EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (PROVISION OF INFORMATION) (AMENDMENT) (NO. 2) REGULATIONS 2011

2011 No. 1797

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 makes a number of amendments to The Registered Pension Schemes (Provision of Information) Regulations 2006 (SI2006/567) ("the Regulations"), to reflect changes made by the Finance Act 2011 ("FA 2011") to the pensions tax regime in the Finance Act 2004 ("the Act") which remove the effective need to take an annuity by age 75 and reduce the amount of tax relief an individual can receive on their pension savings.

2.2 This instrument amends the Regulations and prescribes certain information requirements for scheme administrators of a registered pension scheme and sponsoring employers of occupational schemes in consequence of the reduction of the annual allowance from tax year 2011-12 and the lifetime allowance from tax year 2012-13. The instrument also sets out the information requirements for scheme administrators where they make a flexible drawdown payment and makes further consequential amendments to the Regulations as a result of age 75 changes introduced from April 2011.

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 FA 2011. The annex to the Explanatory Memorandum for The Registered Pension Schemes (Miscellaneous Amendments) Regulations 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 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 two key controls on the amount of tax relief available, the lifetime allowance (section 218 of the Act) and the annual allowance (section 228 of the Act). Any pension savings that exceed the lifetime allowance are subject to a charge to income tax known as the lifetime allowance charge (section 214 of the Act) and any savings that exceed the annual allowance are subject to a charge to income tax, known as the annual allowance charge (section 227 of the Act).

4.3 Paragraph 4 of Schedule 17 to FA 2011 amends section 228 of the Act and reduces the annual allowance to £50,000 from the 2011-12 tax year. Paragraph 2 of Schedule 18 to FA 2011 amends section 218 of the Act and reduces the lifetime allowance to £1.5m from the 2012-13 tax year.

4.4 Paragraph 14 of Schedule 18 to FA 2011 provides transitional protection (‘fixed protection’) from the reduced lifetime allowance and provides that an individual may notify HMRC if they want to rely on a lifetime allowance of £1.8m from April 2012, but in return they must cease to accrue any new benefits in registered pension schemes. The Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 set out the requirements for an individual to notify HMRC that they want to rely on fixed protection and for HMRC to provide the individual with a certificate.

4.5 Schedule 16 to FA 2011 amends the Act as it relates to certain tax rules relating to registered pension schemes that apply to individuals reaching the age of 75. Paragraph 1 of Schedule 16 amends sections 165 and 167 of the Act by inserting a new subsection (3A) and (2A) respectively. These new subsections introduce a new type of pension drawdown (flexible drawdown) which enables scheme members and dependants to fully access their drawdown funds without any annual cap providing certain conditions are met. The conditions are set out in new subsection (3B) and (2B) of section 165 and section 167 of The Act.

4.6 Section 251 of the Act provides that HMRC may make provision in regulations for persons of a prescribed description to provide information to HMRC or other persons of a prescribed description, in relation to matters relating to registered pension schemes. The Regulations are made under these powers and set out the various information provisions required to support the amendments made to the Act by FA 2011.

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 tax relief to encourage individuals to take responsibility for retirement planning and in recognition that pensions have been traditionally 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

7.2 The level of the annual allowance has reduced from £255,000 in the 2010-11 tax year to £50,000 for the 2011-12 tax year onwards. This reduction means more individuals will be affected by the annual allowance charge than previously. Although the Government anticipates that most individuals, employers and pension schemes will adapt their behaviour so that pension savings remain below the annual allowance, some people will trigger tax charges. To help such individuals calculate their annual pension savings, this instrument sets out new requirements on scheme administrators of registered pension schemes to tell the member automatically if their pension savings exceed the annual allowance as well as to provide information to the member about their pension savings if they request it. This instrument also introduces a new requirement on sponsoring employers of defined benefit schemes to provide information to the scheme administrator to enable them to calculate the members pension savings.

7.3 In addition to the reduction in the annual allowance, the level of the lifetime allowance will reduce from £1.8m in the 2011-12 tax year to £1.5m for the 2012-13 tax year onwards. As some individuals may have built up pension pots on the expectation that the lifetime allowance would continue to be no less than £1.8m, the Government has introduced a transitional protection regime (fixed protection) that supports these individuals and which allows them to apply for a lifetime allowance of £1.8m, but in return they must stop contributing to money purchase schemes and cease to accrue new benefits in defined benefit or cash balance schemes. In order to monitor compliance of fixed protection, this instrument sets out the information that members must provide to scheme administrators and which scheme administrators must provide to HMRC where the member has fixed protection.

7.4 The Government's pension benefit reforms make the pension tax system simpler by removing unnecessarily restrictive and outdated rules applying to annuities and income drawdown arrangements, and simplifying the pensions tax framework. The reforms provide greater flexibility for individuals over how and when they can access pension savings in retirement through the introduction of flexible drawdown and by the removal of most of the rules preventing registered pension schemes from paying lump sum benefits after the member has reached the age of 75.

7.5 Individuals who meet the flexible drawdown conditions will have full access to their drawdown funds without any annual cap. All withdrawals from drawdown funds will be subject to tax as pension income, subject to exemptions for non-residents under double taxation arrangements. In order to monitor compliance with the flexible drawdown conditions this instrument sets out the information that scheme administrators must provide to HMRC in the event that they pay flexible drawdown payment(s) to the member.

7.6 This instrument also create a new online reporting requirement with effect from the tax year 2012-13 onwards requiring the scheme administrator to provide HMRC with specified information when flexible drawdown payments are made. These Regulations also create a similar reporting requirement effective for the tax year 2011-12 only requiring the scheme administrator to provide the same specified information to HMRC about flexible drawdown payments in writing.

7.7 This instrument also makes further consequential amendments following the changes to the Act made by FA 2011 to reflect both the removal of the age 75 limit applying to most lump sums and the introduction of drawdown pensions in the place of unsecured pensions.

- ***Consolidation***

7.8 There are no plans to consolidate the instrument that is being amended.

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 to this consultation was published on 14 October 2010. A further informal consultation "Options to meet high annual allowance charges from pension benefits: a discussion document" was published in November 2010 and concluded on 7 January 2011. A Summary of Responses document "Options to meet high annual allowance charges from pension benefits: a summary of the discussion document responses" was published on 3 March 2011 setting out that the Government intended to legislate for the facility for annual allowance charges being met from pension benefits.

8.2 A consultation document "Removing the requirement to annuitise by age 75" was published on 15 July 2010, inviting views on the issues around the precise design of the new rules which would be required to achieve this. The formal consultation concluded on 10 September 2010. A summary of responses to this consultation was published on 9 December 2010.

8.3 The draft regulations relating to the annual allowance were published for comment on the HMRC website on 10 February 2011 and about 20 responses were received. An updated draft taking account of many of the comments was published on 23 May 2011 along with draft regulations relating to the reduced lifetime allowance. The draft Regulations relating to the age 75 pension benefit reforms were published for comment on the HMRC website on 31 March 2011 and 23 May. About 15 responses were received on these drafts and further amendments were made to the regulations relating to the annual allowance as a consequence of these responses to reduce the burdens on scheme administrators and ensure the regulations work as intended.

9. Guidance

9.1 Draft guidance on the annual allowance has been available on the HMRC website since 14 October 2010 at www.hmrc.gov.uk/pensionschemes/annual-allowance/index.htm. Draft guidance on the lifetime allowance has been available on the HMRC website since 9 December 2010 at www.hmrc.gov.uk/pensionschemes/lifetime-allowance/index.htm.

9.2 Draft guidance on the age 75 changes was also published on the HMRC website on 31 March 2011 at http://www.hmrc.gov.uk/budget-updates/march2011/pensions-draft-guidance.pdf.

9.3 All the guidance will be updated at the next available opportunity to reflect the final legislation.

10. Impact

10.1 This instrument will impact on business, charities or voluntary bodies where the business is a registered pension scheme or an employer sponsoring a registered pension scheme, as it introduces new reporting requirements for pension scheme administrators and these employers in a number of circumstances. Further information about this can be found in the Tax Information and Impact Notes.

10.2 The impact on the public sector is the same as for other businesses.

10.3 A Tax Information and Impact Note ('TIIN') concerning the restriction of pensions tax relief was published on 9 December 2010 alongside draft legislation for the Finance (No.3) Bill 2011. This was updated on 3 March 2011 to reflect further decisions relating to the restriction of pensions tax relief. A separate TIIN covering the removal of the effective requirement to annuitise by age 75 was published on 9 December 2010. Both TIINs are available on the HMRC website at www.hmrc.gov.uk/thelibrary/tiins.htm. They each remain an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 The impact on small firms has been considered as part of the consultation. It would however not be appropriate for the policy to apply differently according to the size of firms within which the affected individuals operate.

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 Paul Cottis at HMRC, telephone: 0115 974 2420 or email: pensions.policy@hmrc.gsi.gov.uk, can answer any queries regarding this instrument.