EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AUTOMATIC ENROLMENT) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2017

S.R. 2017 No. 38

1. Introduction

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

1.2 The Statutory Rule is made under section 69A(1) and (3) of the Pensions (No. 2) Act (Northern Ireland) 2008 and is subject to the negative resolution procedure.

2. Purpose

2.1 These Regulations make a technical amendment to the existing Regulations to create a further exception to the automatic enrolment employer duties in consequence of the Finance Act 2016 which introduced a further HMRC tax protection.

3. Background

3.1 The Pensions (No. 2) Act (Northern Ireland) 2008 ("the Pensions (No. 2) Act") 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 The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 ("the 2010 Regulations") set out the practical arrangements underpinning automatic enrolment, for example, the processes and timings for complying with the employer duties.

3.3 In recognition that there are people for whom pension saving is either not suitable or where the automatic enrolment requirement is disproportionate, the Pensions Act (Northern Ireland) 2015 ("the 2015 Act") introduced a discretion to enable employers to choose whether or not to automatically enrol jobholders in certain circumstances. It inserted section 69A into the Pensions (No. 2) Act to allow for exceptions to the employer duties so that

in prescribed situations an individual does not have to be automatically enrolled into a pension scheme.

3.4 The 2010 Regulations were amended, in consequence of the 2015 Act, to create exceptions to the automatic enrolment employer duties in certain circumstances.

3.5 These Regulations make a further amendment to the 2010 Regulations. They introduce a further exception to the employer duties in consequence of the Finance Act 2016. This is to ensure that workers with transitional protection in relation to the latest reduction of the Lifetime Allowance (a limit on the amount of pension benefit that can be drawn from pension schemes and can be paid without triggering an extra tax charge) are not subject to penalty tax charges on their accrued pension benefits.

3.6 The effect is that the employer does not have to automatically enrol such workers. Without this amendment, there could be a risk of such workers being automatically enrolled and facing substantial tax charges if they fail to opt out.

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 Proposals for the 2015 Act 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. The Regulations will have little implication for any of the section 75 categories. In light of this, the Department has concluded that the Regulations 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 2015 Act. The impact on costs on business, charities or voluntary bodies is negligible.

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 proposals for the Regulations were agreed by the Committee for Communities prior to dissolution of the Assembly with effect from 26th January 2017. The corresponding Great Britain Regulations are the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2017 (S.I. 2017/79) which were made on 31st January 2017 and come into force on 6th March 2017. 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. It was, therefore necessary to make the Regulations during the period of dissolution of the Assembly.