EXPLANATORY MEMORANDUM TO

THE OVERSEAS PENSION SCHEMES (MISCELLANEOUS) REGULATIONS 2015

2015 No. 673

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

2. Purpose of the instrument

This instrument aligns the reporting requirements for overseas pension schemes more closely with those for registered pension schemes following the changes introduced by the Taxation of Pensions Act 2014, which received Royal Assent on 17 December 2014.

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

None

4. Legislative Context

4.1 These Regulations amend the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 (S.I. 2006/206) and the Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 (S.I. 2006/208).

4.2 Transfers of UK pension savings that have received tax relief can be made free of UK tax to overseas pension schemes that meet the conditions to be a qualifying recognised overseas pension scheme (QROPS).

4.3 S.I. 2006/206 sets out the conditions to be a 'recognised overseas pension scheme' which a scheme must meet in order to be a QROPS. This instrument amends those conditions so that pension benefits payable under a scheme as far as they relate to funds that have received UK tax relief, must be payable no earlier than they would be under the rules that apply to a UK registered pension scheme.

4.4 S.I. 2006/208 sets out the information that a scheme manager of a QROPS is required to undertake to provide to meet the scheme's obligations as a QROPS. This instrument amends those requirements. It sets out the information that a scheme manager is required to provide when an individual flexibly accesses their pension rights under that scheme and the circumstances in which the individual must provide information on their flexible access to other schemes they belong to. It also sets out the information a scheme manager must provide on transferring pension rights to another scheme.

4.5 The amendments to S.I. 2006/208 are based on the way that section 227G of Finance Act 2004 (inserted by paragraph 65 of Schedule 1 to the Taxation of Pensions Act 2014) is applied by paragraphs 9ZA and 9ZB of Schedule 34 to Finance Act 2004 (inserted by paragraph 95(7) of Schedule 1 to the Taxation of Pensions Act 2014). This means that overseas pension schemes are treated as registered pension schemes for the purposes of the pension flexibility provisions and the annual allowance charge. This allows terms that are specific to registered pension schemes and defined in Finance Act 2004 to carry the same meaning where used in connection with the annual allowance charge. Some of those terms, however, also have independent application to overseas schemes and for example to the member payment charges in Schedule 34 to the Finance Act 2004.

5. Territorial Extent and Application

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 tax regime for pension savings provides that individuals leaving the UK can transfer their tax-relieved pension savings to a pension scheme established in another country. The intention is to allow people permanently leaving the UK to simplify their affairs by taking their pension savings with them to their new country of residence. Provided the overseas pension scheme meet certain conditions, transfers can be made free of UK tax (subject to a charge on any funds above the lifetime allowance, currently £1.25 million).

7.2 This instrument makes a change to more closely align registered pension schemes and overseas schemes. In order to be able to accept transfers of UK tax-relieved pension savings free of UK tax, all schemes will need to provide that pension benefits from the transferred funds are payable no earlier than they would be under the rules of a registered pension scheme. This is intended to discourage people from transferring to overseas schemes so that they can access their UK tax-relieved pension savings before they would be able to under a registered pension scheme.

7.3 This instrument also mirrors some of the information requirements that arise from pension flexibility for registered pension schemes. This is so that members of registered schemes and of overseas schemes where UK tax relief has been provided will receive similar treatment for tax purposes.

7.4 This instrument also introduces a requirement to help scheme managers of QROPS fulfil their obligation to report payments from transferred funds. It requires a scheme manager of a QROPS or former QROPS making a transfer to another QROPS to tell the scheme manager in the recipient QROPS that the funds being transferred consist (at least in part) of funds that came from a registered pension scheme, if that is the case, the value of those funds and the date the transferring scheme received those funds. This helps the scheme manager of the recipient QROPS know when the 10-year reporting requirements for payment out of those funds ends.

- Consolidation

7.5 The Regulations will amend S.I. 2006/206 and S.I. 2006/208. Neither of the Regulations will be consolidated.

8. Consultation outcome

This instrument was published on 19 December 2014 for a four-week technical consultation in line with the Tax Policy Framework. There were 20 responses, most of which were minor and technical in nature. As a result of the consultation the changes to the information requirements have been shortened and the “70% rule” (which requires 70% of funds that have received UK tax relief, either in connection with contributions or as a result of a tax-free transfer, to be designated to provide the individual with an income for life) remains in place temporarily. This is so that, in the light of subsequent events, the legislation to replace the 70% rule can be targeted more precisely to ensure that the principles behind allowing transfer to be made free of UK tax can continue to operate as Parliament intended.

9. Guidance

Draft guidance was published on 21 October 2014 on the clauses in the Taxation of Pensions Bill as it was introduced to Parliament. Further guidance will be provided to include the requirements introduced by this instrument.

10. Impact

10.1 The legislation will have a negligible impact on business and no impact on charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is not expected to be significant.

10.3 An updated Tax Information and Impact Note for the Taxation of Pensions Act 2014 was published on 10 December 2014 to reflect decisions relating to pension flexibility. It remains an accurate summary of the impacts that apply to the overall policy and this instrument.

10.4 The Tax Information and Impact Note is available on the GOV.UK website at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385065/TIIN_8130_2140.pdf

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to restrict some of the reporting and processes requirements together with delaying the introduction of re-notification of QROPS.

12. Monitoring & review

The impact of the changes will be monitored through information collected from HM Revenue & Customs databases, tax returns, receipts and other statistics.

13. Contact

Beverley Davies at the HM Revenue & Customs Tel: 03000 585266 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.