EXPLANATORY MEMORANDUM TO

THE PENSION SCHEMES (CATEGORIES OF COUNTRY AND REQUIREMENTS FOR OVERSEAS PENSION SCHEMES AND RECOGNISED OVERSEAS PENSION SCHEMES) (AMENDMENTS) REGULATIONS 2017

2017 No. 398

1. Introduction

1.1 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 amends the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 (S.I. 2006/206) (the "2006 Regulations").

2.2 It sets out changes to the requirements that a pension scheme based outside the UK must meet for an individual to get UK tax relief on contributions or transfers to such a scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument amends the 2006 Regulations.

4.2 Certain transfers of pension savings that have had UK tax relief may be made free of UK tax (up to the lifetime limit on tax-relieved pension savings) to overseas pension schemes that meet the requirements to be a qualifying recognised overseas pension schemes (QROPS).

4.3 The 2006 Regulations set out the requirements to be an 'overseas pension scheme' (that a scheme must meet to be a qualifying overseas pension scheme (QOPS)) and the requirements to be a 'recognised overseas pension scheme' (that a scheme must meet in order to be a QROPS).

4.4 This instrument provides that it is no longer a requirement for any schemes to designate 70% of funds that have received UK tax relief for the purpose of providing the individual with an income for life in order to be a QOPS or a QROPS.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 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 Following the introduction of pension flexibility, changes were made to the 2006 Regulations. These changes aligned registered pension schemes and overseas schemes more closely and ensured that pension benefits payable under a scheme as far as they relate to funds that have received UK tax relief, were payable no earlier than they would be under the rules that apply to a UK registered pension scheme (the normal minimum pension age, currently age 55).

7.2 However, paragraph 8 of the explanatory memorandum to the Overseas Pension Schemes (Miscellaneous) Regulations 2015 (S.I. 2015/673) explained that the rule requiring 70% of UK tax-relieved funds in overseas schemes to be used to provide the individual member of the scheme with an income for life (the "70% rule") would remain in place.

7.3 This instrument removes the 70% rule and requires the provider of a non-occupational pension scheme to be regulated in the country where the scheme is established if the scheme itself is not regulated. This ensures that where there is a regulator, then the pension scheme or the provider of the scheme, as the case may be, will be regulated.

7.4 This instrument also amends the pension age test to allow schemes the ability to pay benefits earlier than they would under pension rule 1 that applies to UK registered pension scheme (which provides that, generally, pension benefits are payable no earlier than normal minimum pension age, which is currently age 55) if it would be an authorised payment if paid by a registered pension scheme.

7.5 This instrument also expands the type of agreement that enables a country to be a prescribed country to include a tax information exchange agreement providing for exchange of information between fiscal authorities. This provision will allow for more schemes to meet the requirements to be a recognised overseas pension scheme.

Consolidation

7.6 The Regulations will amend the 2006 Regulations. They will not be consolidated.

8. Consultation outcome

8.1 This instrument was subject to consultation from 5 December 2016 to 1 February 2017. The main focus of the consultation responses was the bodies that would constitute a regulatory body of a pension provider and the types of payments that a pension scheme would be able to make and meet the revised pension age test. The final version of this instrument has also taken into account the response on the construction of the regulations.

9. Guidance

9.1 Guidance on this instrument will be included in the next available update of the HMRC Pensions Tax Manual.

10. Impact

10.1 The impact on business is to ensure that more of the providers of pension schemes that meet the conditions to receive UK tax-relieved funds are regulated for pension provision in their home country. The instrument will also make it simpler for pension schemes to meet the conditions to receive UK tax-relieved funds because if the country in which the scheme is established has a tax information exchange agreement with the UK, then it will meet the condition currently met, in part, by the 70% rule. No impact on charities or voluntary bodies is foreseen.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Assessment covering this instrument was published on 5 December 2016 alongside draft legislation for consultation and is available on the gov.uk website at https://www.gov.uk/government/publications/foreign-pension-schemes. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 There is no special provision to minimise the impact of the requirements on small businesses (employing up to 50 people), as the legislation makes it simpler and clearer for all businesses to meet the requirements to receive UK tax-relieved funds.

12. Monitoring & review

12.1 The impact of the changes will be monitored through information collected from HMRC databases, tax returns, receipts and other statistics.

13. Contact

13.1 Beverley Davies at the HMRC Telephone: 03000 512336 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.