EXPLANATORY MEMORANDUM TO

THE PENSIONS (2015 ACT) (CONSEQUENTIAL, SUPPLEMENTARY AND INCIDENTAL AMENDMENTS) ORDER (NORTHERN IRELAND) 2015

S.R. 2015 No. 411

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 the powers conferred by sections 50 and 51(6) of the Pensions Act (Northern Ireland) 2015 ("the 2015 Act") and is subject to the negative resolution procedure before the Assembly.

2. Purpose

2.1 This Order supports the introduction of a new State pension for people reaching State pension age on or after 6 April 2016. It makes amendments to secondary legislation that are consequential, supplementary and incidental to the introduction of the new scheme.

3. Background

3.1 The main features of the new State pension are set out in Part 1 of the 2015 Act. More detailed provisions are contained in the State Pension Regulations 2015 ("the 2015 Regulations").

3.2 Legislation dealing with the administration of social security benefits, including the State pension, is contained in the Social Security Administration (Northern Ireland) Act 1992, the Social Security (Northern Ireland) Order 1998 and associated regulations. The 2015 Act amended existing primary legislation to include references to the new State pension. This Order amends regulations made under that legislation to extend existing administrative arrangements to do with claims, decision-making, payments, overpayments and adjustments between overlapping benefits to the new State pension. There are a small number of provisions which will operate differently, either because of differences in the structure of the new scheme or because the introduction of the new scheme has provided the opportunity to change the current arrangements for the new State pension.

3.3 The remaining provisions contained in the Order are mostly minor consequential or supplementary amendments to secondary legislation.

3.4 The amendments take effect on 6 April 2016 except those made by article 9(1), (2), (6) and (7). Those amendments, which take effect on 4 January 2016, provide for the existing rules relating to advance claims and awards to apply to the new State pension. These rules help prevent delays in making payment on the due date – in this case, on or after 6 April 2016 – by allowing time for enquiries to be resolved beforehand.

Overlapping benefits (Article 4)

3.5 The rules that apply when a person qualifies for more than one benefit paid out of public funds are known as the overlapping benefits rules. The fundamental principle behind these rules is that benefits which are designed to help with income maintenance needs should not be added together and paid in full, even though a person may satisfy the conditions of entitlement to more than one benefit at a time. Regulations therefore provide for the amount of one benefit to be reduced by the amount of the other benefit so that only the balance, if any, is payable.

3.6 Entitlement to the majority of benefits for people of working age ceases when the claimant reaches State pension age. Only the following benefits can still overlap with new State pension, of which, only the first two are still available to new claimants:

- carer's allowance, payable where a person is caring for a severely disabled person for at least 35 hours a week;
- unemployability supplement under the war pension scheme, payable in respect of disability arising from service in the armed forces prior to April 2005;
- severe disablement allowance, payable only where entitlement began before July 2001and the recipient has not been transferred to Employment and Support Allowance before reaching State pension age;
- widow's pension, payable only where bereavement was before April 2001: entitlement ceases at age 65 or, if later, pension age: the potential for concurrent entitlement to State pension and widow's pension will cease after November 2018 when women's State pension age reaches 65;
- widowed mother's allowance, payable only where a woman was widowed with a dependent child or pregnant before April 2001: entitlement ceases when entitlement to child benefit ceases;
- unemployability supplement under the industrial injuries scheme, payable only where entitlement began before April 1987.

3.7 An additional pension (AP) or Graduated Retirement Benefit (GRB) can only overlap another AP or GRB. Of the benefits listed above, only widow's pension and widowed

mother's allowance can include AP. This means that the other benefits, and the basic components of the widow's benefits, can only be reduced by a person's basic State pension.

3.8 From 6 April 2016, people will no longer build up AP. Instead, the State pension will build up at a flat rate, equivalent to 1/35th of the full rate of new State pension for each qualifying year. For the period up to 6 April 2016, the value of a person's State pension calculated under the old rules, comprising basic pension, AP and GRB, will be compared to a valuation under the new State pension rules. The higher of the two will be their "starting amount" as at 6 April 2016. There will therefore no longer be a separate AP for people in the new scheme, and the structure of the scheme means that it will no longer be practicable to exclude particular components from the overlap rules.

3.9 The amendments made by Article 4(3) and (4) provide for the other benefits that overlap with the new State pension to be reduced by the amount of any State pension payable under Part 1 of the 2015 Act.

3.10 The main benefit that will overlap with new State pension is carer's allowance, which, at £62.10 a week, is just over half the full rate of the basic State pension (£115.95) at April 2015 rates. In the "old" (pre April 2016) State pension scheme, carer's allowance will therefore be abated in full unless the person has less than the equivalent amount of old scheme basic pension. This will only arise if the person has fewer than 17 qualifying years of their own (again, based on April 2015 rates) and is also not entitled to any increase of basic pension based on a spouse's or civil partner's National Insurance contributions. For this reason, the number of people over State pension age who receive a payment of carer's allowance is low, around 3,040 based on the latest available data.

3.11 In the new State pension scheme, where the old rules amount in the starting amount calculation includes AP (or they inherit or are awarded a share of a late or former spouse or civil partner's AP) a greater reduction could be applied to their other benefit than under the old State pension system. This will only make a difference to the person's overall income if the amount of State pension would have been less than the rate of carer's allowance if any amount of AP factored into the total had been ignored.

3.12 For example, Person A reaches State pension age in July 2016 and has 15 qualifying years up to 5 April 2016 and £5 AP. Based on 2015 rates, under the old State pension scheme, their State pension would total £62.98 (£57.98 basic pension plus £5 AP). Their new rules amount would total £64.82 (15/35ths of the full rate of new State pension at the 2015 illustrative rate of £151.25). This becomes their "starting

amount"[1] at 6 April 2017 and, as they reach State pension age in the same tax year, it is also the weekly rate of their State pension at State pension age.

3.13 Under the old scheme, the carer's allowance would have been reduced by £57.98 (the amount of the basic State pension), leaving a balance of £4.12. Their total income, including the £5 AP, would be £67.10. In the new scheme, their State pension of £64.82 would reduce the carer's allowance to nil. Their overall income would therefore be £2.28 a week less than under the old State pension scheme for as long as carer's allowance continued in payment.

Claims and payments (Article 9)

3.14 Article 9 amends the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987. These regulations cover matters such as when a claim is required, the time limits for making a claim, how claims are to be made, when payment under a claim starts, the frequency of payments and payment of outstanding benefit at death.

3.15 Most of the amendments simply extend the existing arrangements to the new State pension or make the equivalent provision for the new State pension: for example, Article 9(5) allows electronic claims to be made for new State pension in the same way as for old State pension, and Article 9(11) sets the day of the week on which a person's new State pension is to be paid in the same way as it is set for old State pension.

3.16 The rules about when a State pension award starts and ends will be different. Under the old State pension scheme the State pension is generally payable only for complete weeks. This means that, for example, in the case of a person who reached State pension age on Thursday 5 November 2015, but whose "benefit week" runs from Wednesday to Tuesday, no State pension would be payable for the first 6 days falling before Wednesday 11, the start of their first benefit week. The same principle applies at the other end of an award – when the pensioner dies, their State pension is payable to the end of that benefit week.

3.17 Limited arrangements to make part-week payments at the start of a State pension claim were implemented in 2010 to mitigate the impact on people receiving a working-age benefit of the introduction of part-week payments up to State pension age. However, for reasons to do with the cost of making the additional initial payment and updating IT systems, this was not extended more widely.

3.18 The introduction of the new State pension has provided the opportunity to include part-weeks at the start and end of a claim as part of the wider reforms. New regulation 22CA, inserted by Article 9(11), accordingly provides for the new State

1 In this example, it is assumed that the person had not been contracted-out of the additional State pension at any point, so no adjustment is required to take account of contracted-out benefits built up in lieu of AP foregone.

pension to be payable from the day on which a person reaches State pension age up to and including the date of their death.

3.19 The existing provisions which enable a claim to be made on behalf of a person who has died for benefit (including old State pension) outstanding at their death are extended to include claims for new State pension. These provisions do not currently enable such a claim to be made for State pension if the deceased was married or in a civil partnership when they died. This is because a person who has died over State pension age without claiming their State pension will have accrued deferral benefits which are inheritable by a surviving spouse or civil partner. As the deferral benefit is calculated by reference to the amount of State pension which the person did not claim, allowing a claim to be made for that pension would result in a conflict with the inheritance provisions.

3.20 This restriction will not apply in respect of unclaimed new State pension because the pension increase a person will accrue through deferring their new State pension will not be inheritable. This means it will be possible for the estate to claim up to 3 months' arrears of new State pension, in line with the existing limit on payment of arrears in these circumstances, irrespective of the person's marital or civil partnership status at death. Article 9(14) provides that, as in the old State pension scheme, where the deceased is a surviving spouse or civil partner whose unclaimed State pension includes an inherited deferral payment, the deceased is treated as having chosen to receive a weekly increase rather than a lump-sum payment. Article 28 makes a consequential amendment to the 2015 Regulations.

Payments on account, recovery and notification (Articles 10, 11, 18, and 22)

3.21 Article 11 adds new State pension to the list of benefits, including old State pension, from which benefit overpayments etc. Article 10 similarly provides for recovery of payments from the social fund.

3.22 Article 11 also enables the existing rules providing for payment under an award which is subsequently revised to be offset against payment under the new award to apply to new State pension.

3.23 Article 11(3)(b) inserts references to inherited deferral payments made to a person in the new scheme in the existing rules about payments on account. The amendment allows the amount of a deferral payment to be offset against the amount due under a subsequent award, for example, where a person has changed their choice from a weekly increase to a lump-sum payment.

3.24 Article 22 provides that arrears of new State pension outstanding at the date of a person's death are not used to reduce the amount of a funeral payment from the social

fund, in line with the existing rule on the treatment of arrears of old State pension and other benefits.

3.25 The provision amended by Article 18 specifies how a change of circumstances which affects entitlement to the benefits listed in the regulation (including old State pension) must be notified. This relates to measures introduced by the Social Security Fraud Act (Northern Ireland) 2001 which created new offences resulting from the failure to notify a change of circumstances in the manner set out in the regulations.

Decisions and Appeals (Articles 14 and 16)

3.26 In the old State pension scheme, a person who defers claiming their State pension for at least 12 months can choose to receive either a weekly increase to their pension or a one-off, lump sum payment when they finally claim. They have three months in which to make the choice. If they do not make a choice in this period they are automatically awarded a lump sum. They then have a further three months "cooling off" period during which they can swap their choice, or deemed choice, for the alternative, provided the original payment is recovered. These arrangements also apply to a person who is entitled to inherit a deferral payment, if their deceased spouse or civil partner had deferred their State pension for at least 12 months but died before claiming it and making a choice themselves.

3.27 To support these arrangements, provisions in the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 allow the weekly State pension to be awarded without a deferral payment while the person is considering what choice to make. The award can then be revised from the start of the claim if the person chooses a weekly increase or subsequently changes their choice. They also allow decisions on pension credit awards to be revised or superseded to reflect the choice, or change of choice.

3.28 Although a person who defers claiming their new State pension will not have the option of a lump-sum payment, a person in the new scheme whose deceased spouse or civil partner had deferred an old State pension will still be able to inherit a deferral payment under the same conditions as in the old scheme.

3.29 Article 14(3) and (5) to (7) insert new provisions corresponding to those described above to underpin the choice of inherited deferral payment made by a surviving spouse or civil partner in these circumstances.

3.30 The unrelated amendment made by Article 14(4) extends an existing provision (which allows revision of a decision that a person's entitlement is to stop because they have not provided information) to the new State pension.

3.31 Article 16 amends the regulations dealing with housing benefit decisions and appeals to make the equivalent amendments for housing benefit purposes that Article 14 makes in respect of pension credit.

Income-related benefits and schemes and tax credits (Articles 8, 13, 19, 20, 23, 24 and 25)

3.32 Articles 8, 13, 20, 23, 24 and 25 insert references to the new State pension in regulations variously providing for the treatment of an old State pension in relation to the calculation of income and capital and the conditions of entitlement to additional amounts ("premiums") in income support, jobseeker's allowance, housing renewal grants, employment and support allowance and housing benefit.

3.33 Articles 19 and 24(4) and (5) amend regulations dealing with the treatment of income and capital in pension credit and housing benefit when a person is deferring their State pension, or changes their choice of payment from a weekly increase to a lump sum, to insert new provisions that mirror the existing rules. These specify that:

- a person is to be treated as receiving their State pension while they are deferring it for the purposes of pension credit, but not in the other benefits referred to above;
- a person who changes their choice of a weekly increase to a lump sum is not penalised by being treated as still possessing the extra income;
- in the calculation of a person's capital, an amount equal to the pre-tax amount of the lump-sum payment is to be disregarded for life, so long as that person does not change their choice to a weekly increase.

Child Support (Articles 12, 15 and 27)

3.34 Article 12 includes the new State pension in the benefits which count as income for the absent parent or parent with care under the 1993 child maintenance scheme. Articles 15 and 27 add the new State pension to the list of benefits that qualify the non-resident parent for payment of maintenance at the flat rate under the 2003 and 2012 child maintenance schemes.

National Insurance credits (Article 2)

3.35 Article 2 amends the existing regulations which detail the circumstances in which a person may be credited with National Insurance contributions to clarify that those regulations do not apply for the purposes of meeting the entitlement conditions for new State pension. The crediting arrangements for new State pension will be set out in the 2015 Regulations.

Amendments about National Insurance contributions (Article 6)

3.36 Article 6 amends the regulations which set out the detail of how "earnings factors" are derived from a person's National Insurance contributions and credits. A person's earnings factor for the year needs to reach a specified level in order for that year to count as a qualifying year for entitlement to State pension. There is no change to what constitutes a qualifying year for the purposes of the new State pension. These regulations will therefore apply for new State pension purposes in the same way as for old State pension.

Amendments to do with old State pension

Use of a former spouse or civil partner's National Insurance contributions and Category C pension for certain widows (Article 5)

3.37 A person in the old State pension scheme whose marriage or civil partnership has ended in divorce or dissolution can "substitute" their former spouse or civil partner's National Insurance contributions for their own for the period up to when the marriage or civil partnership ended, if it will give them a higher basic State pension than they would otherwise be entitled to.

3.38 Where the former spouse or civil partner is in the new State pension scheme, the 2015 Act prevents the use of any such contributions made in respect of any period starting on or after 6 April 2016. Article 5(3), (4) and (6) amends the regulations that contain the detail of the substitution rules to apply this restriction in the substitution calculation.

3.39 Article 5(5) amends the regulation that provides for a non-contributory Category C retirement pension for the widows of men who reached State pension age before the National Insurance scheme was introduced in 1948. Other provisions that provide for Category C pensions, including the weekly rate, are contained in primary legislation. As Category C pensions are now virtually obsolete, the 2015 Act repeals those provisions. The regulations will continue to apply to any remaining widows still in receipt, and are amended to insert a reference to the weekly rate in place of the cross-reference to the primary legislation, which will cease to have effect when the repeals are commenced on 6 April 2016.

Maximum additional pension (Article 26)

3.40 In the old State pension scheme, there is a cap on the total amount of AP a surviving spouse or civil partner entitled to AP of their own can be paid when they are also entitled to inherited AP. Under these rules, the amount of inherited AP is restricted to the amount needed to make up the shortfall, if any, between the survivor's own AP and the cap.

3.41 The formula for calculating the cap is specified in regulations. This results in an amount equivalent to the maximum amount of AP a hypothetical person could have accrued if that person reached State pension age in the same year that the survivor becomes entitled to both their own and inherited AP. Under the old State pension scheme AP can accrue from 1978/79, or, if later, the tax year in which a person reaches age 16, up to and including the last tax year before State pension age. The cap accordingly changes in each tax year: in 2015/16 it is £164.36.

3.42 For people reaching State pension age on or after 6 April 2016, the last tax year for AP accrual will be 2015/16[2]. If the existing formula remained in place, the total AP for a person widowed in October 2036 (for example) would be limited to the maximum that a person could have accrued from 1984 - 1985 (the tax year in which a person reaching State pension age in 2035/36 would reach age 16) to 2015/16, rather than to 2035/36, as would be the case if the old scheme had continued. As a result, over time the cap would shrink so it would become increasingly likely that it would be less than the person's own AP alone. This would mean that while the person would retain their own AP, no inheritable AP would be payable.

3.43 The amendment made by Article 26 stabilises the cap by replacing the formula from 6 April 2016 with a cash sum of £165.60, which equates to the maximum that could be accrued up to and including 2015/16 by a person reaching State pension age in 2016/17. This will be the maximum applicable to a person in the old State pension scheme with some AP of their own who is widowed and inherits AP in 2016/17. The intention is to increase the amount of the cap in line with price inflation from April 2017 onwards, in line with the index used to increase AP in payment.

Shared additional pension (Articles 3, 4(2), 5(2), 7, 9(2), 11(3), 14(2), 21 and 24(4))

3.44 Under the old State pension scheme, as part of a divorce or dissolution settlement, the Courts can make an order requiring a person's additional State pension to be shared with their former spouse or civil partner. Where proceedings begin on or after 6 April 2016 and the person whose State pension is to be shared is in the new State pension, the shareable State scheme rights are the person's "protected payment". The amendments ensure that existing provisions relating to shared additional pension for a former spouse or civil partner in the old scheme will apply where their pension share is based on a new scheme pension credit.

Consolidation of old State pension Category B rules (Article 17)

3.45 The provisions under which a person may qualify for a Category B pension (old State pension based on a spouse or civil partner's National Insurance contributions) are

2 People reaching State pension age before 6 April 2016 are eligible to make voluntary Class 3A National Insurance contributions to receive extra AP ("State Pension top-up"). This is ignored for the purposes of the cap.

amended by the 2015 Act to restrict them to people reaching State pension age before 6 April 2016. The Act also substantially replaces the existing versions of those provisions with new versions which consolidate earlier amendments. Article 17 amends cross-references to the Category B provisions as a consequence of the consolidation.

4. Consultation

4.1 There is no requirement to consult on this Rule.

5. Equality Impact

5.1 The provisions of the 2015 Act were the subject of a full Equality Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has screened these proposals and has concluded that they do not have any additional implications for equality of opportunity.

6. Regulatory Impact

6.1 The Rule does not require a Regulatory Impact Assessment as it does not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 The new State Pension has been designed to cost no more overall than the current system.

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 this Order –

(a) is not incompatible with any of the Convention rights,
(b) is not incompatible with Community law,
(c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
(d) does 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 (S.I. 2015 No. 1985) will come into force on 6 April 2016 with the exception of the provisions which enable a claim for new State pension to be made in advance of the entitlement date in line with the existing rules which will come into force on 4 January 2016 for operational reasons. 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.