EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (DEFERRAL OF RETIREMENT PENSIONS) REGULATIONS (NORTHERN IRELAND) 2011

S.R. 2011 No. 109

1. Introduction

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

1.2 The Statutory Rule is made under sections 171(1) and (3) of, and paragraphs 2(2), 3B(2) and 5(b)(iii) and 7B(2) and (5)(b)(iii) of Schedule 5 and paragraph 5(2) of Schedule 5A to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and is subject to the negative resolution procedure.

2. Purpose

2.1 The Regulations—

- amend the Social Security (Widow's Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979 (the"1979 Regulations") and the Social Security (Deferral of Retirement Pensions) Regulations (Northern Ireland) 2005 (the "2005 Regulations") to provide that where a person receives State Pension Credit or their partner receives certain income related benefits while that person defers claiming their State Pension, they will not be entitled to a higher rate of State Pension or a lump sum ("deferral benefits") when they eventually claim their State Pension; and

- further amend the 2005 Regulations to prescribe the day of the week on which an accrual period should begin to enable calculation of a lump sum payment for a person who reaches pensionable age on or after 6 April 2010, who is deferring and is subject to the rules whereby State Pension is payable in arrears.

2.2 Regulation 1 provides for citation and commencement. Regulation 1, paragraphs (2) and (3) of regulation 3 and regulation 4 come into operation on 5 April 2011 while the other provisions in the Regulations come into operation on 6 April 2011.

2.3 Regulations 2 and 3(4) amend regulation 4 of the 1979 Regulations and regulation 3 of the 2005 Regulations respectively to provide that any day during which a person is in receipt of State Pension Credit, or, if a member of a couple, their partner is in receipt of an income-related benefit, will not

be a day of deferral for retirement pension purposes and therefore no deferral benefits will be accrued.

2.4 Regulations 2(4) and 3(5) provide that this change applies only to a day, accrual period or part of an accrual period falling on or after 6 April 2011.

2.5 Paragraph (2) of regulation 3 inserts a definition of "the Claims and Payments Regulations" into the 2005 Regulations.

2.6 Paragraph (3) of regulation 3 substitutes regulation 2 of the 2005 Regulations to specify that the accrual period in respect of the calculation of a lump sum payment should begin at the beginning of the benefit week where a person who has deferred claiming their retirement pension reaches pensionable age on or after 6 April 2010.

2.7 Regulation 4 makes a consequential revocation.

3. Background

3.1 A person may improve their State Pension entitlement if they defer entitlement to it either by:

- not making a claim when they reach State Pension age; or
- deciding to give up an existing award for a period of time.

3.2 When a person defers, they may become entitled to either increments, which give a higher weekly rate of State Pension, or, if they defer for 12 months or more, a lump sum when they subsequently make a claim.

3.3 The receipt of certain social security benefits excludes a person from being treated as having deferred their State Pension. The 1979 Regulations and the 2005 Regulations contain provisions that exclude certain days from the calculation of the deferral period when the person has received another social security benefit to meet their day to day living costs whilst they have delayed claiming or have given up their State Pension.

3.4 Existing legislation also provides for a person to be treated as possessing notional income where State Pension has been deferred and a claim has been made to certain income-related benefits. Where a customer who has reached State Pension age applies for State Pension Credit but has not claimed their State Pension, the State Pension Credit Regulations (Northern Ireland) 2003 provide that a notional amount of State Pension, equal to the amount they would receive if they had claimed, is taken into account in the State Pension Credit calculation, thereby reducing the State Pension Credit entitlement.

3.5 Similar rules apply in circumstances where the deferrer's partner is claiming another income-related benefit, such as income-based Jobseeker's Allowance, Income Support, State Pension Credit or income-

related Employment and Support allowance. These provisions act to reduce the amount of income-related benefit payable.

3.6 Consequently, for many people deferral of State Pension is not the right option:

- it is inappropriate to encourage people who need to rely on an income-related benefit to give up their State Pension and live on a significantly lower income;

- there is no incentive/advantage for people at this income level to earn a higher rate of State Pension as this would simply reduce or extinguish their future entitlement to income-related benefits;

- the lump-sum payment is an inflexible vehicle for saving for the future as it requires a minimum twelve months commitment from people who may be living below the State Pension Credit level in order to take advantage of it.

3.7 Additionally, the Department for Work and Pensions has become aware that the notional income rules have not been applied consistently, resulting in some people receiving full entitlement to State Pension Credit while, at the same time, accruing deferral benefits. Where a person receives a higher rate of State Pension following a period of deferral, the increased income is included in any State Pension Credit assessment; however, there is no mechanism to abate or offset State Pension Credit incorrectly paid against a lump sum payment. This is because the lump sum is not based on a weekly benefit award.

3.8 The Regulations reinforce the intention that, where available, contributory rather than income-related benefits should be claimed for day-to-day support and deferral benefits should not be accrued in respect of periods for which an income-related benefit has been paid and State Pension entitlement deferred.

3.9 They also remove the incentive for people whose income levels are below the State Pension Credit limit to deprive themselves of State Pension and, therefore, have to get by on income levels well below the State Pension Credit level.

3.10 The change will mean that from 6 April 2011 if someone receives State Pension Credit and at the same time they defer claiming their State Pension the days for which they receive State Pension Credit will be excluded from the calculation of their deferral reward. In effect, for that period they will not be treated as having deferred their State Pension. Similar excluding rules will apply where the person who has deferred taking his or her State Pension is part of a couple and the other member of the couple has received State Pension Credit, income-based Jobseeker's

Allowance, Income Support or income-related Employment and Support Allowance in respect of them.

3.11 Lump sum payments are calculated by reference to "accrual periods". An accrual period is defined in Schedule 5 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992. The 2005 Regulations provide when an accrual period should begin. These regulations have not been amended to take account of changes to payment arrangements introduced from April 2010.

3.12 At present regulation 2 of the 2005 Regulations only covers people who reached State Pension age before 6 April 2010 and their State Pension is payable in advance. The regulation provides that an accrual period starts from a person's pay day. In these cases this is the start of the benefit week. The existing provisions do not cover those people who reach State Pension age on or after 6 April 2010 and their State Pension is payable in arrears. There is no basis for calculating a lump-sum payment for this group of people.

3.13 The amendment made by these Regulations will provide a legislative basis for the lump-sum calculation for this group and the accrual period will be set in line with the payment arrangements. For those reaching pensionable age on or after 6 April 2010 the accrual period will start with the first day in the benefit week rather than the payday – the payday is at the end of the benefit week not the beginning.

3.14 This provision will come into operation from 5 April 2011 and will ensure that where State Pension is payable in arrears a lump sum payment will be calculated on a similar basis to cases where State Pension is payable in advance.

4. Consultation

4.1 An informal consultation exercise was carried out from 5 November to 21 November 2010.

4.2 Four responses were received. One of the main issues raised by respondents centred around the right to defer by those on low incomes. Paragraph 3.6 above addresses this concern.

5. Equality Impact

The Department has conducted a screening exercise and has concluded the Regulations do not have any impact on equality of opportunity.

6. Regulatory Impact

The Regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities, social enterprise or voluntary bodies.

7. Financial Implications

7.1 The proposed regulations will ensure that a person cannot gain from both an award of an income-related benefit and deferral benefits for the same period. This will prevent double provision and unintended benefit expenditure.

7.2 The amendment in respect of accrual periods for those reaching State Pension age on or after 6 April 2010 will ensure that there is a mechanism in place to calculate entitlement to a lump sum payment for these people during a period of deferral.

8. Section 24 of the Northern Ireland Act 1998

The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Regulations are not incompatible with any of the Convention rights, are not incompatible with Community law, do not discriminate against a person or class of person on the ground of religious belief or political opinion, and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

Not applicable.

10. Parity or Replicatory Measure

The provisions in paragraphs (2) and (3) of regulation 3 come into operation on 5 April 2011 at the same time as the corresponding Great Britain provisions in the Social Security (Deferral of Retirement Pensions) (Amendment) Regulations 2011. The other provisions in these Regulations come into operation on 6 April 2011 at the same time as the corresponding Great Britain provisions in the Social Security (Deferral of Retirement Pensions) Regulations 2011. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.