

EXPLANATORY MEMORANDUM TO
THE REGISTERED PENSION SCHEMES (TRANSFER OF SUMS AND ASSETS)
(AMENDMENT NO. 2) REGULATIONS 2015

2015 No. 1454

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.

2. Purpose of the instrument

2.1 This instrument amends the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (S.I. 2006/499) ("the 2006 Regulations") so that they also apply to new types of pension annuities introduced by paragraphs 3(2) and (3) of Schedule 4 to the Finance Act 2015, following the flexibilities introduced by the Taxation of Pensions Act 2014 ("TOPA").

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

3.1 None.

4. Legislative Context

4.1 These Regulations are made under paragraphs 27AA(3) and (4) and 27FA(3) and (4) of Schedule 28 to the Finance Act 2004 and paragraph 3(4) of Schedule 4 to the Finance Act 2015. These powers are being exercised for the first time.

4.2 Part 4 of the Finance Act 2004 sets out the regime for the registration of pension schemes and the system of tax reliefs that apply to them. Part 4 provides that registered pension schemes are only authorised to make certain types of payments, including in particular pensions specified in the pension rules in section 165 and the pension death benefit rules in section 167.

4.3 Those rules provide that only certain types of annuities are authorised to be paid to a member in respect of money purchase arrangements. These are;

- lifetime annuities (defined in paragraph 3 of Schedule 28 to the Finance Act 2004),
- short-term annuities (paragraph 6),
- dependants' annuities (paragraph 17),
- dependants' short-term annuities (paragraph 20),
- nominees' short-term annuities (paragraph 27C), and
- successors' short-term annuities (paragraph 27H).

4.4 **Lifetime annuities** are purchased from insurance companies, payable at least annually for life and may only decrease in prescribed circumstances. Paragraph 3(1A) of Schedule 28 (inserted by TOPA) permits lifetime annuities to which individuals become entitled on or after 6 April 2015 to reduce. Regulation 6 of the 2006 Regulations prescribes the circumstances in which a new lifetime annuity acquired following the transfer of sums or assets from an original lifetime annuity will be treated for pensions tax purposes in the same way as the original annuity.

4.5 **Short-term annuities** are a type of drawdown pension, being annuities payable for a term which does not exceed five years and which may only decrease in prescribed circumstances. Paragraph 6(1ZA) (inserted by TOPA) permits short-term annuities to which individuals become entitled on or after 6 April 2015 to reduce. Regulation 7 of the 2006 Regulations prescribes the circumstances in which a new short-term annuity acquired following the transfer of sums or assets from an original short-term annuity will be treated for pensions tax purposes in the same way as the original annuity.

4.6 **Dependants' annuities and dependants' short-term annuities** represent death benefits payable in respect of a money purchase arrangements to individuals who were dependants of the member when the member died. The term "dependant" is defined in paragraph 15 of Schedule 28. Paragraphs 17(1)(za) and 20(1)(ca) (inserted by TOPA) increased the circumstances in which annuities may be paid to dependants on or after 6 April 2015. Regulations 10 and 11 of the 2006 Regulations prescribe the circumstances in which a new dependants' annuity or dependants' short-term annuity acquired following the transfer of sums or assets from an original annuity will be treated for pensions tax purposes in the same way as the original annuity.

4.7 **Nominees' and successors' short-term annuities** introduced by TOPA are new types of short-term annuities that are similar to dependants' short-term annuities but may be paid to individuals who are not dependants of the pension scheme member. Regulations 17 and 18 of the 2006 Regulations, inserted by the Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) Regulations 2015 (S.I. 2015/633), prescribe the circumstances in which a new nominees' or successors' short-term annuity acquired following the transfer of sums or assets from an original nominees' or successors' short-term annuity will be treated for pensions tax purposes in the same way as the original annuity.

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 flexibilities introduced by TOPA extended the type of death benefits that may be provided from drawdown funds beyond dependants' short-term annuities, to include short-term annuities for a wider range of individuals - nominees and successors of deceased scheme members.

7.2 This range of death benefits has been further extended by paragraphs 3(2) and (3) of Schedule 4 to the Finance Act 2015, to include nominees' annuities and successors' annuities.

7.3 This instrument ensures that nominees' or successors' annuities are treated in the same way as dependants', nominees' and successors' short-term annuities, so they may only be transferred to another nominees' or successor's annuity respectively. If they are transferred to any other type of annuity or pension arrangement, the sums or assets transferred will be treated as unauthorised payments liable to tax charges of up to 55%.

8. Consultation outcome

8.1 This instrument was subject of a 12 week period of consultation ending on 29th May 2015. The very limited responses agreed that the proposed changes will be effective.

9. Guidance

9.1 Draft guidance published on 21 October 2014 for the pensions flexibilities introduced in TOPA is to be extended to include the provisions included in the Regulations addressed by this Explanatory Memorandum.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not expected to be significant.

10.2 The impact on the public sector is not expected to be significant.

10.3 An updated Tax Information and Impact Note for TOPA was published on 10 December 2014 to reflect decisions relating to pension flexibility. It remains an accurate summary of the impacts that apply to the overall policy of this instrument.

10.4 The Tax Information and Impact Note is available on the GOV.UK website at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385370/OLD_complete_v3.pdf

11. Regulating small business

11.1 This instrument applies to small firms. It is expected to impact on small and large firms in the same way and the impacts are not expected to be significant.

12. Monitoring & review

12.1 The policy will be monitored through information collected from HMRC databases, tax returns, receipts and other statistics.

13. Contact

Jon Prothero at HMRC Tel: 03000 585221 or email:
pensions.policy@hmrc.gsi.gov.uk for any queries regarding the instrument.