EXPLANATORY MEMORANDUM TO

THE INHERITANCE TAX (DELIVERY OF ACCOUNTS)(EXCEPTED ESTATES) (AMENDMENT) REGULATIONS 2006

2006 No. 2141

1. This Explanatory Memorandum has been prepared by the Commissioners for 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

2.1 These Regulations amend the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 (S.I. 2004/2543) ("the principal Regulations") which make provision in relation to delivery of accounts and other information for inheritance tax (IHT) purposes. Estates within the ambit of the principal Regulations are excepted from delivering an IHT account and are known as excepted estates. They are subject to a simpler reporting procedure to satisfy their IHT obligations and to obtain a grant of representation known as Probate in England, Wales and Northern Ireland and Confirmation in Scotland.

2.3 These Regulations amend regulations 2, 4 and 9 of the principal Regulations as follows:

- Regulation 2 is updated (by regulation 3) to reflect the fact that the Commissioners for Her Majesty's Revenue and Customs now have care and management of IHT;
- Regulation 4 is amended (by regulation 4) to reflect the upgraded monetary amounts in paragraphs (2) and (3). And new subparagraphs (ca) and (ba), inserted respectively in those paragraphs, make it clear that the estates of persons who die with alternatively secured pension funds are outside the ambit of the principal Regulations.
- Regulation 9 is amended (by regulation 5) to correct a cross reference.

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

3.1 None

4. Legislative Background

4.1 Statutory references are to the Inheritance Act 1984 unless otherwise stated.

4.2 Section 216 requires that an IHT account must be delivered unless excepted by Regulations made under section 256; and the principal Regulations are the Regulations made under that section.

4.3 Section 160 of, and Schedule 22 to, FA 2006 bring alternatively secured pension provision within the IHT framework by adding new sections 151A to 151C. These Regulations follow on from the enactment of these new sections. Revenue and Customs ("HMRC") consider that an IHT account should be delivered in these cases. It is necessary, therefore, to exclude the estates of persons who die with such funds from the ambit of principal Regulations.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Commission on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The pensions' tax regime was radically overhauled by Part 4 of the Finance Act 2004, with the new rules coming into effect on 6 April 2006 (A-day). The Government was asked early in 2005 to clarify how IHT was to be applied to the new pension choices available to members of registered pension schemes on and after A-day. This followed widespread media speculation that one of the new choices (the option to take an alternatively secured pension (ASP) from age 75 as opposed to an annuity) could be used for IHT planning. ASPs were specifically designed as an alternative to taking a pension or annuity at age 75 for those who have a principled religious objection to annuitisation. An ASP secures income for the individual's lifetime through a form of income drawdown that is limited to ensure the fund cannot be depleted too quickly.

7.2 A Ministerial Statement of 21 March 2005 launched a discussion exercise with key industry stakeholders about how existing IHT law could be applied to the new wider choices available under the new pensions' tax regime. HMRC subsequently published a Discussion Paper "Inheritance Tax (IHT) and Pension Simplification" on 21 July 2005. Respondents to the Discussion Paper were largely in favour of keeping the existing IHT rules for scheme members under the age of 75 and some thought that there should be specifically targeted IHT legislation for members who die over age 75 with ASP funds. The Government announced at the 2005 Pre-Budget Report that it would bring forward legislation to clarify how the IHT rules would work for pension schemes post A-day.

7.3 Section 160 of, and Schedule 22 to, the Finance Act 2006 detail how IHT will be charged from 6 April 2006 on left-over funds where a pension scheme member dies over the age 75 with funds in an ASP. IHT is charged on the death of the scheme member as if the value of any remaining ASP funds were part of their IHT chargeable estate. Funds paid to charity are excluded from an IHT charge. And where funds are used to provide pension benefits for the scheme member's spouse, civil partner or person who was financially dependent on the scheme member at the time of death, the IHT charge on the left-over ASP funds does not arise until the relevant dependant's pension benefits ceases.

7.4 The responsibility of accounting for and paying any IHT due on the ASP funds falls on the pension scheme administrator. HMRC wish to ensure that the estates of those persons who die with funds in an ASP are outside the scope of the principal Regulations so that an IHT account is delivered. The amendments made by these Regulations are designed to achieve that objective.

7.5 Opportunity is also being taken in these Regulations to upgrade the monetary amounts from their 2002 levels for the property specified in regulation 4 of the principal Regulations. Some good housekeeping measures are included too, for example, the amendment to reflect the enactment of the Commissioners for Revenue and Customs Act 2005.

8. Impact

7.1 These Regulations do not impose new costs on business or charities.

9. Contact

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