EXPLANATORY MEMORANDUM TO

THE PENSIONS SCHEMES (APPLICATION OF UK PROVISIONS TO RELEVANT NON-UK SCHEMES) (AMENDMENT) REGULATIONS 2009

2009 No. 2047

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

2.1 These regulations ensure that the rules governing what lump sums a pension scheme may pay and how they are taxed work properly in the context of relevant non-UK schemes after the member of such a scheme has elected for a benefit crystallisation event ('BCE') to be treated as occurring.

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

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

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- the total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- the Department's Better Regulation and Policy team has confirmed that
    - there are no disproportionate impacts on any business or sector; and
    - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes.

4. Legislative Background

4.1 These Regulations have effect for members of non-UK schemes where at any time after 5th April 2006 either

- relief from tax has been given in respect of contributions under the scheme as migrant member relief, transitional corresponding relief or by double tax arrangements, or

- a member or members of the scheme have been exempt from income tax by virtue of section 307 of Income Tax (Earnings and Pensions) Act 2003 at any time when the scheme was an overseas pension scheme.

4.2 Schedule 29 to the Finance Act 2004 ("the Act") defines the categories of lump sums that a registered pension scheme can pay as an authorised payment and which is consequently not subject to the unauthorised payment income tax charges. These Regulations amend the Pensions Schemes (Application of UK Provisions to Relevant Non-UK schemes) Regulations 2006 (S.I. 2006/207) ("the Principal Regulations"). Regulation 15 of the Principal Regulations modifies Schedule 29 to the Act in order to make sure that lump sums paid by a relevant non-UK scheme from funds transferred to it by way of a recognised transfer from a registered pension scheme are taxed in broadly equivalent manner to lump sums paid by registered pension schemes.

4.3 Members of certain relevant non-UK schemes are liable to the unauthorised payments charge and the unauthorised payments surcharge by virtue of paragraph 1 of Schedule 34 to the Act. The charges apply to unauthorised payments by the relevant non-UK scheme insofar as they are referable to the UK tax-relieved fund. The UK tax-relieved fund is defined in paragraph 3 of Schedule 34 to the Act.

4.4 Relieved members of relieved non-UK pension schemes are subject to the lifetime allowance charge under paragraphs 13 to 19 of Schedule 34 to the Act. The member may elect under paragraph 15 of Schedule 34 for a BCE to be deemed to have occurred at a date specified in the notice of election. This creates an immediate potential liability to the lifetime allowance charge but prevents any future lifetime allowance charges arising in respect of the same funds.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 An election by the member of a relevant non-UK scheme under paragraph 15 of Schedule 34 to the Act reduces the member's available lifetime allowance by an amount effectively equal to the value of the UK tax-relieved fund. It does this without diminishing the sums and assets held in respect of the member for the purposes of the relevant non-UK pension scheme. This creates an economic misalignment between the amount by which the member's available lifetime allowance is reduced and the benefits provided by the non-UK scheme. As a result, certain computational rules intended to restrict the maximum lump sum for someone, whose pension fund exceeds the lifetime allowance, apply to members of relevant non-UK schemes, even though their UK tax-relieved fund has a value well below that of the lifetime allowance. This misalignment means that the rules about lump sums that may be paid from the UK tax-relieved fund have to be modified in order to work as intended.

7.2 These amendments to the Principal Regulations modify the definitions of the different categories of authorised lump sums in Schedule 29 to the Act in relation to relevant non-UK schemes. They ensure that, after the member has made an election deeming a BCE to occur under paragraph 15 of Schedule 34 to the Act, the relevant non-UK scheme can provide the same lump sums paid out of the UK tax-relieved fund with the same tax treatment as would have been the case before the member's election.

7.3 Regulations 3 to 8 prevent certain lump sums paid by a relevant non-UK scheme from being subject to tax as unauthorised payments. These regulations have effect for all such lump sums to which the member becomes or has become entitled after a BCE is treated as occurring by virtue of an election under paragraph 15 of Schedule 34 to the Act, with effect from 6 April 2006.

7.4 Regulation 9 prevents a relevant non-UK scheme from paying a lifetime allowance excess lump sum as an authorised payment. This regulation has effect for all lump sums of this description paid by a relevant non-UK scheme, in respect of which the member has made an election under paragraph 15 of Schedule 34 to the Act, on condition that the member became entitled to the lump sum after the date of the BCE specified in the notice of election and that this notice was given on or after the date on which the regulations were laid.

Consolidation

7.5 There are no current plans to consolidate the HMRC regulations that is being amended.

8. Consultation outcome

8.1 Draft regulations were published on the HMRC website on 19 January 2009. One representation was received requesting that the relieving provisions in the regulations have effect from 6 April 2006 and the Department has agreed to this request.

9. Guidance

9.1 The International pages of the Registered Pension Scheme Manual are being updated to reflect these regulations. This manual is publicly available on the HMRC website at www.hmrc.gov.uk/manual/rpsmmanual/index.htm.

10. Impact

10.1 The Committee is referred to paragraph 3.1 above.

10.2 On 8 April 2004 the Board of Inland Revenue published a regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and the subordinate legislation that was expected to be made under it. The assessment is available on the HM Revenue & Customs website at http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf or (for hard copies) by writing to the Ministerial Correspondence Unit, 2nd Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The outcome will be subject to internal review after 12 months and the legislation may be amended accordingly.

13. Contact

Stephen Webb at HM Revenue & Customs (tel: 020 7147 2872 or e-mail: stephen.t.webb@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.