

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES
(AUTHORISED PAYMENTS) AMENDMENT REGULATIONS 2009

2009 No. 2930

1. This Explanatory Memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations align pensions legislation with recent regulations introduced by HM Revenue and Customs (HMRC). The Registered Pension Schemes (Authorised Payments) Regulations 2009 introduced by HMRC add categories of payments to the list of authorised payments that a registered pension scheme can make without attracting a taxation charge. An ‘authorised payment’ is a permitted payment of a pension or annuity or of a lump sum payable on retirement and, unlike ‘unauthorised payments’, is not subject to a taxation charge. The list of authorised payments has been extended to include payments of certain small sums or pensions (where the member receives a payment equivalent to the value of the fund).

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

3.1 None.

4. Legislative Context

4.1 The HMRC regulations introduce new types of payments that a registered pension scheme can make to its members from 1st December 2009. All payments that are not authorised payments are liable to a special charge to income tax. This charge is known as the unauthorised payment charge.

4.2 The tax charge on unauthorised payments is intentionally high as it is designed to recoup all relief on payments that are not used to provide pension benefits as intended when the relief was given. These Regulations ensure that pensions legislation makes the correct reference to the new provisions in tax legislation that identify the authorised payments. These Regulations come into force on 1st December 2009 to coincide with the HMRC regulations.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

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 Government have identified a number of situations where the tax rules treat payments from a pension scheme as unauthorised but where it would produce a fairer tax treatment for the recipient if they were treated as authorised payments. These include lump sums representing the payment of certain small pots.

7.2 The HMRC regulations enable these payments to be treated as authorised payments and taxed in the same way as other payments that a scheme is authorised to make to a member. Without the HMRC regulations, such payments would be taxed on the member at up to 55 per cent as unauthorised payments.

7.3 The HMRC regulations are aimed at easing the tax burden on scheme members making it easier for them to access very small funds and, at the same time, reducing the administrative burden for pension scheme administrators.

- **Consolidation**

7.4 The Government accepts the need for consolidation of pensions legislation in due course. Most users of pensions legislation are pensions professionals who will have access to their own online resource materials. In addition the Department for Work and Pensions publishes the "Blue Volumes", which can be accessed by members of the public on the internet. The Blue Volumes contain the legislation for which the Department is responsible. The legislation is presented in a consolidated format and is updated regularly. The weblink is:
http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf.

8. Consultation outcome

8.1 These regulations amend current pensions legislation that set out the rules for taking small amounts as a lump sum. All our amendments reflect the easements made by the HMRC Regulations and follow a short consultation with stakeholders.

8.2 Comments received during the consultation demonstrated that stakeholders were happy that we were reflecting HMRC's changes. The comments were mainly of a minor technical nature.

8.3 Comments were received on the references to Part 4 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 which referred to payments made in error. DWP considered those comments and decided

that such payments did not need to be referenced in these regulations as they are already covered by the HMRC legislation.

9. Guidance

- 9.1 Guidance on the changes introduced through the HMRC regulations is included in the HMRC Registered Pension Schemes Manual which is available on the HMRC website at www.hmrc.gov.uk/manuals/rpsmmanual/index.htm

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 The impact on the public sector is the same as for business – an easement for those involved in pensions administration.
- 10.3 A full impact assessment has not been produced for this instrument as it has only a negligible impact on the private and voluntary sectors. An impact assessment was produced by HMRC of the Government's intention to make the changes to the tax legislation. This accompanied the Budget announcement made on 12th March 2008 and is available on the HMRC website at <http://www.hmrc.gov.uk/budget2008/widen-scope-authpyt.pdf>

11. Regulating small business

- 11.1 The legislation applies to small business and, as above, has a negligible impact on small business.

12. Monitoring & review

- 12.1 HMRC will assess the impact of the HMRC legislation. That assessment will be influential for assessing the impact of this instrument.

13. Contact

Neil Vosper at Department for Work and Pensions (tel: 020 7449 7397 or e-mail: neil.vosper@dwp.gsi.gov.uk) can answer any queries regarding the instrument.