EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (PROVISION OF INFORMATION) (AMENDMENT) REGULATIONS 2010

2010 No. 581

1. This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) 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. Purpose of the instrument

2.1 These regulations require scheme administrators to make a report to HMRC where a registered pension scheme has borrowed a sum in excess of the limits set out in the pensions tax legislation. They also specify what information the scheme administrator must provide to HMRC and when. The information is needed by HMRC in order to assess a tax charge on the excess borrowing.

2.2 The regulations also make another amendment, as a consequence of the Registered Pension Schemes (Transfers, Reorganisations and Winding Up)(Transitional Provisions)(Amendment) Order 2010 (SI 2010 no. 529), to ensure that a certain type of pension annuity contract continues to be exempt from the requirement for scheme administrators to notify HMRC of pension schemes having wound up.

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

3.1 None.

4. Legislative Context

4.1 Part 4 of the Finance Act 2004 simplified the tax rules for pension schemes and came into force on 6 April 2006. Under section 251, HMRC was given the power to make regulations requiring persons of a prescribed description to provide HMRC with information of a prescribed description relating to specified matters. The Registered Pension Schemes (Provision of Information) Regulations 2006 (SI 2006 no 567) ("The Information Regulations") were made under that power.

4.2 Those regulations set out, among other things, that a scheme administrator must notify HMRC of the occurrence of any of a list of 'events' that have taken place in that scheme during the tax year. The report is to be made electronically (pursuant to regulation 4 of The Registered Pensions

Schemes and Overseas Pension Schemes (Electronic Communications of Returns and Information) Regulations 2006 (S.I. 2006/570) and after the end of the tax year, but by the following 31 January at the latest. Receipt of this information enables HMRC to issue an assessment for a tax charge on the scheme administrator, in relation to certain of these events.

4.3 Under sections 182 to 185 Finance Act 2004, formulas are set out for calculating the maximum amount of authorised borrowing in any registered pension scheme. The legislation provides that any borrowing in excess of the maximum amount is a scheme chargeable payment. Under section 240 Finance Act 2004, the scheme administrator is liable to a scheme sanction charge at the rate of 40% on the amount of the excess. Such an occurrence however is not currently listed as one of the events which scheme administrators must report to HMRC.

4.4 The Information Regulations include a requirement for the person who was the scheme administrator of a pension scheme immediately before the scheme is wound up to inform HMRC that it has been wound up. But certain types of scheme are exempt from this reporting requirement.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The regulations introduce a new requirement for scheme administrators to provide HMRC with certain information where there is unauthorised borrowing in the scheme without HMRC having to issue a notice to the scheme administrator requiring this information. HMRC will then use that information to assess the scheme administrator to the scheme sanction charge. The new information requirement will apply where, on or after 6 April 2010, the scheme borrows in excess of the limit set out in sections 182 to 185 Finance Act 2004.

7.2 The regulations remove a lacuna from the information requirements for a scheme administrator. The lacuna means that when a scheme administrator has a tax liability in connection with unauthorised borrowing neither the scheme administrator nor any other person is obliged to report to HMRC that the borrowing giving rise to the tax liability has happened, unless specifically issued with an information notice by HMRC. This amendment provides certainty to scheme administrators about their obligations to HMRC in this area. HMRC will use the information provided to issue an assessment to the scheme administrator to collect the scheme sanction charge on the scheme chargeable payment.

7.3 In these circumstances the scheme administrator must provide the required information to HMRC in writing after the end of the tax year in which the excess borrowing took place but by the following 31 January at the latest. This information report will not be covered by the existing electronic report system that scheme administrators use for the reporting of other events to HMRC without notice.

7.4 These regulations also contain a separate amendment to the existing Information regulations, under which certain types of scheme are obliged to inform HMRC when the scheme winds up. This information is used during risk assessment for compliance work and helps HMRC to monitor the significant amount of tax relief it gives out to pension schemes. Certain types of scheme (such as deferred annuity contracts) however are exempt from the requirement under regulation 4(1) to inform HMRC when the scheme winds up because HMRC do not have a separate record of the scheme and so do not need to be informed of it having wound up.

7.5 The Pension Schemes (Transfers, Reorganisations and Winding Up)(Transitional Provisions)(Amendment) Order 2010 (SI 2010 no. 529) turns assigned annuity contracts into registered pension schemes at the point the policy is assigned to the member, where certain conditions are met. HMRC do not need to know that this new type of registered pension scheme has been wound up because HMRC do not have a separate record of such schemes. This instrument therefore makes a consequential change so that such registered pension schemes do not have to tell HMRC they are being wound up.

- ***Consolidation***

7.6 There are no plans to consolidate this instrument.

8. Consultation outcome

8.1 A preliminary informal consultation was carried out with pensions industry representatives, to gain feedback on the administrative burden in introducing a paper-based report system on top of the existing electronic report system for the reporting of other events to HMRC without notice.

8.2 The response was that the pensions industry would prefer there not to be two changes, firstly to a paper-based system and then to an electronic one at a later date. It would not have been practicable for HMRC to add the disclosure of unauthorised borrowings by registered pension schemes to the current electronic report system with effect from the 2010-2011 tax year. Disclosures of unauthorised borrowings in accordance with these regulations therefore only have to be made in writing. However, it is not envisaged that the report will feature in the electronic report system in the near future, which helps the industry in that they only have to adapt their processes to accommodate the paper system for the foreseeable future.

8.3 The pensions industry also fed back that an HMRC-designed form for the purpose of providing the information would be helpful.

8.4 HMRC is working with pensions industry representatives to develop an optional reporting form, which HMRC will make available on its website for scheme administrators to use if they wish. Industry representatives have also had two opportunities to comment on the draft regulations, and these were also discussed face to face at a meeting between HMRC and the Joint Working Group.

9. Guidance

9.1 To draw attention to these new requirements, they will feature in a Newsletter issued by HMRC Pension Schemes Services. The changes will be publicised on the What's New page of the HMRC website, and at the earliest opportunity, guidance will be included in the Registered Pension Schemes Manual (also published on the HMRC website).

10. Impact

10.1 There will only be an impact on business, charities or voluntary bodies if they operate or are otherwise involved in registered pension schemes as a scheme administrator or practitioner. They will need to adopt procedures to collect the information needed to comply with the new requirement. However, the information they are required to provide HMRC with is information which should already be in their possession. Schemes which have no borrowing in excess of the statutory limit do not need to make a report.

10.2 The impact on the public sector is the same as on the private sector.

10.3 An Impact Assessment has not been prepared for this instrument as it has a negligible impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The basis for the final decision on what action to take to assist small business was that in the context of these regulations, pension scheme administrators which are small businesses should be treated the same as any other pension scheme administrator, in line with our compliance strategy. If unauthorised borrowing has taken place in a scheme, HMRC expect this to be reported to it no matter how many people the scheme administrator employs, and a tax charge is due regardless of the size of the business.

12. Monitoring & review

12.1 The effect of the instrument will be monitored through examination of the reports received by HMRC. HMRC will be open to discussion on any difficulties complying with the new requirements, through existing communications channels with the pensions industry.

13. Contact

Sue Marsh at HM Revenue & Customs, Tel: 0115 974 3068 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.