EXPLANATORY MEMORANDUM TO

THE AUTOMATIC ENROLMENT (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2013

S.R. 2013 No. 243

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under sections 107A(15)(b) and 177(2) and (3) of the Pension Schemes (Northern Ireland) Act 1993, Articles 49(8) and 166(1) and (2) of the Pensions (Northern Ireland) Order 1995 and sections 3(2), 4(5), 5(2), 8(4) to (6), 10, 11, 15, 23(1)(c), (3) and (6), 33(2), 37(3) and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008 and is subject to the negative resolution procedure.

2. Purpose

2.1 These Regulations make technical amendments related to automatic enrolment to a number of sets of existing Regulations to –

- define pay reference periods for the purposes of assessing jobholder status and money-purchase scheme quality;
- introduce consistency for contribution payment deadlines for all joiners;
- clarify the form of the opt-out notice;
- extend the joining window;
- make changes to the quality requirements for defined benefit schemes;
- make minor and consequential amendments and revocations.

3. Background

3.1 The Pensions (No. 2) Act (Northern Ireland) 2008 and corresponding provision in the Westminster Pensions Act 2008 introduce a duty on employers to enrol eligible jobholders into a qualifying workplace pension and to make minimum contributions into it. Under the legislation, employers are able to choose the qualifying workplace pension scheme they adopt to discharge this duty. A qualifying scheme is a scheme which meets specific criteria, for example, an occupational pension scheme (including the National Employment Savings Trust (NEST) established on a UK-wide basis under the Pensions Act 2008) or a workplace personal pension scheme.

3.2 Defining pay reference periods for assessing jobholder status

The current definition of a payroll reference period can be difficult for some existing payroll systems. This can make it hard to match a payment of salary or wages to the relevant pay reference period adopted for the purpose of assessing jobholder status. The Regulations allow employers the option of using periods already recognised by established payroll software to determine a pay reference period.

3.3 Defining pay reference periods for assessing scheme quality

The Regulations amend the definition of pay reference period to remove the possibility of a mismatch between contributions calculated on the basis of pay periods and contributions calculated annually.

3.4 Introducing consistency for contribution payment deadlines for all joiners

At present, employers are required to pass contributions deducted from a jobholder's pay to the pension scheme by the 19th or 22nd (if sent electronically) day of the month after the month in which the deduction is made. To ease scheme administration, the current provision for an extension to the deadline (for example, contributions taken as part of the automatic enrolment, re-enrolment or opt-in process) is extended to cover contributions taken as a result of workers joining a pension scheme under the terms of a contract of employment.

3.5 Clarifying the form of the opt-out notice

Following automatic enrolment, an individual has the right to opt out of pension saving by giving notice to the employer. To address concerns that the current legislation setting out the form of the opt-out notice is too restrictive, the Regulations clarify the form of the notice.

3.6 Extending the joining window

An employer currently has one month from the automatic enrolment date to achieve active membership and issue enrolment information to the jobholder – "the joining window". The Regulations extend the deadline from one month to six weeks to protect the employer from unwitting non-compliance and allow schemes sufficient time to achieve active membership.

3.7 Changes to the quality requirements for defined benefit pension schemes

Employers have a duty to automatically enrol their eligible jobholders into a qualifying pension scheme and to maintain active membership for those already enrolled. Qualifying schemes are schemes which meet certain standards set out in the Pensions (No. 2) Act (Northern Ireland) 2008. Additionally, defined benefits schemes must satisfy the test scheme standard in order to receive scheme certification. The Regulations make technical amendments to ensure scheme certification for defined benefit schemes works as intended.

4. Consultation

4.1 There is no requirement to consult on these Regulations as 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 Proposals for the Pensions (No. 2) Act (Northern Ireland) 2008 were subject to a full Equality 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. As the amendments are technical in nature, the proposals would have little implication for any of the section 75 categories. In light of this, the Department has concluded that the proposals would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment was carried out on the proposals for the Pensions (No. 2) Act (Northern Ireland) 2008. These Regulations do not require a Regulatory Impact Assessment as they have no 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 has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations –

(a) are not incompatible with any of the Convention rights,

(b) are not incompatible with Community law,

(c) do not discriminate against a person or class of person on the ground of religious belief or political opinion, and

(d) do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Regulations are the Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556) which come into force on 1st November 2013. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.