regulations will allow the process to take account of the changing business and economic environment.

Inspection powers

- 3.8 The 2021 Act extends the Pensions Regulator's powers of inspection to cover premises where records relating to the sponsoring employer of a defined benefit scheme are kept. Regulation 4 of the Regulations modifies these inspection powers in the case of a multi-employer scheme so that the powers of inspection extend to any of the employers which sponsor the scheme, or that section in the case of a sectionalised scheme. This will

prevent any ambiguity as to the extent of the Regulator's powers in such situations.

Fixed and escalating civil penalties

- 3.9 Regulations 5 and 6 of the Regulations lay down the level of the fixed and escalating penalties which are also introduced by the 2021 Act. Previously, the Pensions Regulator could only impose a fixed or escalating civil penalty for non-compliance with information gathering provisions regarding the employer's duties in the context of automatic enrolment or Master Trusts. Otherwise, not complying with an information request made under Articles 67 to 70 of the 2005 Order without reasonable excuse is a criminal offence under Article 72 of that Order. The new provisions at Articles 72A and 72B of the 2005 Order allow the Regulator to impose a fixed penalty for non-compliance and, if the failure to comply continues, an ongoing penalty for each further day of non-compliance (described as an escalating penalty). Obtaining information can be a necessary and urgent part of an investigation and civil financial penalties will enable the Regulator, where appropriate, to enforce the information gathering requirements more efficiently.
- 3.10 Regulation 5 of the Regulations sets the level of the new fixed penalty and regulation 6 of the Regulations sets out the level of the escalating penalties: the fixed penalty is £400 and the daily rate of the escalating penalty is £200 for an individual and a daily rate of up to £10,000 for non-individuals. The levels of the fixed penalty and the escalating penalty for individuals are the same as the existing penalties for non-compliance with information gathering requests relating to automatic enrolment. The level of the escalating penalty for non-individuals follows the format and maximum daily rate which can be imposed for non-compliance with information gathering in connection with Master Trusts but reaches the daily maximum at a slower rate.

4. Consultation

- 4.1 There is no requirement to consult on these Regulations. They make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain.

5. Equality Impact

- 5.1 The 2021 Act was subject to an Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for these Regulations. The Department has concluded that they would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

- 6.1 These Regulations do not require a Regulatory Impact Assessment as they have only a negligible impact on costs on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 None for the Department.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department is content that these Regulations comply with section 24 of the Northern Ireland Act 1998 (Convention rights, etc.).

9. EU Implications

- 9.1 Not applicable.

10. Parity or Replicatory Measure

- 10.1 The corresponding Great Britain Regulations are the Pensions Regulator (Information Gathering Powers and Modification) Regulations 2021 (S.I. 2021/754) which come into force on 1st October 2021. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions in line with section 87 of the Northern Ireland Act 1998.