EXPLANATORY MEMORANDUM TO

The Scheme for Construction Contracts in Northern Ireland (Amendment) Regulations (Northern Ireland) 2012

2012 No. 365

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Finance and Personnel 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 Articles 7(6), 13 and 16(1) of the Construction Contracts (Northern Ireland) Order 1997 and is subject to the Assembly affirmative resolution procedure.

2. Purpose

2.1. This rule amends the Scheme for Construction Contracts in Northern Ireland Regulations (Northern Ireland) 1999 ("the Scheme"). Related primary legislation, the Construction Contracts (Northern Ireland) Order 1997 ("the 1997 Order") makes provision for the contents of construction contracts and the Scheme applies where parties have failed to provide for these contents - in effect, by supplying the missing contractual terms.

3. Background

3.1. The 1997 Order was amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011 ("the 2011 Act"). The 2011 Act will be commenced on 14 November 2012. This rule amends the Scheme and most of these amendments are consequential - reflecting the changes made to the 1997 Order by the 2011 Act. This rule will come into effect at the same time as the 2011 Act is commenced.

3.2. A related rule, which will be laid at the same time, is the Construction Contracts Exclusion Order (Northern Ireland) 2012.

3.3. At the Final Stage of the Construction Contracts (Amendment) Bill, the then Chairperson of the Committee for Finance and Personnel referred to advice given by officials to the Committee that it would be necessary to amend the Scheme before the Bill, once passed, could come into effect and that any proposed amendments to the Scheme would be subject to further consultation (Hansard, Official Report 18 January 2011).

3.4. This rule is a consequence of that consultation.

4. Consultation

4.1. A consultation was carried out between 9 February 2012 and 2 May 2012 seeking views as to what amendments should be made to the Scheme following changes made to the 1997 Order by the 2011 Act.

4.2. The response to the consultation was modest with just six replies received. Overall, the proposals attracted broad support, although some differing and sometimes strongly held views were expressed.

4.3. Responses tended to reflect the viewpoint of respondents relating to their position within the supply chain. The divergence of opinions offered again serves to underline the continuing need to deliver a balanced outcome to reflect the complexity, diversity and the range of commercial interests represented within the construction industry.

5. Equality Impact

5.1. Compliance with section 75 of the NI Act 1998 was assessed at the primary legislation stage and found to be compatible.

6. Regulatory Impact

6.1. A separate regulatory impact assessment has not been carried out in respect of the proposed regulations as these issues were addressed at the primary legislation stage.

7. Financial Implications

7.1. There are no financial implications.

8. Section 24 of the Northern Ireland Act 1998

8.1. As this Statutory Rule is technical, and is unrelated to Community Law, there are no section 24 implications.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. This Rule closely replicates recent amendments to corresponding legislation in England, Wales and Scotland. The public consultations carried out to amend the primary legislation (the Order) and the subordinate legislation (the Scheme) heavily endorsed the policy to maintain parity with the legislative position throughout the UK in order to provide a level commercial playing field and allow a common basis for the emergence of legal precedent.

11. Additional Information

11.1. Not applicable.