EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (MORATORIUM AND ARRANGEMENTS FOR COMPANIES IN FINANCIAL DIFFICULTY) REGULATIONS (NORTHERN IRELAND) 2020

S.R. 2020 No. 162

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 13HB and 13HF of the Insolvency (Northern Ireland) Order 1989 and section 46 of the Corporate Insolvency and Governance Act 2020 and is subject to the confirmatory resolution procedure.

2. Purpose

2.1 These Regulations provide specific protection for pension schemes and the Pension Protection Fund ("PPF") during a moratorium pursuant to the Insolvency (Northern Ireland) Order 1989. They enable the PPF to participate in key decisions in the process by enabling it to exercise creditor rights that would otherwise be exercised by the scheme trustees or managers.

3. Background

3.1 The PPF which operates across Great Britain and Northern Ireland was established to provide a safety net for members of defined benefit schemes. It 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 PPF compensation levels. The PPF is funded via a combination of transferred scheme funds, recoveries from insolvent employers, investment returns and a levy on eligible schemes.

3.2 If a qualifying insolvency event occurs in relation to an employer of a pension scheme eligible for protection by the PPF, the scheme will enter an assessment period to enable the PPF to assess whether or not the scheme is eligible to transfer into the PPF. Under pensions law, during the assessment period, the rights of managers of the scheme in relation to any debt due to them by the employer (whether in relation to deficiencies in scheme assets or otherwise) are exercisable by the PPF.

3.3 In light of the Covid-19 pandemic, the Corporate Insolvency and Governance Act 2020 makes changes to the corporate insolvency regime and creates new processes including a moratorium (during which no legal action can be taken against a company without leave of the court). Although a moratorium is not a

qualifying insolvency event, it inevitably includes negotiations with the creditors of the company, limited liability partnership or relevant co-operative society or community benefit society and has the potential to have a significant impact on the pension scheme and by extension on the interests of the PPF. As it is not a qualifying insolvency event, the PPF cannot use its powers under existing pensions law to exercise the rights of trustees or managers in relation to any debt due to them by the employer. The Corporate Insolvency and Governance Act 2020 therefore provides regulation-making powers to allow the PPF to exercise rights of the trustees or managers as creditors of the company.

3.4 These Regulations provide that during any period in which a moratorium is in force the creditors' rights of the scheme trustees or managers are to be exercised by the PPF, in specified circumstances. Before exercising those rights, the PPF is required to consult the scheme trustees or managers.

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. As they are technical and relate to the exercise of creditor rights by the PPF in certain circumstances, 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 direct 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 Great Britain Regulations are the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020 (S.I. 2020/693) which came into force on 7th July 2020 and the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment) Regulations 2020 (S.I. 2020/783) which came into force on 23rd July 2020. 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.