EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2011

2011 No. 1751

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 These regulations make a number of consequential amendments to various existing 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.

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 this memorandum contains a full list of instruments which 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 a number of key controls including the lifetime allowance (section 218) and the annual allowance (section 228) which act as a cap on tax-relieved pension saving. Section 160 of the Act provides that the only payments that a registered pension scheme is authorised to make to or in respect of a member are those set out in section 164. Sections 165 and 167 and Schedule 28 make further provision about pension payments and section 166 and 168 and Schedule 29 make further provision about lump sum payments. Payments that are not authorised are unauthorised payments and are subject to certain tax charges set out in sections 208 to 210 and section 239 of the Act.

4.3 A number of the pension and lump sum rules in sections 165 to 168 are set by reference to age 75, so that tax-relieved pension savings must be used to secure an income by the time the individual reaches age 75 and various lump sums can only be authorised payments if the individual becomes entitled to them before they reach age 75.

4.4 Schedule 16 to FA 2011 amends the Act as it relates to these tax rules relating to registered pension schemes that apply to individuals reaching the age of 75.

Paragraph 1 of Schedule 16 amends section 165 of the Act to remove the requirement to take a secure income by age 75 and paragraph 23 amends Schedule 29 to the Act to allow individuals to become entitled to certain lump sums after age 75. Part 2 of Schedule 16 makes various consequential amendments to the Act as a result of these changes.

4.5 The following regulations are amended by these regulations in consequence of measures contained in Schedule 16 to FA 2011:

- The Pension Benefits (Insurance Company Liable as Scheme Administrator) Regulations 2006 (SI 2006/136)
- The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 (SI 2006/574)
- The Registered Pension Schemes (Relevant Annuities) Regulations 2006 (SI 2006/129)
- The Registered Pension Schemes (Meaning of Pension Commencement Lump Sum) Regulations 2006 (SI 2006/135)
- The Registered Pension Schemes (Authorised Payments) Regulations (SI 2009/1171)
- The Registered Pension Schemes (Prescribed Manner of Determining Amount of Annuities) Regulations 2006 (SI 2006/568).

4.6 Paragraph 4 of Schedule 17 to FA 2011 amends section 228 of the Act and reduces the annual allowance from £255,000 in the 2010-11 tax year to £50,000 from the 2011-12 tax year and paragraph 2 of Schedule 18 to FA 2011 amends section 218 of the Act and reduces the lifetime allowance from £1.8m in the 2011-12 tax year to £1.5m from the 2012-13 tax year.

4.7 Paragraph 15 of Schedule 17 to FA 2011 inserts sections 237A to 237F into the Act enabling members of registered pension schemes to require the scheme administrator to pay the annual allowance charge on behalf of the member in certain circumstances. Section 237B sets out when the scheme administrator is liable to the annual allowance charge. Section 254 of the Act, sets out that a scheme administrator must make returns to HMRC of the income tax to which they are liable and sets out when returns must be made. A return under section 254 must show the income tax to which the scheme administrator is liable and any other particulars as required by regulations. The Registered Pension Schemes (Accounting and Assessment) Regulations 2005 (SI 2005/3454) are made under this power. These regulations amend SI 2005/3454 so as to provide for the particulars required in a return where the scheme administrator is liable to the annual allowance charge under section 237B of the Act. A further consequential amendment is made to The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (SI 2006/207) necessitated by the reduction in the annual allowance from £255,000 to £50,000.

4.8 A further consequential amendment is also made to The Registered Pensions Schemes (Authorised Payments) Regulations necessitated by the reduction in the standard lifetime allowance from £1.8M to £1.5M.

4.9 The amendments relating to the decrease in the annual allowance and the removal of the age 75 restrictions have retrospective effect for the 2011-12 tax year and subsequent years under the power contained in section 282(A1) of the Act. This power was modified by paragraph 108 of Schedule 16 to FA 2011 enabling it to be exercised in the case of consequential amendments necessitated by the introduction of Schedule 16 despite the changes resulting in an individual becoming subject to an increase in tax. The amendment to the Pension Benefits (Insurance Company Liable as Scheme Administrator) Regulations 2006 is the only amendment that potentially may increase an individual's liability to tax.

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 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 annual allowance has therefore been reduced from £255,000 to £50,000 for the 2011-12 tax year onwards and the lifetime allowance has been reduced from £1.8m to £1.5m for the tax year 2012-13 onwards. Individuals can apply for transitional protection in respect of existing pension rights up to £1.8m provided that such an application is made before the start of the 2012-13 tax year and certain conditions are met.

7.3 Alongside the restrictions on relief, the Government has made reforms to pension benefits, which are intended to make pension saving more flexible and attractive and encourage people to take greater responsibility for their financial future. Ending the rules that create an effective obligation to purchase an annuity by age 75 and removing the age 75 cap which applies to most authorised lump sum payments made from registered pension schemes supports the Government's objective to re-invigorate private pensions and provides people with greater flexibility to choose the retirement options that are best for them.

7.4 These regulations bring together a number of consequential changes required to existing regulations as a result of the changes in FA 2011.

- ***Consolidation***

7.5 There are no plans to consolidate the instruments that are being amended.

8. Consultation outcome

8.1 The Government held an informal consultation in March 2010 which concluded on 27 August 2010 on its proposed approach to restricting pensions tax relief, involving reform of existing allowances. A discussion document on the subject "Restriction of pensions tax relief: a discussion document on the alternative approach" was published in July, 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 to be 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 required to do so. This consultation concluded on 10 September 2010. A summary of responses to this consultation was published on 9 December 2010.

8.3 All of the drafts of the regulations being amended were published for comment on the HMRC website on 23 May 2011 except those relating to non-uk schemes. These were not published as they are very minor consequential amendments. About 15 responses were received on the proposed draft legislation. Some changes were made to the regulations as a result of the representations to ensure that they work as intended. The main point raised was that some insurers were concerned about the impacts of the proposed changes to SI 2006/568 on certain variable annuity products relying on one of the rules in that instrument, which is based in part on the drawdown pension rules. The consultation version of the instrument has been changed to remove the potential impacts and give more time to consider the issue further with respondents.

9. Guidance

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

9.2 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. Guidance on the process for registered pension schemes to meet annual allowance charges from pension benefits will be published on the HMRC website shortly.

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

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

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 does apply 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.

ANNEX

The Registered Pension Schemes (Miscellaneous Amendments) Regulations 2011

The Registered Pension Schemes (Provision of Information) (No.2) Regulations

The Registered Pension Schemes (Prescribed Requirements of Flexible Drawdown Declaration) Regulations 2011

The Registered Pension Schemes (Relevant Income) Regulations 2011

The Registered Pension Schemes (Notice of Joint Liability for the Annual Allowance Charge) Regulations 2011

The Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011

The Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) (No.2) Regulations 2011

The Taxation of Pension Schemes (Transitional Provisions) Order 2011

The Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011

The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011[1]

[1] DWP legislation.