EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY REVALUATION OF EARNINGS FACTORS ORDER (NORTHERN IRELAND) 2022

S.R. 2022 No. 86

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 sections 130 and 165(4) and (5) of the Social Security Administration (Northern Ireland) Act 1992 ("the 1992 Act") and is subject to the negative resolution procedure.

2. Purpose

2.1. The Social Security Revaluation of Earnings Factors Order (Northern Ireland) 2022 (referred to in this Memorandum as the "Revaluation Order") provides that earnings factors relating to National Insurance contributions for historic tax years, used in the calculation of additional State Pension and Guaranteed Minimum Pensions (GMPs), maintain their value in line with the increase in average earnings.

3. Background

3.1. Under section 148 of the Social Security Administration Act 1992, the Secretary of State is under a statutory duty, in each tax year, to review the general level of earnings and, if appropriate, make an Order to increase those earnings factors for past years to reflect these changes, ensuring they maintain their value relative to earnings growth.

3.2. Section 130 of the 1992 Act provides that where the Secretary of State makes such an Order the Department may make a corresponding Order for Northern Ireland.

3.3. The Department has no power to set different percentages.

3.4. The percentage increase for the tax year 2021-2022 is 4.5 per cent. The Order will also provide that the earnings factors for earlier tax years are re-valued at 2021/22 earnings levels to ensure that they maintain their value.

Additional State Pension

3.5. Additional State Pension ceased to accrue on 5th April 2016 with the introduction of new State Pension. However, new awards of inherited additional State Pension are still possible after that date, payable as part of an old State Pension to a surviving spouse or civil partner who reached State

Pension age before 6th April 2016 and whose deceased spouse or civil partner had reached, or would have reached, State Pension age after 6th April 2016.

3.6. In those circumstances, the inherited additional State Pension is based on the deceased's earnings factors and flat-rate accrual amounts of State Second Pension (S2P) up to and including 2015/16, revalued to the tax year immediately before the tax year in which they died or, if later, reached State Pension age. This is to ensure that earnings growth beyond 6th April 2016 is reflected in the survivor's inherited additional State Pension, as it would have been had the new State Pension not been introduced.

3.7. For the purposes of additional State Pension and GMPs, "earnings factors" represent the amount of earnings on which relevant National Insurance contributions have been paid or treated as paid over a person's working life from 1978/79 onwards. They are derived from earnings upon which primary Class 1 contributions have been paid or treated as paid. For the purpose of additional State Pension only, they are also derived from Class 2 and Class 3 contributions paid between 1978/79 and 2002/03. From 2002/03, carers and disabled people entitled to certain benefits are treated as having a qualifying earnings factor for these purposes.

3.8. Earnings factors derived for each year from 1978/79 are revalued annually in line with the increase in average earnings. This annual revaluation exercise allows earnings factors derived from historic earnings to be restated at current values as part of the calculation of a first award of a GMP (i.e. an award as calculated when someone first reaches GMP age – 60 for women and 65 for men) and additional State Pension. Once in payment additional State Pension is up-rated annually in line with the increase in the general level of prices; any GMP accrued from April 1988 to April 1997 is uprated by occupational pension schemes annually in line with the increase in the general level of prices subject to a cap of 3.0 per cent.

Flat Rate accruals of additional State Pension

3.9. From 2012/13, accruals of S2P on the first band of earnings became flat-rate. Revaluation of the flat-rate amount was formerly made by reference to a separate Order. The last such Order, made in 2015 (the Social Security Pensions (Flat Rate Accrual Amount) Order (Northern Ireland) 2015, reset the flat-rate amount at £93.60 for 2015/16. From 6th April 2016, flat-rate amounts are increased by the percentage specified for 2015/16 in the Schedule to the Revaluation Order.

Shared additional State Pension

3.10. Where a pension-sharing order has been made by the Courts in respect of a person's additional State Pension on divorce or dissolution of a civil partnership, the National Insurance record of the person whose additional State Pension is to be shared (the transferor) is noted with a debit and the record of the person who will benefit (the transferee) is noted with a credit.

A state scheme pension debit becomes a weekly deduction from the transferor's State Pension when they reach State Pension age or, if later, the effective date of the pension-sharing order. State scheme pension credits give rise to a weekly State Pension for the transferee which becomes payable when they reach State Pension age or, if later, when the pension-sharing order takes effect. Where the share order takes effect in a tax year earlier than the tax year before the one in which the person reaches State Pension age, the debit or credit is revalued. For this purpose, the relevant Revaluation Order is the last such Order to come into operation before the start of the tax year in which the person reaches State Pension age and the debit or credit is increased by the percentage specified in that Order for the year in which the share order took effect.

3.11. Additional State Pension will still be shareable where either the transferor reached State Pension age before 6th April 2016, or the divorce or dissolution proceedings began before that date. This means that revaluation is still required for old state scheme debits and credits which have not yet been activated.

Guaranteed Minimum Pension

3.12. Between April 1978 and April 1997 employers sponsoring salary-related occupational pension schemes could "contract out" of State Earnings Related Pension (SERPS) on condition that they provided members of the scheme with a pension of a statutory minimum (the GMP). In return, both the employer and employee paid reduced National Insurance contributions. Earnings factors calculated on the basis of Class 1 contributions paid in tax years 1978/79 to 1996/97 are used to calculate the amount of GMP payable for that period. Other than where an individual leaves a formerly contracted-out scheme before they reach GMP pensionable age (60 for women, 65 for men), section 10 of the Pension Schemes (Northern Ireland) Act 1993 requires the earnings factors to also be revalued by the relevant order under section 130 of the 1992 Act.

4. Consultation

4.1. There is no requirement to consult on this Order.

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 this Order and, as they merely discharge the Department's statutory duty to revalue earnings factors, has concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

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

7. Financial Implications

7.1. None.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is content that this Order complies 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 corresponding Great Britain Order is the Social Security Revaluation of Earnings Factors Order 2022 (S.I. 2022/216) which comes into force on 6 April 2022. 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.