EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (LIFETIME ALLOWANCE TRANSITIONAL PROTECTION) REGULATIONS 2011

2011 No. 1752

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 This instrument provides that an individual may give notice to HMRC that they intend to rely on a new form of transitional protection to reduce or eliminate any potential lifetime allowance charge from April 2012.

2.2 This instrument sets out the steps the individual and HMRC have to take to enable an individual to rely on the transitional protection and what happens if the notice is refused or if the individual no longer meets the conditions for the transitional protection.

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

3.1 None.

4. Legislative context

4.1 This instrument is one of a group of instruments which are part of the changes made to the pension tax regime introduced by the Finance Act 2011 ("FA 2011"). The table annexed to the Explanatory Memorandum for The Registered Pension Schemes (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/1751)shows the full list of instruments that are expected to be laid following the coming into force of FA 2011.

4.2 Part 4 of Finance Act 2004 ("the Act") came into force on 6 April 2006 and makes provision for registered pension schemes. The Act put in place a single regime for tax privileged pension saving, with a number of key controls including: the annual allowance (an annual cap on tax-relieved saving – section 228 of the Act) and the lifetime allowance (a lifetime cap on tax-relieved saving – section 218 of the Act).

4.3 The lifetime allowance acts as a ceiling on the total amount of tax relieved pension savings an individual can amass during their working life. A tax charge - the lifetime allowance charge (section 214 of the Act) - acts as a deterrent to amassing pension savings greater than the lifetime allowance by imposing a tax charge of effectively 55% on savings in excess of the lifetime allowance.

4.4 Paragraph 2(2) of Schedule 18 to FA 2011 amends section 218 of the Act so that the standard lifetime allowance is reduced from the current limit of £1,800,000 to £1,500,000 for the 2012-13 tax year onwards.

4.5 Paragraph 14 of Schedule 18 to FA 2011 provides for individuals to rely on a lifetime allowance of the greater of £1,800,000 or the standard lifetime allowance in certain circumstances if they notify their intention to rely on this paragraph to HMRC.

4.6 Paragraph 14(2) of Schedule 18 to FA 2011 provides the power for HMRC to make regulations specifying how notice is to be given and paragraph 14(15) says that the regulations may include supplementary or incidental provision. This is the first time that any instrument has been made using the power in paragraph 14(2) of Schedule 18 to FA 2011. The instrument is also made under section 251 of the Act which allows HMRC to impose certain information requirements.

5. Territorial Extent and Application

5.1 The 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

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

7.1 The Government provides generous tax relief on pensions savings to encourage individuals to take responsibility for retirement planning and to recognise that pensions are less flexible than other forms of saving. However, the cost of tax relief net of income tax on pensions doubled over the past decade to an annual cost of around £19bn by 2008-09. Reform to pensions tax relief is an integral part of the Government’s deficit reduction package and as part of these reforms the Government has introduced restrictions to the amount of tax-free pension savings that can be made to ensure that pensions tax relief remains fair, affordable and sustainable.

7.2 The level of the standard lifetime allowance will reduce from its current level of £1,800,000 to £1,500,000 from the 2012-13 tax year onwards.

7.3 In recognition that reducing the lifetime allowance creates a potential issue for individuals who may have already built up pension pots on the expectation that the lifetime allowance would remain around its current level of £1,800,000, the

Government introduced a protection regime to support individuals who had already made pension savings decisions based on the current level of the lifetime allowance.

7.4 Individuals who have built up pension pots on the expectation that the lifetime allowance would be around its current level of £1,800,000 can apply for transitional protection which gives them a lifetime allowance of the greater of £1,800,000 and the standard lifetime allowance. In return for this protection they must, by 6 April 2012, cease all contributions to any defined contribution arrangement and stop accruing new benefits in any defined benefit or cash balance arrangement in a registered pension scheme. There are also further conditions which the individual must satisfy set out in the legislation such as the fact that they must not have, or must surrender, certain protection which they previously held at the time that the Act came into force.

7.5 The instrument being made sets out the process for how individuals notify HMRC of their intention to rely on the transitional protection and the actions HMRC have to take.

- ***Consolidation***

7.6 The instrument does not amend another instrument so consolidation is not appropriate.

8. Consultation outcome

8.1 The Government held an informal consultation which concluded on 27 August 2010 on its proposed approach to restricting pensions tax relief, involving reform of existing allowances. A discussion document "Restriction of pensions tax relief: a discussion document on the alternative approach" was published in July 2010, inviting views on a range of issues around the precise design of any such regime. A Summary of Responses document "Restricting pensions tax relief through existing allowances: a summary of the discussion document responses" was published in October 2010 in which the government recognised the need for transitional protection for individuals who had already planned for their pension to grow to a level of £1,800,000.

8.2 The instrument was published in draft for comment on the HMRC website on 23 May 2011 and 4 responses were received on the proposed draft legislation. Minor changes were made as a result of the consultation.

9. Guidance

9.1 Draft guidance on the transitional protection has been available on HMRCs website since 9 December 2010 at http://www.hmrc.gov.uk/pensionschemes/lifetime-allowance/index.htm. HMRC are in the process of finalising the guidance to reflect the final legislation including this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies of this instrument is negligible as this instrument provides for information individuals have to provide and what actions HMRC have to take when an individual wishes to rely on the transitional protection.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note covering this instrument was published on 9 December 2010 alongside draft legislation for the Finance (No.3) Bill 2011 concerning the restriction of pensions tax relief. This was updated on 3 March 2011 to reflect further decisions relating to the restriction of pensions tax relief and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does apply to small businesses.

11.2 The impact of this instrument on small firms has been considered as part of the consultation but is negligible for all business.

12. Monitoring & review

12.1 The policy will be monitored through information collected from HMRC databases, tax returns, receipts and other statistics.

13. Contact

13.1 Angela Miles at HMRC, telephone: 020 7147 3635 or email: pensions.policy@hmrc.gsi.gov.uk, can answer any queries regarding this instrument.