# EXPLANATORY MEMORANDUM TO

# THE REGISTERED PENSION SCHEMES AND RELIEVED NON-UK PENSION SCHEMES (LIFETIME ALLOWANCE TRANSITIONAL PROTECTION) (AMENDMENT) REGULATIONS 2013

## 2013 No. 1740

**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.

## 2. Purpose of the instrument

2.1 This instrument helps ensure that the fixed protection rules, which provide for transitional protection from the lifetime allowance charge, introduced in Finance Act (FA) 2011 as part of the restriction of pensions tax relief changes, work as intended. It ensures that fixed protection is not lost in certain circumstances outside the individual's control and that fixed protection also applies to relieved members of relieved non-UK schemes.

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

3.1 This instrument is the first use of the relevant vires contained in Section 47 Finance Act 2013. This instrument has retrospective effect. The effect is largely relieving, although there is a theoretical possibility that it could give rise to a charge to tax. The vires allows for retrospective increases in limited circumstances and the Regulations are within those circumstances.

## 4. Legislative Context

4.1 Finance Act (FA) 2004 introduced two controls over the amount of tax relief available to individuals, the lifetime allowance ('LTA') (sections 214 to 226) and the annual allowance ('AA'), (sections 227 to 238). Where the value of an individual's pension benefits exceed the LTA, a tax charge, the LTA charge, applies to the excess.

4.2 In FA 2011, for tax year 2012-13 onwards, the standard LTA was reduced from £1,800,000 to £1,500,000 (£1,250,000 from 2014-15). Alongside the reduction in the LTA a new transitional protection regime was introduced in paragraph 14 of Schedule 18 to FA 2011. This protection is known as 'fixed protection'. Section 47 of Finance Act 2013 amended Part 1 of Schedule 18 to provide powers allowing amendments to be made to the fixed protection legislation in paragraph 14.

4.3 Individuals who were a member of a registered pension scheme at 6 April 2012 could notify HMRC that they wanted to rely on fixed protection from that date. S.I. 2011/1752 (the Registered Pension Schemes (Lifetime

Allowance Transitional Protection) Regulations 2011), which was made under the powers in paragraph 14(2) of Schedule 18, set out that the notice to rely on fixed protection had to be received by HMRC on or before 5 April 2012.

4.4 Where an individual has fixed protection, their LTA is the greater of the standard lifetime allowance and £1,800,000. Fixed Protection ceases to apply where there is benefit accrual under a registered pension scheme on or after 6 April 2012 in relation to the individual (paragraph 14(5) of Schedule 18). Benefit accrual occurs in the case of an other money purchase arrangement where any relevant contributions are paid under the arrangement on or after 6 April 2012, or for all other types of arrangements, where the rights of the individual under the arrangement increase by more than the relevant percentage.

4.5 Under paragraph 13 of Schedule 34 to FA 2004, the LTA provisions in FA 2004 apply to relieved members of relieved non-UK schemes as if they were members of a registered pension scheme subject to certain modifications contained in that Schedule. However the provisions of paragraph 14 of Schedule 18 to FA 2011 do not apply to relieved members of relieved non-UK schemes as this paragraph is not incorporated within the LTA provisions in FA 2004.

4.6 This instrument amends paragraph 14 of Schedule 18 to FA 2011 to help ensure that fixed protection is not lost in circumstances outside the control of the individual. The instrument therefore provides for a number of circumstances when increases in rights are excluded from being tested against the relevant percentage. It also extends the provisions of paragraph 14 to relieved members of relieved non-UK pension schemes and extends the time limit in S.I. 2011/1752 for such individuals to notify HMRC if they want to rely on fixed protection.

## 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

The Commissioners for Her Majesty's Revenue and Customs have made the following statement regarding Human Rights:

In our view the provisions of The Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Amendment) Regulations 2013 are compatible with the Convention rights.

## 7. Policy background

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

7.1 The Government provides tax relief on pension savings to encourage individuals to take responsibility for retirement planning and to recognise that pensions are less flexible than other forms of saving. However, the cost of tax relief on pensions doubled in the decade prior to 2010. Reform to pensions tax relief is an integral part of the Government's deficit reduction package and as part of these reforms the Government reduced the LTA for tax relieved pension savings from £1,800,000 to £1,500,000 from tax year 2012-13 onwards (£1,250,000 from 2014-15 onwards).

7.2 The LTA provides an overall limit on the amount of UK tax relieved pension savings that an individual can receive in their lifetime. Any pension benefits paid to an individual from a UK registered pension scheme are normally tested against the LTA at the point they come into payment. When the total benefits paid exceed the LTA then a tax charge applies on the excess, intended to recover the tax relief given on those pension savings. In addition to benefits from UK registered pension schemes, any benefits paid from an overseas pension scheme that have benefited from UK tax relief, for example through migrant member relief, are also tested against the LTA.

7.3 In recognition that reducing the lifetime allowance created a potential issue for individuals who may have already built up pension pots on the expectation that the lifetime allowance would remain around its current level of £1,500,000, a transitional protection regime to support individuals who had already made pension savings decisions based on the current level of the lifetime allowance was introduced known as fixed protection.

7.4 Individuals with fixed protection had a higher LTA of the greater of £1,800,000 and the standard LTA. The policy intention is that fixed protection should continue to apply where an individual is not accruing additional benefits. Therefore those with fixed protection had to, by 6 April 2012, cease all contributions to any defined contribution arrangement and stop accruing new benefits in any defined benefit or cash balance arrangement in a registered pension scheme. This ensures that existing rights prior to the reduction of the LTA would be protected but no new tax-relieved savings could be made to a registered pension scheme.

7.5 There are however a number of circumstances where fixed protection is lost through no fault of the individual, for example in some cases where statutory increases to existing pension rights of deferred members are given these can result in new benefits being accrued and fixed protection would be lost. This instrument amends the conditions for keeping fixed protection to ensure that it is not lost in a number of specified circumstances which are outside the control of the individual.

7.6 It is intended that the fixed protection rules apply equally to anyone was has pension benefits that are tested against the LTA. However the legislation in FA 2011 only applies to members of, and savings in, UK registered pension schemes. This instrument amends FA 2011 to ensure the fixed protection rules apply equally to members of and savings in, overseas pension schemes that are tested against the LTA.

- Consolidation

7.7 There are no plans to consolidate.

## 8. Consultation outcome

8.1 The draft instrument was published for consultation on 11 December 2012. Six substantive responses were received, all of which supported the changes. There were no significant changes made to this instrument as a result of consultation responses although a number of minor technical improvements have been made.

## 9. Guidance

9.1 The Registered Pensions Scheme Manual will be updated at the earliest opportunity to reflect this change.

## 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 A Tax Information and Impact Note covering this instrument was published on 3rd March 2011 and 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 policy will be monitored through information collected from HMRC databases, tax returns and other statistics.

## 13. Contact

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