EXPLANATORY MEMORANDUM TO

THE UNFUNDED PUBLIC SERVICE DEFINED BENEFITS SCHEMES (TRANSFERS) REGULATIONS (NORTHERN IRELAND) 2015

2015 No. 328

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Finance and Personnel to accompany the above named Statutory Rule which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under powers conferred by sections 91 (2A)(d) and 91(5A) of the Pension Schemes (Northern Ireland) Act 1993 (as introduced by section 71 of the Pension Schemes Act 2015).

1.3. The Statutory Rule is subject to Negative Resolution Assembly procedure.

1.4. The Statutory Rule is due to come into operation on 2 October 2015.

2. Purpose

2.1. The Statutory Rule prevents transfers, under section 91 of the Pension Schemes Act (Northern Ireland) 1993 ('the 1993 Act'), from an unfunded, public service defined benefits scheme to a qualifying recognised overseas pension scheme which can provide flexible benefits as a result of the transfer.

3. Background

3.1. The context of this Statutory Rule is the major reform of pensions (from 6 April 2015) which enable members of a money purchase pension scheme to access their pension pot flexibly, so that they can draw down their pension pot as a lump sum rather than having to use it to buy an annuity.

3.2. As part of these reforms, and in order to protect the Exchequer and tax payer, the government decided to ban transfers from unfunded, public service defined benefit schemes to schemes from which members could draw down their pension pot flexibly. This policy was announced in July 2014 in *'Freedom and choice in pensions: government response to the consultation'.*

3.3. In the unfunded, public service pension schemes, the contributions of current pensioners and employers are used to pay for the pensions of current pensioners, with any shortfall being met through payments from the Exchequer. As such, where a member chooses to transfer,

there is a direct upfront cost to the Exchequer which must provide the cash equivalent transfer value and cover the cost of any foregone contributions which would have been used to pay for pensions in payment.

3.4. This policy was given effect by section 71 of the Pension Schemes Act 2015 ('the 2015 Act') which, by means of amendments to section 91 of the 1993 Act, restricted transfers out of unfunded, public service defined benefits schemes in Northern Ireland. Section 91 (2B) enables the Department of Finance and Personnel to make exceptions to the restriction on transfers out of unfunded public service defined benefits schemes. No exceptions have been made.

3.5. However, as a result of section 71(9) of the 2015 Act the regulations, already made by the Department of Finance and Personnel under section 91(2)(d) and 91(5)(a) of the 1993 Act, continue to apply for the purposes of section 91(2A)(d) and 91(5A) of the 1993 Act respectively, until the coming into operation of the first regulations made by the Department of Finance and Personnel under section 91(2A)(d) and 91(5A).

3.6. As a result there is in effect a loophole in the restriction on transfers from unfunded public service defined benefit schemes. This is because regulations 12(4) and (5) of the Occupational Pension Schemes (Transfer Value) Regulations (Northern Ireland) 1996 (S.R. 1996 No.619) permit transfers to qualifying recognised overseas pension schemes. This Statutory Rule closes that loophole by preventing transfers under section 91 of the 1993 Act from an unfunded public service defined benefits scheme to a qualifying recognised overseas pension scheme which can provide flexible benefits as a result of the transfer.

3.7. With the coming into operation of this Statutory Rule, the first made under section 91(2A)(d) and 91(5A) of the 1993 Act, regulation 12(4) and 12(5) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.R. 1996 No.619) will no longer apply for the purposes of those provisions.

4. Consultation

4.1. The Department of Finance and Personnel has consulted with representatives of persons likely to be affected by the Statutory Rule.

5. Equality Impact

5.1. The Department of Finance and Personnel conducted a Policy Screening Exercise on the relevant Northern Ireland provisions of the Pensions Act 2015 (c. 8) for which a Legislative Consent Motion was agreed by the Northern Ireland Assembly (on 13 January 2015). No convention rights are engaged and the Department does not consider

that the Statutory Rule will result in any differential impact to persons with the following characteristics: disability, ethnicity, age, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marriage / civil partnership. The Statutory Rule simply sets out the rules required to effect the necessary pension changes.

6. Regulatory Impact

6.1. The Statutory Rule imposes no costs on business, charities, social economy, enterprises or the voluntary sector. A Regulatory Impact Assessment is not considered necessary.

7. Financial Implications

7.1. The policy intention is to protect the Exchequer and the tax payer.

8. Section 24 of the Northern Ireland Act

8.1. It is the view of the Department that the Statutory Rule is compatible with section 24 of the NI Act 1998.

9. EU implications

9.1. None

10. Parity or Replicatory Measure

10.1. HM Treasury introduced equivalent secondary legislation to make provision for addressing this legislative change.

11. Additional Information

11.1. Not applicable