

EXPLANATORY MEMORANDUM TO
THE REGISTERED PENSION SCHEMES AND OVERSEAS PENSION
SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 2259

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) 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 instrument makes a number of changes to the rules on tax-free transfers of UK tax-relieved pension savings to pension schemes overseas that meet the requirements to be qualifying recognised overseas pension schemes ("QROPS"). These changes are being made to further strengthen the QROPS regime by supporting the changes that took effect from April 2012 under the Registered Pension Schemes and Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012 ("S.I. 2012/884").

3. **Matters of Special Interest to the Select Committee on Statutory Instruments**

- 3.1 Regulations 7 and 8 have effect from 6 April 2012 in relation to public service pension schemes and pension schemes of international organisations that were QROPS immediately before that date. The effect is that transfers to such schemes are treated as if the schemes had not ceased to be QROPS on that date. This means that an unauthorised payment charge will not have arisen if a transfer of UK tax-relieved pension savings was made to such a scheme on or after 6 April 2012. Section 282(A1) of the Finance Act 2004 permits retrospective provided that the change does not increase any person's liability to tax.

- 3.2 Reporting obligations arise in respect of a transfer which is recognised retrospectively. Regulation 6 contains a transitional provision to enable those reporting requirements to be met in respect of such a transfer made between 6 April 2012 and 14 October 2013.

- 3.3 We are mindful of the Committees' comments on the need for clarity as to the meaning of terms used in secondary legislation, in particular in the comments in the SCSI's 1st Report of Session 2012-13 in respect of S.I. 2012/2500 and the JCSI's 22nd Report of Session 2010-12 in respect of S.I. 2011/781.

- 3.4 The term "tax identification number" which appears in the text inserted by regulations 12 and 19 is therefore defined in the text inserted by

regulation 10. The UK element of that definition refers to “the unique taxpayer reference (UTR)”, a term that has been used in other legislation without definition. We are conscious that the overseas element of the definition, namely “the reference number allocated to that person by the tax authority in the country or territory in which they are resident for tax purposes” is less precise. This reflects the fact that the non-UK number may be allocated by any one of more than 200 countries or territories.

3.5 We do not believe that this formulation will cause any difficulty for those who are required to comply with the relevant obligations. We say this on the basis that:

- The vast majority, if not all, of those who the definition applies to will have a national insurance number or UTR (which must be provided in preference to a non-UK number).
- Where relevant, we do not believe that there is any scope for confusion as to the nature of the number referred to.
- Although the overseas number relates to an individual, the relevant obligations are imposed on the scheme managers of QROPS. They will be experienced in dealing with such reference numbers.
- If there is no such number, that does not present a problem. The relevant obligations apply only where such a number exists.

4. Legislative Context

4.1 These Regulations amend the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 (“S.I. 2006/206”), the Pension Schemes (Information Requirements for Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pensions Schemes and Corresponding Relief) Regulations 2006 (“S.I. 2006/208”), the Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) Regulations 2006 (“S.I. 2006/570”) and the Registered Pension Schemes etc (Information) (Prescribed Descriptions of Persons) Regulations 2010 (“S.I. 2010/650”).

4.2 UK pension savings that have received tax relief can be transferred free of UK tax to overseas pension schemes which meet the requirements to be QROPS.

4.3 S.I. 2006/206 sets out the requirements that a pension scheme must meet to be an overseas pension scheme, which is the first step in a pension scheme meeting the conditions to be a QROPS. It also sets out the requirements that a pension scheme must meet to be a recognised overseas pension scheme, which is the second step. One of the requirements that a pension scheme must meet to be a recognised overseas pension scheme is that where tax relief in respect of pension benefits is available to a non-resident member of the scheme, the same or substantially the same tax relief must also be available to a resident member (the benefits tax relief test). This instrument removes this requirement for overseas public service pension schemes and

certain pension schemes established by international organisations so that they are not required to meet the ‘benefits tax relief test’ to be a QROPS.

4.4 S.I. 2006/208 sets out the information that a scheme manager of a QROPS is required to provide to HMRC to meet the scheme’s obligations as a QROPS. This instrument extends the categories of information that a scheme manager is required to provide when making a payment in respect of a scheme member and extends the obligations to former QROPS that cease to be QROPS on or after 14 October 2013. It also introduces a new system of re-notification every five years for QROPS, with a transitional regime for schemes that were allocated a QROPS number before 1 April 2010.

4.5 This instrument also introduces a penalty regime for former QROPS that do not meet their reporting obligations. Part 7 of Schedule 36 to the Finance Act 2008 (which covers HMRC’s information and inspection powers) sets out the penalties for failure to comply with an information notice served under that Schedule. Under this instrument a former QROPS that fails to meet its reporting requirements is subject to a modified version of Part 7, as if it had failed to comply with an information notice issued under Schedule 36.

4.6 S.I. 2006/570 sets out the information that a pension scheme may provide to HMRC electronically. This instrument extends the categories of information that may be provided electronically and enables former QROPS to provide information electronically.

4.7 S.I. 2010/650 prevents HMRC from having to serve identical information notices to certain persons in connection with pensions matters. A copy of a third party information notice must be copied to the scheme administrator of a registered pension scheme or the responsible person in relation to an employer-financed retirement benefits scheme, except where it would require HMRC to serve two identical notices. This instrument adds the scheme manager of a QROPS or a former QROPS to the list of persons to whom HMRC does not have to issue two identical information notices.

5. Territorial Extent and Application

5.1 These Regulations apply throughout 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 tax regime for pension savings provides that individuals leaving the UK can transfer their pension savings that have received UK tax relief to a pension scheme in another country. The intention is to allow those leaving the

UK permanently to arrange their affairs so that they can continue to save to provide themselves with an income in retirement.

7.2 Provided the overseas pension scheme receiving the transfer meets certain requirements, the transfer can be made free of UK tax. (This is subject only to a charge on any funds above the lifetime allowance limit, currently £1.5 million.)

7.3 In order to guard against such transfers being made for tax-motivated reasons, the requirements the recipient overseas scheme must meet are broadly intended to ensure that tax advantages and access to larger lump sums are not available if those would not be present had the funds remained in the UK. These conditions are set out in S.I. 2006/206.

7.4 This instrument increases the specific information that a QROPS is required to provide under S.I. 2006/208. However, in practice QROPS provide most of the information already under the general requirement to provide information to HMRC, so it is not an increase in the administrative burden for QROPS.

7.5 This instrument introduces a new requirement for a QROPS to re-notify HMRC every five years that it meets the requirements to be a QROPS. This is to help scheme managers of QROPS meet their continuous obligation to ensure that their scheme meets the requirements to be a QROPS if they want to continue to receive tax-free transfers of UK pension savings.

7.6 The information requirements are also extended to former QROPS that cease to be QROPS on or after 14 October 2013, so that all transfers of UK pension savings to QROPS will be subject to the same reporting requirements, regardless of whether the scheme subsequently remains a QROPS.

7.7 If a QROPS does not meet the reporting requirements then it may be excluded from being a QROPS. As this sanction cannot be used where former QROPS do not meet their obligations, this instrument provides a penalty regime that will apply to former QROPS.

7.8 This instrument also operates so that overseas public service and international organisation pension schemes do not have to meet the benefits tax relief test to be QROPS. S.I. 2012/884 introduced the benefits tax relief test which prevents a scheme from being a QROPS if there is tax relief on a pension benefit paid to a non-resident that is not available to a resident.

7.9 The test had effect from 6 April 2012 and it meant that some pension schemes that previously met the conditions to be a QROPS no longer did so. The test was intended to prevent an individual making a transfer in order to gain a tax advantage on their pension savings that would not be available in the UK. In some circumstances overseas pension schemes for public servants and international organisations would not meet the benefits tax relief test (and could not, therefore, be QROPS) even though, in monitoring the regime, the

UK has not seen transfers made to those pension schemes for tax-motivated reasons.

7.10 The provision operates retrospectively from 6 April 2012 in relation to QROPS in existence immediately before that date. The time limits for reporting a transfer to one of these schemes on or after 6 April 2012 but before 14 October 2013 are extended if the reporting obligation arose only by virtue of the retrospective effect of these Regulations.

7.11 These Regulations also ensure that scheme managers may report information on QROPS and former QROPS electronically and that two identical information notices do not have to be provided to the scheme managers of QROPS and former QROPS now that they are within the definition of 'pensions matters' for information and inspection powers purposes. These changes ensure that the QROPS regime operates in line with other pensions matters.

- **Consolidation**

7.12 The Regulations amend S.I. 2006/206, S.I. 2006/208, S.I. 2006/570 and S.I. 2010/650. None of those Regulations are being consolidated at this time.

8. Consultation Outcome

8.1 These Regulations were subject to consultation for four weeks in line with the Tax Policy Framework. Twelve responses were received from individuals, trustees, pension providers and representative bodies in both the UK and overseas. The responses showed that the changes were more limited than the industry was expecting.

9. Guidance

9.1 Guidance will be included in the next available update of the HMRC Registered Pension Schemes Manual following the entry into force of this instrument.

10. Impact

10.1 The legislation will have a limited impact on business and no impact on charities or voluntary bodies is foreseen.

10.2 There is a negligible impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 24 May 2013 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 will apply to small business.

11.2 However, the legislation will have a limited impact on small business as this instrument only requires a minor change to their actions under the QROPS regime, requiring them to provide information to HMRC that they are likely to have already. Therefore no action is being taken to minimise the impact of the requirements on firms employing up to 20 people.

12. Monitoring & Review

12.1 HMRC will monitor the impact of the changes through information collected from notifications, information reported, receipts and other statistics.

13. Contact

Beverley Davies at the Her Majesty's Revenue and Customs Tel: 03000 585266 or email: beverley.davies@hmrc.gsi.gov.uk can answer any queries regarding the instrument.