EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to provisions about the annual allowance charge contained in Part 4 of the Finance Act 2004 (c. 12) ("the Act").

Articles 1 to 9 provide for when this Order comes into force and the times and events from which provisions of this Order take effect. The amendments mentioned in articles 2 and 6 apply in relation to past times. When read with article 3 they do not increase any person's liability to tax. This accords with section 282(A1) of the Act which provides that an Order that is made under Part 4 of the Act (which includes section 238A under which this Order is made) may include provision having effect in relation to times before the Order is made, if that provision does not increase any person's liability to tax.

Article 11 inserts a new section into the Act. It concerns where a first pension input period ("PIP") ends in tax year 2011-12, 2012-13 or 2013-14. The PIP is the time period used for calculating the annual allowance charge. The new section has the effect that unused annual allowance is to be available to be carried forward for those tax years. This applies in relation to so called defined benefits, cash balance and some hybrid pension arrangements.

Articles 12 and 15 make amendments which affect the calculation of the "pension input amount" ("PIA"). They apply to a cash balance or defined benefits pension arrangement. PIA is the increase in the value of the individual's pension rights which is relevant for determining the annual allowance charge. When calculating the PIA for the first PIP, the opening balance is based on benefits that are available under the arrangement just before the PIP (see articles 12(a) and 15(a)). A "deferred member" – a member who only has accrued rights - will not stop being a deferred member merely because additional rights are granted to that member under a new pension scheme in respect of funds transferred from their old pension scheme. That transfer must however meet conditions in new sections 230(5BC) and 234(5BD)). In addition, articles 12 and 15 make provision for more situations where a deferred member's PIA will be nil.

Articles 13 and 16 make amendments about a "block transfer", meaning a transfer between schemes or arrangements in respect of at least two persons. Those amendments apply where a reduction in the value of an individual's benefits in the transferring scheme is equal to an increase in the value of the individual's benefits in the receiving scheme. The reduction and increase must be in consequence of the transfer. The Order specifies what is then to be added in the transferring scheme, and subtracted in the receiving scheme, for PIA purposes. Articles 13 and 16 also deal with individual transfers by setting out definitions which ensure that only amounts which are solely attributable to the value of transferred sums or assets will count for PIA purposes (see new sections 232(6D) and 236(5D)).

Article 13(f) makes amendments in relation to a cash balance arrangement. The amendments determine what is to be added to the closing balance for PIA purposes. They apply where the individual becomes entitled to a pension because of a relevant "benefit crystallisation event" ("BCE") such as retirement. Articles 13(g) and 16(f) make amendments relating to an adjustment to the individual's pension rights where the individual has given notice under section 237B of the Act so that the scheme and the individual are jointly liable to pay that individual's annual allowance charge ("scheme pays notice"). The amendment applies to cash balance and defined benefits arrangements. It ensures that, if the adjustment occurs before the individual takes all their benefits (or if BCE 5, 5A or 5B occurs), an amount is to be added to the closing balance for PIA purposes.

Article 14 amends section 233 of the Act in relation to a "refund of excess contributions lump sum" (see paragraph 6 of Schedule 29 to the Act). That amendment ensures that the sum will not be included in PIA. It applies to a money purchase arrangement other than a cash balance arrangement. Article 17(a) makes amendments which prevent an individual giving a scheme pays notice after that individual has taken all their pension benefits (or BCE 5, 5A or 5B occurs). Article 17(b) ensures that an individual can give a scheme pays notice even where there is a transfer of all the individual's sums or assets into that scheme during a PIP.

A Tax Information and Impact Note ("TIIN") covering this instrument was published on 3rd March 2011. It remains an accurate summary of the impacts that apply to this instrument and is available on the Government website at https://www.gov.uk.