EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (COMPENSATION) AND OCCUPATIONAL PENSION SCHEMES (FRAUD COMPENSATION PAYMENTS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2023

S.R. 2023 No. 41

1. Introduction

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

1.2 The Statutory Rule is made under Articles 169(1)(a)(ii) and 287(2) and (3) of, and paragraph 23 of Schedule 6 to, the Pensions (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.

2. Purpose

2.1 These Regulations amend existing Regulations so that the compensation paid to child dependants of Pension Protection Fund members does not cease due to a break of more than twelve months between periods of full-time education. They also allow the Fraud Compensation Fund to make interim payments to pension schemes to cover the cost of making an FCF application.

3. Background

3.1 The Pension Protection Fund, which operates UK wide, provides compensation for members of eligible occupational pension schemes, where the sponsoring employer is insolvent and the scheme has insufficient assets to pay benefits at the Fund compensation levels. The Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005 set out the persons who may be entitled to compensation from the Pension Protection Fund. Currently, a child dependant who has a gap between qualifying courses (broadly, full-time education of any level) of more than one year loses their entitlement to PPF survivor's compensation which would otherwise be payable until the age of 23.

3.2 These Regulations correct this anomaly so that payment may be made to a surviving child dependant from the start date of a further qualifying course, provided that the course begins before the child reaches the age of 23.

3.3 The Pension Protection Fund's responsibilities include the operation of the Fraud Compensation Fund which provides compensation to eligible occupational pension schemes where there has been a scheme asset reduction, which is attributable to an offence involving dishonesty, and

where the employer has become insolvent or is unlikely to continue trading.

3.4 In November 2020, the High Court, in the case of The Board of the PPF v Dalriada Trustees Ltd, clarified that pension liberation schemes, if they satisfied all specified criteria, were able to make a claim on the Fraud Compensation Fund.

3.5 Due to the nature of pension liberation fraud, many schemes now in scope for compensation from the Fraud Compensation Fund have exhausted most or all of their assets, either as a direct result of the fraudulent offence or because of costs incurred by the trustees or managers of the scheme in trying to rectify the fraud. A scheme with exhausted assets may not have sufficient funds to pay the administrative costs and expenses necessary for progressing their application to the Fraud Compensation Fund. There is currently no means through which to provide interim funding to trustees or managers of schemes for these types of costs and expenses.

3.6 These Regulations amend the Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations (Northern Ireland) 2005 to add these types of costs and expenses to the current list of prescribed liabilities that arise when trustees or managers make an application for compensation from the Fraud Compensation Fund. This amendment allows the Fraud Compensation Fund to progress applications from the set of schemes which were found to be eligible for fraud compensation payments from the Fund.

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 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 Department has concluded that they would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 The Regulations do not require a Regulatory Impact Assessment as they have only a negligible 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 is content that these Regulations comply with section 24 of the Northern Ireland Act 1998 (Convention rights, etc.).

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The Great Britain Regulations are the Occupational Pension Schemes (Pension Protection Fund (Compensation) and Fraud Compensation Payments) (Amendment) Regulations 2023 (S.I. 2023/265) which come into force on 6th April 2023. 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 interregnum.