EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (TRANSFER OF SUMS AND ASSETS) (AMENDMENT) REGULATIONS 2008

2008 No. 1946

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

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 These Regulations amend the Registered Pension Schemes (Transfers of Sums and Assets) Regulations 2006 (S.I. 2006/499) ("the principal Regulations"). The amendments are required because of amendments made by Finance Act 2008 to section 172A of the Finance Act 2004 ("FA 2004").

2.2 The Regulations ensure that where the obligation to pay a lifetime annuity or a dependant's annuity has been transferred from one insurance company to another one the transfer will not be treated as an unauthorised member payment by virtue of being a surrender of a member's rights to receive payments under the original annuity. However this is only to the extent that the funds transferred from one insurance company to another are applied to the payment of the new annuity. The Regulations achieve this by treating the new annuity as if it were the original annuity.

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

3.1 A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- the total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- the Department's Better Regulation and Policy team has confirmed that
    - there are no disproportionate impacts on any business or sector; and
    - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes.

3.2 The amendments to the principal Regulations have retrospective effect for surrenders and agreements to surrender made between 10 October 2007, (the day after changes to the relevant primary legislation were announced in the Pre Budget Report) and when the amending Regulations take effect. The power for the Regulations to have retrospective effect, provided they do not increases any person's tax liability, is provided under paragraph 2 of Schedule 29 to Finance Act 2008. This amends the regulation-making powers in Schedule 28 to FA 2004 by inserting new paragraphs 3(2CA) and 17(4A) into that Schedule. The Finance Act received Royal Assent on 21 July.

4. Legislative Background

4.1 Part 4 of FA 2004 sets out the rules for the taxation of pension schemes. The rules setting out the pension payments that are authorised member payments are in sections 164, 165 and 167 of FA 2004. Terms used in sections 165 and 167 FA 2004 are further defined in Schedule 28 to FA 2004.

4.2 Payments made from sums or assets held for the purposes of a registered pension scheme to or in respect of a member, which are not authorised member payments are unauthorised member payments under the rules in Part 4 of FA 04 and are subject to particular income tax charges under sections 208, 209 and 239 of FA 2004.

4.3 Section 172A of FA 2004 sets out the rules that treat the surrender of benefits or rights under a registered pension scheme as an unauthorised member payment in certain circumstances. Paragraph 3 of Schedule 28 to the Finance Act 2008 extends the scope of section 172A to include surrenders of (or agreements to surrender) rights to receive payments from an insurance company under a lifetime annuity or dependants' annuity. This applies to surrenders and agreements to surrender made on or after 10 October 2007.

4.4 New section 172A(5)(ca) provides that the section will not apply when the surrender is covered by regulations made under paragraphs 3(2B) and 17 of Schedule 28 to FA 2004 and these regulations are the principal Regulations.

4.5 Before their amendment the principal Regulations applied to the transfer of sums and assets by an insurance company as a consequence of the cessation of a lifetime annuity or dependants' annuity with that company. Such a transfer can be treated as an unauthorised member payment made by the registered pension scheme in respect of which that lifetime or dependants' annuity is related. Where sums and assets are transferred as part of a transaction transferring obligations to pay a lifetime annuity, the principal Regulations provide that the transfer is not treated as an unauthorised payment only to the extent that the sums and assets are applied by the insurance company receiving them to the payment of the new annuity. However, where the sums and assets are transferred as part of a transaction transferring obligations to pay a *dependants' annuity*, none of the sums and assets transferred are treated as an unauthorised payment.

4.6 In addition to the existing provisions in the principal Regulations described in paragraph 4.5, which will remain, the amendments to the principal Regulations ensure that the surrender of rights to receive a lifetime or dependants' annuity that occurs as a consequence of a transfer of the obligations to pay that annuity from one insurance company to another is also not treated as an unauthorised member payment under the extended scope of section 172A FA 2004. This applies to lifetime annuities by virtue of the amendment the regulations make to Table 2 in regulation 6 in the principal Regulations; and to dependants' annuities by virtue of the new regulation 10(1) in the principal Regulations.

4.7 The protection that regulation 10 in the principal Regulations, as unamended, gave from the unauthorised member payment tax charges when a transfer of sums and assets takes place as part of a transaction transferring obligations to pay a dependants' annuity from one insurance company to another is retained in regulation 10(2) of the principal Regulations, as amended.

4.8 These Regulations and the principal Regulations are made under Paragraphs 3 and 17 of Schedule 28 of 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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The simplified tax regime for pension schemes was introduced in the Finance Act 2004 and came into effect on 6 April 2006. One of the requirements is that tax relieved pension savings are used to provide an income in retirement for the member and their dependants and are not used to provide pre-retirement income, asset accumulation or inheritance.

7.2 Changes introduced in the Finance Act 08 mean that where rights to payments under a lifetime annuity or dependants' annuity are surrendered in certain circumstances this surrender will be treated as an unauthorised member payment and taxed accordingly. The section as amended is not however intended to apply where the surrender occurs as part of a transaction under which a lifetime or dependants' annuity ceases, there is a transfer of the funds underpinning that annuity from one life insurance company to another insurance company and these funds are used to purchase an equivalent annuity in respect of the same individual. The effect of the amendments in these Regulations will be that the stopping of the original annuity is not treated as a surrender for the purposes of section 172A FA 2004. However this is dependent on the principal Regulations being amended by these Regulations to cover this circumstance.

7.3 The only effect of these regulations can be to prevent a surrender of, or an agreement to surrender, rights to receive payments under an annuity from being treated as an unauthorised payment under section 172A Finance Act 2004.

8. Impact

8.1 The Committee is referred to paragraph 3.1 above.

8.2 On 8 April 2004 the Board of Inland Revenue published a regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and the subordinate legislation that was expected to be made under it. The assessment is available on HM Revenue & Customs website at http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf or (for hard copies) by writing to the Ministerial Correspondence Unit, 2nd Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

9. Contact

Paul Cottis at HM Revenue & Customs (tel: 0115 974 1691 or e-mail: paulcottis@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.