

EXPLANATORY MEMORANDUM TO
THE REGISTERED PENSION SCHEMES (MODIFICATION OF THE RULES OF
EXISTING SCHEMES) REGULATIONS 2009

2009 No. 3055

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

2. Purpose of the instrument

2.1 Since 6th April 2006 there has been no requirement for amendments to pension scheme rules to be approved by HMRC. These Regulations modify any provision in the rules of registered pension schemes, as they stood immediately before 6th April 2006, to remove the need for such approval or consent by HMRC. These Regulations have effect in relation to any time on or after 6th April 2006 until the end of the tax year 2010-2011 (or until pension schemes have amended their rules to have the same effect as the modifications if they do so before then).

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

3.1 None.

4. Legislative Context

4.1 Prior to 6th April 2006 ("A Day") all pension schemes had to be approved formally by HMRC in order to receive tax privileges. Additionally, in order to maintain tax privileged status, amendments to the governing documentation of approved pension schemes also had to be approved by HMRC. Because of this many approved pension schemes had written into their rules that those rules could not be amended without the approval of HMRC.

4.2 From A Day the requirement for approval by HMRC was removed. Since then pension schemes have had to register with HMRC to obtain tax privileges. Compliance with the post 6th April 2006 tax rules for registered pension schemes is monitored on a risk basis. Schemes which were tax approved under the previous pensions' tax regime have been treated as registered pension schemes since A Day without the need to formally register (unless they opted out). This means that the rules of many of these schemes still require HMRC clearance for rule changes even though this is no longer a requirement of the tax rules.

4.3 As a consequence of these Regulations a small amendment is needed to some legislation for which the Department for Work and Pensions ("DWP") has responsibility. The amendment is needed to enable trustees of a trust based pension scheme without a power to amend its rules through a rule amendment to modify the scheme by resolution to achieve the same effect as these Regulations. DWP aim to have their regulations in place in 2010.

4.4 This is the first use of the power in section 282(A1) of the Finance Act 2004 which was inserted by the Finance Act 2009.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 Pension schemes are governed by their trust deeds and rules. Some pension schemes require HMRC approval in order to make amendments to the rules of the scheme. These Regulations are needed to modify the requirement to seek approval as it is no longer necessary for HMRC to approve such rule changes.

7.2 These Regulations allow any provision in the rules of a pension scheme which would require the agreement, consent, approval of, or confirmation of continued approval of the scheme by, HMRC in order to make an amendment to a rule of the scheme, to be amended without such consent etc. during the transitional period. The transitional period runs until the earlier of the date the pension scheme alters its rules to say that the modifications made by these Regulations no longer apply or the end of the tax year 2010-2011.

7.3 The transitional period is set out in paragraph 3(2) of Schedule 36 to the Finance Act 2004 and applies to all modifications made by regulations made under paragraph 3 of that Schedule.

- *Consolidation*

7.2 Not applicable.

8. Consultation outcome

8.1 On 20th March 2007 HMRC put a draft of these regulations (“the 2007 draft”) out for consultation with responses requested by 23 April 2007. A full 12-week consultation was not undertaken because the application of the regulations was limited to occupational pension schemes that had been tax approved before 6 April 2006. The pension representative bodies, whose members administered the pension schemes in question, were alerted to the consultation individually.

8.2 The 2007 draft proposed to amend the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 (“the 2006

Regulations”). Three responses to the consultation suggested that this approach would not work because some of the schemes involved would have already amended their rules and closed the transitional period in accordance with paragraph 3(2)(a) of Schedule 36 to the Finance Act 2004 by stating that the 2006 Regulations no longer have effect. In consequence of these comments, these Regulations are a free standing instrument and so the modifications made by them operate independently from the 2006 Regulations.

8.3 Some consultation responses also suggested that changes would be needed to the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (S.I. 2006/759) (“the DWP Regulations”). HMRC and DWP agree that there are a small number of schemes which rely upon the DWP Regulations to give them the power to amend their rules. DWP aim to have their regulations in place in 2010.

8.4 HMRC put these Regulations out for a short limited further consultation in October 2009. The draft went to those who had commented on the 2007 draft. Those who responded were content with the Regulations but pointed out that as the Regulations lapsed on 6 April 2011 it was important that pension schemes were reminded of the need to make any necessary rule amendments before then. In response to this HMRC will be stressing this issue when the Regulations are announced on the HMRC website and will also raise the point at its regular meetings with the pension schemes’ representative bodies.

9. Guidance

9.1 When these Regulations are made and laid, they, together with this Explanatory Memorandum, will be published on HMRC’s website. Details of the Regulations will also be set out in HMRC’s on-line ‘Registered Pension Schemes Manual’ at www.gov.uk/manuals/rpsmanuals/index.htm and in the next available Pensions Simplification Newsletter.

10. Impact

10.1 An Impact Assessment has not been produced for this instrument as it has no impact on the business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Regulations will be assessed as part of HMRC’s more general plans for monitoring the impact of the pension simplification reforms.

13. Contact

David Dodd at Her Majesty’s Revenue and Customs (Tel: 020 7147 2829 or email: david.dodd@hmrc.gsi.gov.uk) can answer any queries regarding these instruments.