EXPLANATORY MEMORANDUM TO

THE TAXATION OF PENSION SCHEMES (TRANSITIONAL PROVISIONS) (AMENDMENT No.2) ORDER 2009

2009 No. 1989

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. Purpose of the instrument

2.1 This Order amends the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (SI 2006/572) ("the principal Order"). The amendments allow some pensions to be paid to dependent children who are over the age 23 without attracting tax charges of up to 70%.

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

3.1 None.

4. Legislative Context

4.1 Part 4 of the Finance Act 2004 sets out the rules for the taxation of pension schemes that apply from 6 April 2006 ("A Day"). Under these rules a pension paid to a child of a deceased scheme member must cease when that child reaches age 23 – unless the child qualifies for a dependant's pension on grounds of incapacity or the pension is covered by the transitional provisions in the principal Order. If such a pension does not cease at age 23 then any subsequent pension payments made are treated as unauthorised payments taxable at up to 70%.

5. Territorial Extent and Application

5.1 This instrument applies to all of 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 Under the tax rules applying to registered pension schemes which came into effect from A Day, a pension paid to a child of a deceased member of a registered pension scheme must cease when that child reaches age 23, unless the child qualifies for a dependant's pension on grounds of incapacity.

7.2 Under the pre A day rules there were some specific circumstances where children's pensions could continue to be paid after age 23. The main circumstance was where the pension scheme's rules permitted this pension to be paid until the child ceased full-time education or vocational training. Article 34 of the principal Order allows such pensions to continue to be paid after A Day without attracting unauthorised payment tax charges.

7.3 After A Day Her Majesty's Revenue and Customs received representations concerning pensions payable to children who were too old to fall within either the age 23 rule or the existing transitional protection. Typically these individuals were carers who looked after an elderly parent. The amendments made by this Order will give protection to such pensions arising before 1 July 2008. That is the date on which the proposal to make these amendments was made public.

- ***Consolidation***

7.4 There are no current plans to consolidate the Treasury order that is being amended.

8. Consultation outcome

8.1 An earlier draft of this Order was issued for public consultation on Her Majesty's Revenue and Custom's website on 1 July 2008 with comments requested by 31 July. A full 12-week consultation was not undertaken because of the limited number of pension schemes who were known to pay adult dependent children's pensions; these pension schemes were alerted to the consultation individually. The consultation attracted three responses. These supported the proposal and put forward suggested amendments to enable the Order to fully match the relevant provisions in their pension scheme's rules.

8.2 One issue that emerged from the consultation was the desirability for the transitional protection under article 34 of the principal Order and Article 34A of this Order to continue after a block transfer (or series of block transfers) arising from a corporate or pension scheme reorganisation. This suggestion has been adopted.

9. Guidance

9.1 Guidance on this Order will be included in the Her Majesty's Revenue and Custom's Registered Pension Scheme Manual which is available on the HMRC website at www.gov.uk/manuals/rspmmanual/index.htm.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen. There are no public sector impacts.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The impact of the changes will be assessed as part of HMRC's more general plans for monitoring and evaluating the impact of the pensions simplification reforms.

13. Contact

David Dodd at Her Majesty's Revenue and Customs (Tel: 020 7147 2829 or email: david.dodd@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.