EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (RELEVANT ANNUITIES) (AMENDMENT) REGULATIONS 2012

2012 No. 2940

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 instrument provides that male and female drawdown pensioners will be treated the same. It achieves this by providing for the maximum drawdown pension for females aged 23 or over to be calculated using the same rates already being used for males.

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

3.1 The instrument applies to all calculations of the "annual amount" of a "relevant annuity" made on or after the date the instrument comes into force, and to some calculations made by scheme administrators before the instrument comes into force, using the power in section 282(A1) of the Finance Act 2004 ("FA 2004").

4. Legislative Context

4.1 A drawdown pension is the way in which an individual takes pension income (through income withdrawal or a short-term annuity) from a money purchase arrangement in a registered pension scheme without purchasing a lifetime annuity or a scheme pension.

4.2 Sections 165 and 167 FA 2004 prescribe which pensions and pension death benefits a registered pension scheme is "authorised" to pay under the tax rules (known as "authorised payments").

4.3 To be an authorised payment under pension rule 5 in section 165 FA 2004, where flexible drawdown pensions are not available by virtue of section 165(3A) FA 2004, the amount of drawdown pension for a year must not be more than 100% of the "basis amount".

4.4 To be an authorised payment, under pension death benefit rule 4 in section 167 FA 2004, where flexible drawdown pensions are not available by virtue of section 167(2A) FA 2004, the amount of a dependants' drawdown pension for a year must not be more than 100% of the "basis amount".

4.5 Payments which exceed these authorised payments are known as "unauthorised member payments".

4.6 Unauthorised member payments are subject to the unauthorised payment charges in sections 208 and 209 FA 2004 and to the scheme sanction charge in section 239 FA 2004. The member of the registered pension scheme is liable for the income tax charges that sections 208 and 209 impose on payments to or in respect of that member. Scheme sanction charges relating to such payments are chargeable on the scheme administrator of the registered pension scheme.

4.7 The "basis amount" is defined in paragraphs 10(2), (4) and (6) and 24(2), (4) and (6) of Schedule 28 to FA 2004 as the "annual amount" of the "relevant annuity" which could have been purchased by the application of sums and assets representing the drawdown pension fund, or the dependants' drawdown pension fund as appropriate, on a specified date.

4.8 "Annual amount" and "relevant annuity" are defined in regulations made under paragraph 14 of Schedule 28 to FA 2004.

4.9 These regulations are the Registered Pension Schemes (Relevant Annuities) Regulations 2006 SI 2006/129. Regulation 2 defines "relevant annuity". Regulation 3 provides how to determine the "annual amount"

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 The Court of Justice of the European Union (CJEU) ruled on 1 March 2011 (in the Test-Achats Case, C-236/09) that insurers should not be permitted to use gender as a risk factor in ways which result in individual differences in premiums and benefits for men and women for insurance transactions covered by Council Directive 2004/113/EC. This directive implements the principle of equal treatment between men and women in the access to and supply of goods and services.

7.2 The amount of drawdown pension that may be taken as income annually is the "annual amount" of a "relevant annuity" which the drawdown pensioner could have purchased. Annuity rates are currently higher for men than for women because on average men do not live as long.

7.3 The instrument provides for male and female drawdown pensioners to be treated the same from 21 December 2012 by providing that the maximum drawdown pension for females is calculated using the existing male rates. This increases the maximum drawdown pension female pensioners can take without affecting the maximum drawdown pension males can take.

- **Consolidation**

7.4 There are no plans to consolidate this amending instrument with the principal regulations.

8. Consultation outcome

8.1 HMRC consulted informally with the two representative bodies who between them represent most drawdown providers: the Association of British Insurers and the Association of Member-Directed Pension Schemes. The two bodies both confirmed that the legislation fully implemented HMRC's announcement of the change on 8 August 2012 and that the way in which male and female drawdown pensioners were to be given the same tax treatment was the most efficient way for them of immediately aligning the drawdown pension rules with the CJEU ruling referred to above.

9. Guidance

9.1 Amended guidance was published on the HMRC website on 8 August 2012 and is available at http://www.hmrc.gov.uk/pensionschemes/gad-tables-instructions-2011.pdf. It includes information on when the male rates should be used for calculations for female drawdown pensioners between the time the guidance was published and the instrument coming into force.

10. Impact

10.1 There is an impact on businesses which administer smaller registered pension schemes. There is also an impact on some life insurers which provide drawdown pensions. A Tax Information and Impact Note covering this instrument will be published on the HMRC website at: http://www.hmrc.gov.uk/thelibrary/tiins.htm.

10.2 There is no impact on charities or voluntary bodies.

10.3 There is no impact on the public sector.

11. Regulating small business

11.1 The measure has no impact on small business.

12. Monitoring & review

12.1 Drawdown limits are based on annuity rates. The way the annuity market changes in response to the ruling by the CJEU mentioned in 7.1 above will be kept under review to ensure the drawdown pension calculations that this Instrument provides for remain consistent with the annuity market.

13. Contact

13.1 Samantha Skill at HMRC Tel: 03000 564149 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.