EXPLANATORY MEMORANDUM TO

THE NORTHERN IRELAND ACT 1998 (MODIFICATION) ORDER 2016

2016 No. 160

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 This Order amends the Northern Ireland Act 1998 http://www.legislation.gov.uk/ukpga/1998/47/contents by adding the most recent social security, child support and pensions legislation to the list in section 87(6) of that Act. The intention is to ensure that there is a comprehensive record of all the legislation to which the reciprocal consultation and co-ordination provisions of the Northern Ireland Act 1998 apply (see Legislative Context for more information).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 87 of the Northern Ireland Act 1998 requires the Secretary of State for Work and Pensions and the Minister with responsibility for social security in Northern Ireland (currently the Minister for Social Development) to consult each other to ensure, to the extent they agree, that the relevant legislation achieves single systems of social security, child support and pensions for the UK. The Minister and the Secretary of State are also given powers in their respective jurisdictions to make arrangements for co-ordinating the operation of the relevant legislation to secure the provision of the single systems and to make reciprocal arrangements to achieve this.

4.2 The legislation to which Section 87 applies is listed in Section 87(6). Section 87(7) gives a power for this list to be modified, so that the list can be updated when necessary. A number of orders in council have previously been made under this power to reflect the introduction of new social security, child support and pensions legislation. The new State Pension comes in to force from 6 April 2016. The relevant Acts are not yet listed in s.87 (6) but now need to be as we have to include new State Pension in the reciprocal arrangements from 6 April 2016. And it makes sense to include the Welfare Reform Act 2012 and its NI equivalent at the same time.

4.3 This Order now uses the power in Section 87(7) to add the most recent social security, child support and pensions legislation to the list in Section 87(6). These are: the

Welfare Reform Act 2012 Welfare Reform Act 2012; Welfare Reform (Northern Ireland) Order 2015 Welfare Reform (Northern Ireland) Order 2015;; the Pensions Act 2014Pensions Act 2014; the Pensions Act (Northern Ireland) 2015Pensions Act (Northern Ireland) 2015; the Pension Schemes Act 2015Pension Schemes Act 2015; and the Pension Schemes Act (Northern Ireland) 2016 Pension Schemes Act (Northern Ireland) 2016.

4.4 The effect of this modification will be to render those Acts subject to the provisions in section 87 (1) to (5) concerning consultation and co-ordination between the Secretary of State and the Northern Ireland Minister having responsibility for social security, with a view to securing that, to the extent agreed between them, the legislation provides a single system of social security and pensions for the United Kingdom.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom

6. European Convention on Human Rights

6.1 The Minister of State for Pensions the Baroness Altmann has made the following statement regarding Human Rights:

In my view the provisions of the Northern Ireland Act 1998 (Modification) Order 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 Under the current devolution arrangements responsibility for social security, child support and pensions in Northern Ireland rests with the Northern Ireland Assembly. However, the Belfast Agreement, also known as the Good Friday Agreement, which was reached in multi-party negotiations and signed on 10 April 1998, specifically cited social security as an area where parity is normally maintained. This was reflected in the Northern Ireland Act 1998 where provision was made in Section 87 to ensure that the social security systems in the two jurisdictions in Great Britain and Northern Ireland could continue to work, in effect, as a coherent single system. This is generally known as the "parity principle".

7.2 The parity principle operates on the basis that Northern Ireland has the same range of benefits which are paid at the same rates and subject to the same conditions as in Great Britain. In addition, the Child Support Schemes are virtually identical as is the legislation governing private pensions. Changes in existing legislation, and new legislation, as far as possible, take effect at the same time in Great Britain and Northern Ireland. Underpinning the parity principle is the argument that as people in Northern Ireland pay the same rate of income tax and National Insurance contributions as those in Great Britain, they are entitled to enjoy the same rights and benefits as people in Great Britain, notwithstanding that Northern Ireland is not self-sufficient in funding the resulting benefit costs.

7.3 The principle of parity is given practical effect through transfers between the GB and NI National Insurance Funds to maintain contributions and benefits - such as state pensions - at common levels throughout the UK. Section 87 provides for the co-

ordination of the operation of the Great Britain and Northern Ireland legislation, and therefore the list of legislation in section 87(6) has to be updated on a regular basis to embrace on-going changes in the fields of social security, child support and pensions.

Consolidation

7.4 There are no immediate plans to produce a consolidated version of the Northern Ireland Act 1998.

8. Consultation outcome

8.1 Public consultation had been carried out on the legislation listed in this Order, but the Order itself has not been subject to formal public consultation as it simply updates the list in section 87(6) of the Northern Ireland Act 1998. It does, however, follow full consultation with, and agreement between, officials in the Department for Work and Pensions, the Northern Ireland Office and the Department for Social Development.

9. Guidance

9.1 No specific guidance concerning this Order is required because it is a technical matter limited to updating the list of legislation in section 87(6). As such it does not affect the daily work of either the Department for Work and Pensions or the Department for Social Development.

10. Impact

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

10.2 The impact on the public sector is negligible. The purpose of this instrument is solely to ensure that the Welfare Reform Act 2012; the Welfare Reform (Northern Ireland) Order 2015; the Pensions Act 2014; the Pensions Act (Northern Ireland) 2015; the Pension Schemes Act 2015; and the Pension Schemes Act (Northern Ireland) 2016 are added to the list of legislation in section 87(6), in order to bring them within the scope of the consultation and co-ordination (reciprocal) arrangements. This is a technical matter but is needed to achieve single systems of social security, child support and pensions for the UK to the extent agreed by Ministers.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The legislation is not subject to any formal monitoring and review.

13. Contact

13.1 Simon Boniwell at the Department for Work and Pensions Telephone: 020 7449 7103 or email: Simon.Boniwell@dwp.gsi.gov.uk can answer any queries regarding the instrument.