EXPLANATORY MEMORANDUM TO

THE RELEVANT OVERSEAS SCHEMES (TRANSFER OF SUMS AND ASSETS) REGULATIONS 2018

2018 No. 372

1. Introduction

1.1 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 sets out the UK tax treatment of transfers of pensions in payment from an overseas pension scheme which has funds that have had UK tax relief in connection with a transfer.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument provides the first use of the powers under section 169(7A) and (7D) of the Finance Act ("FA") 2004, which were introduced in Schedule 4 to FA 2017.

4.2 This instrument is being made to ensure that a transfer of pension in payment can be a transfer that is not subject to the unauthorised payments charges and, where appropriate, is subject to overseas transfer charge, which was introduced on 9 March 2017.

4.3 It makes similar provision for transfers related to pensions in payment under certain overseas pension schemes to that in the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 ("the 2006 transfer regulations") for transfers related to pensions in payment under registered pension schemes.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is 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 Section 169 FA 2004 ensures that where an individual transfers their pensions savings from a registered pension scheme to a qualifying recognised overseas pensions scheme (QROPS) this is an authorised payment (a recognised transfer) and is not subject to a tax charge. Section 216 confirms that it is tested against the individual's lifetime allowance. Extra conditions have to be met for transferring a pension in payment. These are set out in the 2006 regulations.

7.2 Sections 169, 216 and the 2006 regulations all relate to a transfer made from a registered pension scheme. Following the introduction of pensions flexibility in April 2015, there is more evidence of transfers being made back from a QROPS to a registered pension scheme. This instrument provides for the situation where sums or assets that have been transferred from a registered pension scheme (the "original scheme") to a relevant overseas scheme are transferred to another relevant overseas scheme or a registered pension scheme (the "new scheme"). It ensures that the new scheme is treated as the original scheme so that the transfer is an authorised payment and the fact that a proportion of the funds have already been tested against the individual's lifetime allowance.

Consolidation

7.3 This instrument does not amend another instrument.

8. Consultation outcome

8.1 The draft regulations have not been published for consultation. They do not provide any new policy and are intended to ensure that the new FA 2017 provisions operate correctly.

9. Guidance

9.1 Guidance on the final version of this instrument will be included in the next available update of the HMRC Pensions Tax Manual.

10. Impact

10.1 The impact on business is that scheme managers of QROPS will need to determine how a pension in payment should be treated when received. One-off familiarisation costs are expected in connection with the new rules but they should not be significant. No impact on charities or voluntary bodies is foreseen.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 8 March 2017 (Qualifying recognised overseas pension schemes charge on transfers) alongside draft Schedule 4 to Finance Bill 2017 and is available on the website gov.uk website https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 There is no special provision to minimise the impact of the requirements on small businesses (employing up to 50 people), as the legislation provides all businesses with the provisions that need to be met to ensure that a pension in payment is not subject to unauthorised payments charge when transferred.

12. Monitoring & review

12.1 The impact of the changes will be monitored through information collected from HMRC databases, tax returns, receipts and other statistics.

13. Contact

13.1 Beverley Davies at HMRC Telephone: 03000 512336 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.