EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2018

2018 No. XXXX

AND

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AMENDMENT ETC.) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2018

2018 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These instruments make minor and technical changes to United Kingdom (UK) pensions legislation to ensure retained European Union (EU) law continues to operate effectively, and to address other deficiencies arising from the withdrawal of the UK from the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 Current UK legislation governing occupational and personal pension schemes operates on a tripartite system differentiating between three territories: the UK, the 'European Economic Area' (EEA) and 'overseas'. This differentiation reflects any special arrangements for occupational pension schemes made as a result of the UK being an EU or EEA Member State. This includes participation in the EU's cross-border regime for occupational pension provision, which also requires reciprocal arrangements for the sharing of information between the pensions regulators of EEA Member States relevant to cross-border activity. Broadly, cross-border activity is when an employer in one Member State selects to base their occupational pension scheme in another Member State.

Why is it being changed?

2.3 These changes are being made as part of the Government's wider planning in the event the UK leaves the EU without a withdrawal agreement in place. The European Union (Withdrawal) Act 2018 ("EUWA")[1] repeals the European Communities Act 1972[2] and converts into UK domestic law the existing body of directly applicable EU law and UK laws relating to EU membership e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law". The EUWA also gives ministers a power to prevent, remedy or mitigate any failure of EU law to

[1] http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted
[2] https://www.legislation.gov.uk/ukpga/1972/68/contents

operate effectively, or any other deficiency in retained EU law, through statutory instruments.

What will it now do?

2.4 The instruments correct any elements of the UK's occupational and personal pensions legislation that will not work effectively after the UK departs the EU. This includes where distinctions have been made between EU or EEA Member States and overseas entities that will no longer apply, where the UK is referred to as a EU or EEA Member State, or where the UK is obliged to share data with EU agencies or Member States under reciprocal arrangements that will no longer apply.

2.5 Since the UK will no longer be a member of the EU or EEA after it withdraws from the EU, UK occupational pension schemes will no longer need to obtain authorisation from the Pensions Regulator for cross-border activities. These instruments make the necessary changes to UK legislation to remove this requirement.

2.6 The legislation that will be changed by these instruments is contained in paragraph 6.3 of this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018 apply to the UK.

3.3 The Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018 apply to Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018 is the United Kingdom.

4.2 The territorial application of The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018 is the United Kingdom.

4.3 The territorial extent of The Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018 is Northern Ireland.

4.4 The territorial application of The Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018 is Northern Ireland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement regarding Human Rights:

"In my view the provisions of The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018 and The Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 The UK is leaving the EU. These instruments have been made as part of the Government's planning to enable UK law to continue to operate in the event that the UK leaves the EU without a withdrawal agreement in place. They are designed to correct any elements of the UK's occupational and personal pensions legislation that will not work effectively after the UK departs the EU. This includes where distinctions have been made between EU Member States and other countries that will no longer apply, where the UK is referred to as a EU Member State, or where the UK is obliged to share data with EU agencies or Member States as part of reciprocal arrangements that will no longer apply.

6.2 Part 2 of these instruments amends primary legislation (and Orders in Council in relation to the Northern Ireland instrument), Part 3 amends secondary legislation and Part 4 revokes secondary legislation that will be redundant when the UK withdraws from the EU. This includes revoking the Occupational Pension Schemes (Cross-Border Activities) Regulations 2005[3] (and corresponding Northern Ireland Regulations[4]). These regulations provide details of a requirement for schemes based in an EEA country to be authorised under particular conditions before carrying out, or continuing, cross-border activities in another EEA country. The UK will no longer be a Member State after it leaves the EU so these regulations will be redundant.

6.3 The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018 make changes to the following:

Part 2

- The Pension Schemes Act 1993
- The Pensions Act 1995
- The Welfare Reform and Pensions Act 1999
- The Pensions Act 2004
- The Pensions Act 2008
- The Pension Schemes Act 2015

Part 3

- The Occupational Pension Schemes (Contracting-out) Regulations 1996
- The Contracting-out (Transfer and Transfer Payment) Regulations 1996
- The Occupational Pension Schemes (Scheme Administration) Regulations 1996
- The Occupational Pension Schemes (Winding Up) Regulations 1996
- The Occupational Pension Schemes (Discharge of Liability) Regulations 1997
- The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000)
- The Pension Sharing (Pension Credit Benefit) Regulations 2000
- The Stakeholder Pension Schemes Regulations 2000

[3] http://www.legislation.gov.uk/uksi/2005/3381/contents/made

[4] http://www.legislation.gov.uk/nisr/2005/581/contents/made. An updated version of this legislation is available on the Department for Communities Blue Volumes website (http://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx).

- The Register of Occupational and Personal Pension Schemes Regulations 2005
- The Pension Protection Fund (Appointment of Ordinary Members) Regulations 2005
- The Occupational and Personal Pension Schemes (General Levy) Regulations 2005
- The Occupational Pension Schemes (Employer Debt) Regulations 2005
- The Occupational Pension Schemes (Winding up etc.) Regulations 2005
- The Pension Protection Fund (PPF Ombudsman) Order 2005
- The Pensions Regulator (Contribution Notices and Restoration Orders) Regulations 2005
- The Financial Assistance Scheme Regulations 2005
- The Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005
- The Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations 2005
- The Pension Schemes (Categories) Regulations 2005
- The Financial Assistance Scheme (Appeals) Regulations 2005
- The Occupational Pension Schemes (Scheme Funding) Regulations 2005
- The Occupational Pension Schemes (Investment) Regulations 2005
- The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005
- The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006
- The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006
- The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010
- The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013
- The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014
- The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015

Part 4

- The Occupational Pension Schemes (Cross-Border Activities) Regulations 2005

6.4 The Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018 make equivalent and relevant changes to corresponding existing Northern Ireland legislation

7. Policy background

What is being done and why?

7.1 These instruments do not make policy changes but are designed to ensure that UK law in the field of occupational and personal pensions continues to operate effectively in the event that the UK exits the EU without a withdrawal agreement in place.

7.2 The UK is not reliant on any European institutions or agencies for essential functions in respect of private pensions such as approvals, licences, decisions or rights. The Pensions Regulator's powers are derived from UK law. This means that the UK does not need to create any legislation to replicate domestically any EU level activities relating to occupational and personal pensions after the UK's exit from the EU. However, the UK must ensure that its legislation relating to occupational and personal pensions does not rely on any definitions, obligations or reciprocal arrangements that will no longer apply once the UK is no longer an EU or EEA Member State.

Cross-border Occupational Pension Schemes

7.3 The EU's Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision, (Directive 2003/41/EC, commonly known as "IORP I")[5] introduced a requirement for occupational pension schemes located in one EU Member State with members employed in another EU Member State to obtain authorisation for this cross-border activity, if they met certain criteria, from the relevant competent authority (which in the UK is the Pensions Regulator). This requirement was transposed into UK domestic law through The Pensions Act 2004[6] and consequential regulations (and corresponding Northern Ireland legislation [7]).

7.4 The IORP I Directive was adopted by the other EEA States (Norway, Iceland and Liechtenstein) in 2006 and the requirement to obtain authorisation for cross-border activity extended to all EEA Member States via the Occupational Pension Schemes (EEA States) Regulations 2007 (SI 2007/3014)[8] (and corresponding Northern Ireland Regulations [9]).

7.5 The cross-border authorisation regime requires reciprocal arrangements for the sharing of information between the pensions regulators of EEA Member States relevant to the cross-border activities of an authorised occupational pension scheme. On exit from the EU and the EEA, the UK's occupational pension schemes will no longer meet the criteria to obtain authorisation for cross-border activity and the reciprocal arrangements for sharing information between national regulators will fall away.

7.6 UK private occupational pension schemes accepting contributions from other countries will still be subject to section 66A(3) of the Pensions Act 1995[10] (and

[5] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0041
[6] https://www.legislation.gov.uk/ukpga/2004/35/contents
[7] http://www.legislation.gov.uk/nisi/2005/255/contents. An updated version of this legislation is available on the Department for Communities Blue Volumes website (http://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx).
[8] http://www.legislation.gov.uk/uksi/2007/3014/made
[9] http://www.legislation.gov.uk/nisr/2007/457/contents/made
[10] http://www.legislation.gov.uk/ukpga/1995/26/contents/enacted

corresponding Northern Ireland legislation[11]), which provides that schemes must treat non-UK members in the same way as members who work wholly in the UK in relation to contribution and membership entitlements.

7.7 These regulations therefore remove the requirement for occupational pension schemes to obtain authorisation from the Pensions Regulator for cross-border activities from the Pensions Act 2004 and consequential regulations (and corresponding Northern Ireland legislation).

7.8 The Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018 apply to policy areas which are a transferred matter for Northern Ireland under the Northern Ireland Act 1998[12]. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day in the absence of a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 These instruments are being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in annexes B and C of Part 2 of this Explanatory Memorandum.

9. Consolidation

9.1 No further consolidation of these instruments is planned. Informal consolidated text of instruments is available to the public free of charge via 'the National Archive' website https://legislation.gov.uk/.

9.2 Informal consolidated text of pension law in Northern Ireland is available free of charge to the public via the Department for Communities website http://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx

10. Consultation outcome

10.1 A formal consultation was not considered necessary for these changes as there is no policy change and they make only minor and technical amendments designed to ensure UK legislation operates effectively on the day the UK leaves the EU without a

[11] http://www.legislation.gov.uk/nisi/1995/3213/contents. An updated version of this legislation is available on the Department for Communities Blue Volumes website (http://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx).

[12] http://www.legislation.gov.uk/ukpga/1998/47/contents

withdrawal agreement in place. DWP collaborated with Northern Ireland policy officials in developing this Explanatory Memorandum and the instruments. The Department for Communities agreed the text of the proposed amendments.

11. Guidance

11.1 The Pensions Regulator will provide guidance to the small number of UK pension schemes which are currently authorised for 'cross-border activity' within the EU.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A formal Regulatory Impact Assessment has not been prepared for these instruments because they only make technical changes to UK legislation that would otherwise no longer operate effectively in the event the UK leaves the EU without a Withdrawal Agreement in place. If elements of the UK's occupational and personal pensions legislation did not work effectively after the UK departs the EU it would result in associated costs on all involved parties, e.g. extra resource invested trying to clarify the situation. These instruments make the necessary changes needed to avoid this situation, and on this basis are assessed to be at least cost-neutral or beneficial, on balance, to all involved parties.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 This is because there is little to no significant burden made on small businesses.

14. Monitoring & review

14.1 As these instruments are made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Nada Balasingham at the Department for Work and Pensions Telephone: 0207 449 5276 and email: Nada.Balasingham@dwp.gsi.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Fiona Walker, Deputy Director for Private Pensions and Arm's Length Bodies at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Guy Opperman, Parliamentary Under Secretary of State for Pensions and Financial Inclusion, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

Annex A

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

These Statements have been made for the Explanatory Memorandum to The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018 and the Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018.

Annex B contains statements relating to the Great Britain statutory instrument. Statements relating to the Northern Ireland statutory instrument can be found in Annex C.

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2018

1. Appropriateness Statement

1.1 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018: "In my view the Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018 do no more than is appropriate".

1.2 This is because the instrument does not make any changes to policy. The changes being made are minor and technical in nature and are designed to ensure that UK occupational and personal pensions legislation operates effectively on the day the UK leaves the EU without a withdrawal agreement in place.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018: "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are given in the policy background section of the Explanatory Memorandum (paragraphs 7.1 to 7.8).

3. Equalities

3.1 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement: "The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement regarding use of legislative powers in

the European Union (Withdrawal) Act 2018: "In relation to the draft instrument, I, Guy Opperman, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in paragraphs 2.2 to 2.5 of this Explanatory Memorandum.

Annex C

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AMENDMENT ETC.) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2018

1. Appropriateness Statement

1.1 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018: "In my view the Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018 do no more than is appropriate".

1.2 This is because the instrument does not make any changes to policy. The changes being made are minor and technical in nature and are designed to ensure that UK occupational and personal pensions legislation operates effectively on the day the UK leaves the EU without a Withdrawal Agreement in place.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018: "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These reasons are given in the policy background section of the Explanatory Memorandum (paragraphs 7.1 to 7.8).

3. Equalities

3.1 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement "The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018: "In relation to the Occupational and Personal Pensions (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018, I, Guy Opperman, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to these regulations, and as they extend to Northern Ireland only, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland."

4. Explanations

4.1 The explanations statement has been made in paragraphs 2.2 to 2.5 of this Explanatory Memorandum.