EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 No. 392

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.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument provides for the extension to Scheme Pays information and reporting deadlines where there has been a retrospective change of facts that affects an individual's pension input amount and their annual allowance.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 21-day rule: A combination of factors led to delays in progressing the regulations, which nevertheless must take effect from 6 April 2022 to align with the Scheme Pays changes the government introduced through the Finance Act 2022.

3.2 The breach is necessary to account for input from the technical consultation and to ensure that there is not a period where the primary legislation is operative without the detailed provision through secondary legislation.

3.3 Delaying the secondary legislation to comply with the 21-day rule would mean that, in practice, some individuals with a retrospective change to their pension input amount for a previous tax year would not be able to use Scheme Pays, even though the primary legislation provides for that option. The annual allowance tax charge would still be due, but the individual would have to pay the tax charge using other means.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 In the United Kingdom, there are no limits on the amount of pension savings that an individual can have, but there are limits on the amount of tax relief available, in accordance with Part 4 of the Finance Act 2004 (FA 2004).

6.2 The annual allowance sets the maximum value of new tax relieved pension savings that an individual can have for a tax year. If an individual's pension savings exceed the annual allowance, the individual may become liable to report and pay an annual allowance tax charge. Section 227 of FA 2004 provides for the annual allowance charge.

6.3 Scheme Pays was introduced by the Finance Act 2011 and enables an individual to require their pension scheme to pay their annual allowance tax charge, for the most recent tax year, in certain circumstances. Where a charge arises for an earlier tax year the scheme cannot be required to pay the charge, so the individual must pay. Section 237B of FA 2004 provides for the pension scheme administrator to be jointly liable for the tax charge, in return for an actuarial equivalent reduction in their pension pot (section 237E).

6.4 Regulation 15A of the Registered Pension Schemes (Provision of Information) Regulations (SI 2006/567) requires the employer to provide information to the scheme administrator to enable them to calculate an individual's pension input amount.

6.5 Regulation 14A of SI 2006/567 requires a pension scheme to provide members with a pension savings statement, in certain circumstances, if they go above the annual allowance limit. The information included in the pension savings statement enables the individual to calculate their annual allowance tax charge. The individual may then consider if they can use the Scheme Pays facility. Regulation 3(1) sets out a table of events that scheme administrators must report to HMRC and event 22 requires the pension scheme to inform HMRC when a pension savings statement has been issued to an individual.

6.6 This instrument provides for the extension of Scheme Pays information and reporting deadlines where there has been a retrospective change of facts for a previous tax year.

6.7 This instrument will have effect from 6 April 2022.

7. Policy background

What is being done and why?

7.1 At Tax Policies and Consultations Spring 2021, the government announced its intention to make technical updates to pension tax rules to remove anomalies that were identified as part of finalising the age discrimination found in litigation on the 2015 public service pension reforms (commonly referred to as 'McCloud'). One such update is in respect of Scheme Pays.

7.2 The annual allowance tax charge is payable where pension scheme members have over £40,000 added value to their pension in a single year. Scheme Pays is a mechanism which enables members to request that scheme administrators pay their annual allowance tax charge where it is above £2,000, in exchange for a reduction in their pension pot.

7.3 Scheme Pays is currently only available for the most recent tax year. The government has introduced legislation through the Finance Act 2022 that provides for the extension of two of the Scheme Pays information and reporting deadlines where a previous tax year is affected.

7.4 This instrument extends the remaining Scheme Pays information and reporting deadlines where there has been a change of facts and an individual then asks their pension scheme to settle their annual allowance tax charge of £2,000 or more from a previous tax year. This instrument will ensure that the Scheme Pays facility works correctly for previous tax years. Scheme Pays will be available to any individual who meets the conditions.

7.5 This instrument requires the provision of information to pension schemes to enable the scheme administrator to correctly calculate a member's pension input amount, and for pension schemes to provide that information to individuals and to HMRC. This instrument also extends the time that an individual has to notify their pension scheme that they need to amend their original notice to use Scheme Pays.

7.6 If this legislative change is not made, an individual with an annual allowance tax charge more than £2,000 for a previous tax year would have to pay the tax charge by other means.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Consolidation is not required.

10. Consultation outcome

10.1 The draft regulations were published on GOV.UK for a short technical consultation to provide industry with an opportunity to comment and check the regulations work and meet the policy intent.

10.2 HMRC received 5 responses and have made minor amendments to the regulations to ensure the policy intent and extended deadlines are clear.

11. Guidance

11.1 Existing guidance in the Pensions Tax Manual and GOV.UK explains when Scheme Pays can currently be used. Amendments are required to this guidance and will be made to coincide with the regulations taking effect.

11.2 The guidance will be updated here https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm056400 and here https://www.gov.uk/guidance/who-must-pay-the-pensions-annual-allowance-tax-charge.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that employers will be required to provide information to pension schemes to enable the scheme administrator to correctly calculate a member's pension input amount. Pension scheme administrators will be required to provide that information to its members, using the pension savings statement, and to tell HMRC the pensions savings statement has been issued, using the Event Report.

12.2 The impact on the public sector is that public service employers will be required to provide information to their pension schemes to enable the scheme administrator to correctly calculate a member's pension input amount. Public service pension scheme administrators will be required to provide that information to its members, using the pension savings statement, and to tell HMRC the pensions savings statement has been issued, using the Event Report.

12.3 Pension schemes are already required to include details of when they issue a pension savings statement on the Event Report which is sent to HMRC. This instrument does not change this, so there will be no operational impacts.

12.4 A Tax Information and Impact Note covering this instrument was published at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

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

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was that it would not be appropriate for the policy to apply differently according to the size of business, as this would effectively penalise individuals that were members of a small pension scheme if they were unable to use Scheme Pays to pay a tax charge for a previous tax year.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will be monitored through communications with taxpayer groups including those involved in the public service pension reform.

14.2 The instrument does not include a statutory review clause due to the tax exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Karen Bishop at HMRC Telephone: 03000 512336 or email: pensions.policy@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Edwards, Deputy Director for Pensions Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen, Economic Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.