EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (EXTENSION OF MIGRANT MEMBER RELIEF) REGULATIONS 2006

2006 NO. 1957

THE PENSION SCHEMES (TAXABLE PROPERTY PROVISIONS) REGULATIONS 2006

2006 NO. 1958

THE INVESTMENT- REGULATED PENSION SCHEMES (EXCEPTION OF TANGIBLE MOVEABLE PROPERTY) ORDER 2006

2006 NO. 1959

THE PENSION SCHEMES (APPLICATION OF UK PROVISIONS TO RELEVANT NON-UK SCHEMES) (AMENDMENT) REGULATIONS 2006

2006 NO. 1960

THE REGISTERED PENSION SCHEMES (PROVISION OF INFORMATION) (AMENDMENT) REGULATIONS 2006

2006 NO. 1961

THE TAXATION OF PENSION SCHEMES (TRANSITIONAL PROVISIONS)(AMENDMENT) ORDER 2006

2006 NO. 1962

THE TAXATION OF PENSION SCHEMES (CONSEQUENTIAL AMENDMENTS) (NO. 2) ORDER 2006

2006 NO. 1963

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

These seven instruments relate to, and supplement, Part 4 of the Finance Act 2004 as amended.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 The new simplified pensions tax regime in Finance Act 2004 was amended by the Finance Acts 2005 and 2006 took effect from 6 April 2006.

3.2 These provisions supplement the new simplified tax regime as enacted in Finance Act 2004, as amended by the Finance Acts 2005 and 2006, by setting out details for the operation of pension tax simplification. With the exception of the amendment to the Registered Pensions Schemes (Provision Of Information) Regulations 2006 (S.I. 2006/567) the instruments will have effect from 6 April 2006.

3.3 An explanation of each instrument follows.

4. Legislative Background

4.1 The powers to make these provisions are contained in sections 169, 251, 273ZA, 281 and 283 of and paragraphs 11, 33, 34, 36 and 37 of Schedule 29A, paragraph 4 of Schedule 33, paragraph 4, 7 and 7A of Schedule 34 and paragraph 51 of Schedule 36 to the Finance Act 2004 as variously inserted or amended by the Finance Act 2006 (c. 25).

4.2 The following paragraphs under this heading deal with amendments made to the original powers to make consequential and transitional provision.

4.3 Section 281 enables the making of such amendments as may appear appropriate in consequence of, or otherwise in connection with the application of Part 4 of the Finance Act 2004 to any enactment contained in an Act passed before 6th April 2006 or in the Session in which that date falls and in any instrument made before that date or in the Session in which that date falls. This section is extended by the 2006 Act to enable similar amendments to be made in the light of amendments made to Part 4 of the 2004 Act by subsequent enactments.

4.4 Section 283 enables the making of any transitional provisions and savings which may appear appropriate in consequence of, or otherwise in connection with Part 4 of the Finance Act 2004 or the repeals made in consequence of that Act in consequence of Part 4. It has been extended by the 2006 Act in the same way as section 281.

4.5 As amended the powers in both of these sections may be exercised retrospectively, but only if it does not increase any person's liability to tax.

5. Extent

These instruments apply throughout the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Ed Balls MP has made the following statement regarding Human Rights:

"In my view the provisions of the Pension Schemes (Taxable Property Provisions) Regulations 2006 and the Taxation of Pension Schemes (Consequential Amendments) (No. 2) Order 2006 are compatible with the Convention rights.".

6.2 The Pension Schemes (Taxable Property Provisions) Regulations 2006 apply primary legislation, hence appear to fall within the rules for giving a compatibility statement. The Taxation of Pension Schemes (Consequential Amendments) (No. 2) Order 2006 amend primary legislation.

6.3 The remaining instruments are subject to annulment and do not amend primary legislation. Accordingly, no statement of compatibility with the European Convention on Human Rights is required.

7. Policy Background

7.1 The Government wants to encourage today's workers, tomorrow's pensioners, to save for their retirement and offers generous tax incentives to encourage people to save in a pension. Following extensive consultation, pensions tax simplification was legislated for in Part 4 of the Finance Act 2004. As a result of ongoing consultation a package of supplementary measures were introduced in Finance Act 2005 and Finance Act 2006. The objectives are to increase individual choice and flexibility and cut industry costs by tackling the complexity and fragmentation caused by the previous rules.

7.1 From 6th April 2006, a new unified pensions tax regime replaced the numerous existing regimes. The new regime contains two key controls on tax relief for pension savings, a lifetime allowance and an annual allowance, which replace the plethora of controls previously in existence.

7.1 An explanation of each instrument follows:

The Registered Pensions Schemes (Extension of Migrant Member Relief) Regulations (S.I. 2006/1957)
Migrant member relief allows tax relief, under certain circumstances, on contributions to overseas pension schemes that are not registered pension schemes. The regulations allow access to migrant member relief where the overseas scheme of which an individual is currently a member is not the same overseas scheme in respect of which the individual originally became entitled to migrant member relief. This will allow migrant member relief to be retained, for example, where the individual's pension rights are transferred to another overseas pension scheme as part of a company takeover.

The Pension Schemes (Taxable Property Provisions) Regulations 2006 (S.I. 2006/1958)
These Regulations make provision supplementing those contained in the Finance Act 2006 providing for a tax charge on investments by investment-regulated pension schemes in residential property and tangible moveable property. They provide that the method of valuing UK residential property set out in the Bill apply to non UK residential property and tangible moveable

assets. They also provide rules for taxing overseas assets held by non-UK resident registered pension schemes.

The Investment-regulated Pension Schemes (Exception of Tangible Moveable Property) Order 2006 (S.I. 2006/1959)
These Regulations exclude certain items of tangible moveable property from being regarded as taxable property for the purposes of the provisions in the Finance Act 2006 providing for a tax charge on investments by investment-regulated registered pension schemes in residential property and tangible moveable property.
The items excluded are investment grade gold bullion and small items used for the administration of investment vehicles owned by such pension schemes.

The Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2006 (S.I. 2006/1960)
The principal Regulations serve two purposes;

- To provide a method of computing the amount to be charged to UK tax in respect of a payment by a relevant non-UK pension scheme; and
- To modify the provisions of Part 4 of the Finance Act 2004 ("the Act"). This is to ensure that the new regime for registered pension schemes works in the context of relevant non-UK schemes.

These Regulations amend the principal Regulations to ensure the provisions contained in the Finance Act 2006 providing for a tax charge on investment by investment-regulated pension schemes in residential property and tangible moveable property cannot be side-stepped by transferring funds to a non UK scheme which are then used to purchase such assets.

The Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2006 (S.I. 2006/1961)
These Regulations amend the requirements for the provision of information in connection with registered pension schemes, qualifying overseas pension schemes and qualifying recognised overseas pension schemes. They implement provisions contained in the Finance Act 2006.
Firstly, the Regulations provide for scheme administrators to report certain further events. These are

- when a stand-alone lump sum is paid,
- when a scheme starts or ceases to be an investment-regulated pension scheme,
- when a tax charge arises on an investment-regulated pension scheme in relation to income or gains from residential property or tangible moveable property,
- when there is a change in the country or territory in which a scheme is established and
- where a scheme becomes or ceases to be an occupational pension scheme.

Secondly, the Regulations provide that an individual, who is caught by the provision contained in section 159 of the Finance Act 2006 countering the recycling of tax free lump sums, is obliged to tell the scheme that provided their lump sum that they are so caught. This is so that the scheme can fulfil its obligation to report unauthorised payments to HM Revenue & Customs.

Thirdly, the Regulations provide that overseas schemes, whose members are caught by either the recycling rule or the prohibited assets rules are obliged to report to HM Revenue & Customs the unauthorised payments that arise as a consequence.
Fourthly, the regulations provide that individuals to whom paragraph 23 of Schedule 23 to the Finance Act 2006 applies (calculation of maximum lump sum for scheme pensions provided from money purchase arrangements) are obliged, where necessary, to tell schemes about the amount of their fund used to provide the pension. This is so that any scheme paying a subsequent lump sum to the individual is able to calculate the maximum tax-free lump sum that it may pay within the overall limit of 25% of the lifetime allowance.

The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2006 (S.I. 2006/1962)
This Order contains amendments to transitional provisions in relation to the provisions for pension schemes which came into force on 6th April 2006. Section 283(3C) of the Finance Act 2004 provides that an Order may have retrospective effect if it does not increase any person's liability to tax. The provisions of this Order reduce, rather than increase, taxpayers' liability, and accordingly has effect from 6th April 2006. Firstly, the Order modifies section 216 which sets out the table of events which are benefit crystallisation events in relation to an individual and the amount which is crystallised by each of those events so that benefit crystallisation event 5A which will be inserted by paragraph 29 of Schedule 23 to the Finance Act 2006, is not triggered where the individual had a drawdown fund in payment at A day. This new article is necessary because the provisions in the second column of that benefit crystallisation event, preventing overlap with other such events, will not apply appropriately to funds that were in existence before 6th April 2006.

Secondly, under the new pensions tax regime certain lump sum death benefits may be paid, which are tested against the lifetime allowance and any amount that falls above the lifetime allowance is taxable at 55%. There is also a requirement that such lump sum death benefits must be paid within 2 year's of the member's death. Lump sums paid outside of this time limit will not meet the pension rules and will be subject to an unauthorised payments charge of 70%. Transitional protection has already been provided so that the lifetime allowance charge should not apply to lump sums that arise in respect of people who died before the new pensions tax regime was introduced 6th April 2006. But this protection is not effective in all circumstances and, in particular, it retains the 2 year time limit for the payment of death benefits, albeit that the member's death has occurred some time before the start of the new regime. This order extends transitional protection to lump sum death benefits paid by pre A-day schemes in respect of members, and dependants of members, who died before 6th April 2006. The period is extended to two years from the date on which the pension scheme administrator could reasonably have known of the death of the member or dependant concerned, rather than from the date of death, to reflect the fact that scheme administrators do not always learn of the death immediately.

The Taxation of Pension Schemes (Consequential Amendments) (No. 2) Order 2006 (S.I. 2006/1963)
This instrument makes consequential amendments to other primary legislation to secure consistency with the Provisions of Part 4 Finance Act 2004.

8. Impact

The impact of these regulations is contained within the Simplifying the taxation of pensions Regulatory Impact Assessment and Appendix which can be found at www.hmrc.gov.uk/ria/simplifying-pensions.pdf and www.hmrc.gov.uk/ria/simplifying-pensions-appendix.pdf .

9. Contact

Kevin Golightly at HM Revenue & Customs (tel: 020 7147 2825 or e-mail: Kevin.Golightly@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.