EXPLANATORY MEMORANDUM TO

THE PENSIONS SCHEMES (APPLICATION OF UK PROVISIONS TO RELEVANT NON-UK SCHEMES) (AMENDMENT) REGULATIONS 2012

2012 No. 1795

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 The Finance Act 2011 ("FA 2011") amended the Finance Act 2004 ("FA 2004") so as to remove the restrictions on paying lump sums and drawdown pensions that previously applied from the age of 75. Further reforms permit an individual, with a minimum secure pension income of at least £20,000 a year, to draw unlimited amounts from their drawdown pension fund ['flexible drawdown'] if certain conditions are met.

2.2 This instrument ensures that the FA11 reforms work properly in connection with members of foreign pension schemes, which contain funds that have received UK tax relief. These changes have retrospective effect back to when the Finance Act 2011 reforms came into force on 6 April 2011. They ensure that the tax rules applying to such members and schemes are compliant with EU law.

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

3.1 The instrument does not increase any person's liability to tax. It has effect before it is made pursuant to the power in paragraph 7(2) of Schedule 34 to FA 2004.

4. Legislative Context

4.1 Part 1 of Schedule 16 to FA 2011 made a number of amendments to FA 2004 expanding the authorised benefits available under registered pension schemes.

4.2 Benefits provided under registered pension schemes that are not authorised benefits are subject to the unauthorised payments charge and in certain circumstances the unauthorised payments surcharge too under sections 208 and 209 of FA 2004 respectively.

4.3 Under paragraph 1 of Schedule 34 to FA 2004, relieved members of relevant non-UK schemes are liable to the unauthorised payments charge and surcharge as if they were members of a registered pension scheme subject to certain modifications contained in that Schedule. Further modifications are provided for in the Pensions Schemes (Application of UK Provisions etc) Regulations 2006/207 ("the 2006 Regulations").

4.4 This instrument amends the 2006 Regulations pursuant to the power contained in paragraph 7 of Schedule 34 to Finance Act 2004. Paragraph 7 provides powers to make regulations modifying the way the tax rules in Finance Act 2004 apply to payments made by relevant non-UK schemes out of pension savings have received UK tax relief.

5 Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

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 FA 2011 reforms removed unnecessarily restrictive and outdated rules applying to annuities and income drawdown arrangements in particular removing restrictions on lump sums and drawdown pensions payable to individuals after reaching the age of 75. The changes also provided greater flexibility over how and when individuals can access their pension savings in retirement within a fair and sustainable pensions tax regime.

7.2 The Government announced in the Taxes Information and Impact Note published on 9 December 2010 entitled "Removing the effective requirement to annuitise by age 75" that "the changes made for members of registered pension schemes would also apply to members of non-UK pension schemes who have received either tax relief on contributions or funds transferred from registered pension schemes".

7.3 The instrument makes consequential amendments to the 2006 Regulations so as to ensure that members of relevant non-UK schemes may receive the same payments with broadly the same tax treatment as members of registered pension schemes with effect from 6 April 2011.

- Consolidation

7.2 There are no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 The draft instrument and explanatory memorandum were published for consultation on the HMRC website. The consultation period was four weeks. This is in line with the Tax Consultation Framework for secondary legislation, which may present technical drafting issues but does not implement a significant policy change or impose significant new obligations or responsibilities. The Government received one response suggesting an improvement to the drafting of the instrument for consistency. This change has been made.

9. Guidance

9.1 Guidance on the impacts of the FA 2011 reforms on members of registered pension schemes was published as part of the Registered Pension Schemes manual in 2011. These regulations will ensure that members of relevant non-UK schemes will also be able to rely on existing guidance with retrospective effect from 6 April 2011.

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 An Impact Assessment has not been prepared for this instrument. A Tax Information and Impact Note covering this instrument was however published on 9th December 2010 alongside draft legislation for the Finance (No.3) Bill 2011 concerning the removal of the effective requirement to annuitise by age 75. This is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business. Its impact on small business is negligible.

12. Monitoring & review

12.1 The measure will not be monitored or evaluated separately.

13. Contact

Stephen Webb at Her Majesty's Revenue and Customs [Tel: 020 7147 2872 or email: stephen.t.webb@hmrc.gsi.gov.uk] can answer any queries regarding the instrument.