

EXPLANATORY MEMORANDUM TO
THE PERSONAL AND OCCUPATIONAL PENSION SCHEMES (AMENDMENT)
REGULATIONS 2008

2008 No. 1979

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These regulations:

- will permit self invested personal pensions (SIPPs) to hold protected rights (rights which arise when someone takes out a private pension in place of the additional state pension).
- repeal a provision which allowed protected rights to be used for paying a pension to someone who was not the pension scheme member's spouse, civil partner or child.

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

3.1 None.

4. Legislative Background

4.1 The regulations governing the arrangements for taking out a personal pension in place of the State Second Pension place more restrictions than the tax rules on the type of investments which can be used. An extension to the Financial Services Authority regulatory role means that these constraints are now redundant. These regulations remove those constraints.

4.2 The regulations also bring the legislation governing the investments that can be used in such pensions into line with the tax law.

4.3 The intention is that the legislation in the regulations governing arrangements for taking out a personal pension in place of the State Second Pension should be in line with the tax legislation on pension provision. These regulations correct an inconsistency which was created by a change to the tax regime from 6 April 2006, from which time payments to a person who is not the spouse, civil partner or child of the member were prohibited...

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention 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

Summary of policy on Self-Invested Personal Pensions

7.1 Individuals who contract out of (i.e. leave) the additional State Pension by taking out a private pension in its place, build up contracted-out rights. If the private pension is a money purchase arrangement (i.e. a personal pension, a stakeholder pension, or money purchase occupational pension) the contracted-out rights are known as protected rights. Any personal pension scheme holding protected rights must satisfy certain conditions set out in Regulations.

7.2 Currently, protected rights cannot be invested in a SIPP (a type of personal pension which allows individuals to be more involved in decisions about how their contributions are invested). Therefore, individuals have only the limited choice available from the pension provider's in-house funds. This restriction exists because protected rights are derived mainly from the National Insurance contribution rebate intended to replace the State pension foregone. The intention was to reduce the risk that can arise from self-investment so individuals had less chance of a reduced State pension and a small protected rights fund arising from poor investment return.

7.3 In April 2007, the Financial Services Authority (FSA) introduced their new regulatory regime. The new regime brings all personal pensions, including SIPPs, within their regulatory control. The changes brought consistent treatment and protection for consumers across all types of personal pension schemes.

7.4 Although allowing SIPPs to hold protected rights does carry some risks, they are mitigated to a large extent by the FSA's new regulatory regime. In light of this and in the spirit of deregulation, the Government decided that SIPPs should be allowed to hold protected rights.

Summary of policy on the protected rights rules

7.5 Payments to a person who was not the spouse, civil partner or child of the pension scheme member are prohibited by the tax rules from 6 April 2006. The rules regarding protected rights should reflect the tax rules so the change has resulted in pensions legislation being at odds with the tax rules. This change removes that conflict.

8. Impact

8.1 A full impact assessment has not been published for this instrument as it has only a negligible impact on the private or voluntary sectors.

8.2 The impact on the public sector is negligible.

9. Contact

Jane Bonner-Morgan at the Department for Work and Pensions Tel: 020 7962 8411 or e-mail: jane.bonner-morgan@dwp.gsi.gov.uk can answer any queries regarding the instrument.

