EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that a variety of payments will be authorised payments when made by pension schemes to or in respect of their members. The payments will accordingly not attract the tax charges that apply when a registered pension scheme makes an unauthorised payment. The payments concerned fall into two broad categories: commutation payments that are not otherwise permitted by the rules in the Finance Act 2004 ("FA 2004") and pensions or lump sums paid or overpaid in error.

Regulation 1 is about citation, commencement and effect.

Regulation 2 contains interpretation provisions.

Regulations 3, 4 and 5 provide that the payments described in Parts 2, 3 and 4 of these Regulations are payments of a prescribed description for the purposes of section 164(1)(f) of FA 2004 (so they become authorised payments). Regulations 3, 4 and 5 also make provision about the income tax treatment of the payments for the purposes of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003"), so that they are taxed as pension income. The overall effect is that the payments are taxed in the same way as payments of lump sums that are allowed by the rules in FA 2004 or pensions paid in the correct amount, as appropriate.

Part 2 is about commutations (pensions out paid as lump sums). Regulations 6 to 12 allow amounts to be paid to members to extinguish their entitlements under the pension scheme. This prevents schemes having to pay pensions that would be uneconomic for them to administer and of little real value to the member. Not all of the conditions relating to the payment of trivial commutation lump sums permitted by FA 2004 will be satisfied in the cases described here.

Regulation 6 is about pension entitlements that arise because there has been a belated contribution received by the scheme or the value of the member's rights is discovered to be greater than was thought. Regulation 7 defines "relevant accretion" for the purposes of regulation 6. Regulation 8 is about about compensation paid by the Financial Services Compensation Scheme. Regulation 9 relates to members whom the scheme has been unable to contact. Regulation 10 concerns members who will continue to receive lifetime annuities (the rules in FA 2004 would normally prevent such commutations because of this). Regulations 11 and 12 are de minimis rules, the latter being for larger pension schemes and so containing special rules.

The Regulations have retrospective effect in relation to payments within Part 3 or 4. Section 164(2)(d) of FA 2004 provides that regulations made under subsection (1)(f) may include provision having effect in relation to times before they are made if this does not increase any person's liability to tax.

Part 3 (regulation 13 to 16) is about pensions overpaid in error (or, where no pension at all was due, payments made in error). Schemes are only authorised to pay pensions in the amounts provided by their rules and higher amounts will otherwise attract tax charges under FA 2004. The excess is treated as pension income and so taxed under ITEPA 2003 as if it too were pension.

Regulation 13 are about simple overpayments made in error. Regulation 14 allows certain payments made even after the error has been discovered. Regulation 15 is about pensions paid after the member has died (when entitlement to that pension ceases). Regulation 16 is about arrears of pension settled after the member's death.

Part 4 is about lump sums paid in error. Regulations 17 to 19 provide that these payments trigger benefit crystallisation events for the purpose of the member's lifetime allowance which, if exceeded, would attract tax charges. This places these payments on a par with lump sums permitted by the rules in FA 2004.

Regulation 17 concerns lump sums that are based on pensions that have been miscalculated, where there is an overpayment of pension within regulation 13 or the error has been discovered in time. Regulation 18 is about lump sums based on calculation errors in relation to pensions or annuities purchased by the scheme for the member. Regulation 19 covers the case where the member has died before the scheme pays the pension commencement lump sum to which the member would have been entitled had the member lived.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

An Impact Assessment was produced to accompany the Budget announcement, made on 12th March 2008, of the Government's intention to make these changes. This is available on the HMRC website at http://www.hmrc.gov.uk/budget2008/widen-scope-authpyt.pdf.