EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AUTOMATIC ENROLMENT) (AMENDMENT NO. 3) REGULATIONS (NORTHERN IRELAND) 2012

S.R. 2012 No. 390

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 16(3)(c) and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008 and is subject to the confirmatory procedure.

2. Purpose

2.1 These Regulations amend the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (S.R. 2010 No. 122) ("the Automatic Enrolment Regulations") to allow greater flexibility for certain schemes to meet minimum revaluation requirements while ensuring that the benefits of members of these types of schemes remain protected.

3. Background

3.1 The Pensions (No. 2) Act (Northern Ireland) 2008 introduces 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 The Automatic Enrolment Regulations exclude a defined benefit scheme which provides average salary benefits from being a qualifying scheme unless it meets minimum revaluation requirements. Revaluation can be achieved either by the scheme providing for guaranteed revaluation or providing for funded discretionary revaluation. Currently, a scheme which has a mix of guaranteed revaluation below the minimum rate and a discretionary power to revalue at a higher rate technically does not meet the minimum revaluation requirements. Similarly, a new average salary scheme which revalues in line with the retail prices index would technically not qualify. This excludes some high quality schemes as qualifying schemes for automatic enrolment under the workplace pension reforms.

3.3 These Regulations amend the Automatic Enrolment Regulations to –

- allow average salary schemes which provide for discretionary increases, or a mix of guaranteed and discretionary increases, to qualify provided that the revaluation is funded for and included in the statement of funding principles on the basis that revaluation is at or above the minimum rate, and

- allow any average salary scheme which revalues in line with the retail prices index to qualify, not just those with members on 1 July 2012.

3.4 This fits with the original policy intention of allowing schemes flexibility on how they provide for revaluation while protecting members' benefits and ensures that high quality schemes, which are currently technically prevented from being qualifying schemes, can be qualifying schemes for automatic enrolment.

4. Consultation

4.1 There is no requirement to consult on these Regulations.

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 of a technical nature, they 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 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 Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (No. 3) Regulations 2012 which come into force on 1st November 2012. 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.

11. 21 Day Rule

11.1 The Great Britain Regulations were made on 25th October 2012. The Regulations were made as soon as possible the next day, 26th October 2012. Owing to parity considerations it is vital that the Regulations come into operation on the same date as the Great Britain Regulations, in this instance 1st November 2012.