EXPLANATORY MEMORANDUM TO

THE SPECIAL ANNUAL ALLOWANCE CHARGE (VARIATION OF RATE) ORDER 2010

2010 No. 572

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

Schedule 35 to the Finance Act 2009 imposes a charge to income tax (the "special annual allowance charge") on certain individuals with high incomes if the individual's "total adjusted pension input amount for a tax year" exceeds the individual's "special annual allowance". This Order amends the rate of the special annual allowance charge to reflect the introduction of the 50 per cent additional tax rate from 6 April 2010. The rate of the special annual allowance charge is amended for the tax year 2010-11 and subsequent tax years.

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

3.1 None.

4. Legislative Context

4.1 The special annual allowance charge is currently set at 20 per cent. The charge is on certain contributions and benefits accrued in excess of the special annual allowance of £20,000 for individuals whose relevant income is £150,000 or more. The charge to income tax does not apply in respect of an individual's normal pattern of regular pension contributions or the normal way in which their pension benefits accrued before 22 April 2009.

4.2 Paragraph 1(8) of Schedule 35 sets out the rate of the Special Annual Allowance Charge. Paragraph 19(1) provides the power to vary the rate by Treasury Order. Paragraph 19(2) makes the provision for different rates in different circumstances. The instrument is subject to the affirmative resolution procedure.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary, Sarah McCarthy-Fry, has made the following statement regarding Human Rights:

In my view the provisions of the Special Annual Allowance Charge (Variation of Rate) Order 2009 are compatible with the Convention rights

7. Policy background

- ***What is being done and why***

7.1 The Government announced in the 2009 Budget that tax relief on pension savings would be restricted for those with incomes of £150,000 or over from April 2011. Relief will be tapered away so that those with incomes of £180,000 and over will receive pensions tax relief at 20 per cent, the same as a basic rate taxpayer.

7.2 Legislation was included in the Finance Act 2009 to prevent those potentially affected by the change from seeking to forestall this by increasing their pension savings in excess of their normal regular pattern prior to the restriction taking effect.

7.3 The rate of the special annual allowance charge at 20 per cent is designed to recover the higher rate relief given, being the difference between the 40 per cent higher rate of income tax and the basic rate of 20 per cent. The introduction of a 50 per cent additional rate of tax from 6 April 2010 for those earning over £150,000 means that the 20 per cent charge will be insufficient in many situations to remove the advantage of higher rate relief.

7.4 As the 50 per cent rate applies only to income over £150,000, some relief will still have been given at the lower rate of 40 per cent. A flat rate charge will not therefore recover the correct amount of relief given in all cases.

7.5 This order links the rate of the special annual allowance charge for 2010-11 and subsequent years to the top slice of an individual's income so that it charges the difference between the rate of relief that was given on the pension contribution and the basic rate of tax.

- ***Consolidation***

7.6 Not applicable.

8. Consultation outcome

A draft of this Order has been exposed for informal consultation with representative bodies for the pensions sector and others. No comments were received.

9. Guidance

No guidance is being issued.

10. Impact

10.1 Negligible impact on business, charities or voluntary bodies is foreseen.

10.2 Negligible impact on the public sector is foreseen.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

Not appropriate

13. Contact

Anne Smith at HM Revenue and Customs Tel: 0207 147 3076 or email: anne.h.smith@hmrc.gsi.gov.uk can answer any queries regarding the instrument.