EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (AUTHORISED MEMBER PAYMENTS) REGULATIONS 2023

2023 No. 1012

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs and is laid before the House of Commons by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument provides for payments made to the holders of insurance policies whose entitlements have been reduced following the issuing of a write-down order (as defined by section 377A (1) of Financial Services and Markets (FSM) Act 2000) to be paid without incurring charges to income tax under sections 208, 209 and 239 of Finance Act 2004, otherwise known as unauthorised payments charges. It also clarifies the tax treatment of these payments under Part 9 of Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

2.2 This instrument provides that where a surrender (or agreement to surrender) of benefits is made as a result of the issuing of a write-down order, subsections (2) and (4) of section 172A of Finance Act 2004 do not apply and a reduction can be made without incurring unauthorised payments charges.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Currently, the reduction of a policyholder's entitlement as a result of a write-down order could, under section 172A (1) (aa) of the Finance Act 2004, be considered as a surrender of rights to payments under an annuity that has been purchased in respect of a registered pension scheme. This would give rise to the unauthorised payments charge on the value of the surrendered rights.

6.2 The aim of giving tax relief on pension saving is to encourage people to set funds aside in a registered pension scheme to provide for retirement. To ensure that taxrelieved pensions savings are used to do this, section 164(1)(f) of the Finance Act 2004 sets out the only payments a registered pension scheme is authorised to make to, or in respect of, a member of the pension scheme. Any other payment is an 'unauthorised payment' and is subject to certain tax charges depending on the circumstances.

6.3 A "top up" payment will be made to policyholders whose entitlements have been reduced following the issuing of a write-down order. This "top up" payment is not currently accounted for under section 164 (1) (f) and therefore would be categorised as an unauthorised payment and would be subject to unauthorised payments charges.

7. Policy background

7.1 The FSM Act 2023 introduced amendments designed to enhance existing processes for managing insurers in financial distress. A key element of this package was a revised power for the courts to reduce the value of an insurer's liabilities, including liabilities to policyholders, to avoid insolvency proceedings, this is referred to as a write-down order. The Act also provided for protected policyholders whose entitlements have been subject to a write-down order to be provided with "top up" payments from the Financial Services Compensation Scheme (FSCS), made via the insurer, to ensure that the value of their policy is not reduced as a result.

What is being done and why?

7.2 These regulations add payments made from the FSCS via the insurers to policyholders whose entitlements have been reduced following the issuing of a write-down order to the list of authorised payments. This will enable them to be paid without incurring unauthorised payments tax charges under Part 4 of Finance Act 2004.

7.3 These regulations ensure that any reduction of a policyholder's entitlement following a write-down order will not be considered a surrender of rights under section 172A (1) (aa) and therefore will not be subject to the unauthorised payments tax charges under Part 4 of Finance Act 2004.

7.4 These regulations also ensure that any "top up" payments will be treated as pension income for the purposes of Part 9 of ITEPA 2003 and as pension accruing in the tax year in which they were paid.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 There were no provisions for payments from the FSCS to the holders of insurance policies following a write-down order to be considered authorised payments.

7.6 There were no provisions to prevent the reduction of a policyholder's entitlement being considered a surrender of rights and as a result any such reduction was treated as an unauthorised payment. These regulations will only allow for exemptions in specific circumstances.

Why is it being changed?

7.7 This change will ensure that policyholders will not incur any unintended tax consequences as a result of the new provisions introduced as part of the FSM Act 2023.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Consolidation is not required.

10. Consultation outcome

10.1 The government consulted on the FSM 2023 prior to its introduction to parliament. These are consequential technical changes that ensure the correct tax outcome and therefore no further consultation was considered necessary.

11. Guidance

11.1 The Pensions Tax Manual includes the current list of authorised payment that a registered pension scheme can make without incurring unauthorised payments charges at https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm140000 and the circumstances qualifying as a surrender of rights or benefits at https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm133300. Updates to include the new categories are required to this guidance and will be made to coincide with the regulations taking effect.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument because there is no significant impact.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be to keep it under review through communication with affected taxpayer groups.

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

15. Contact

15.1 Helen Early 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 Andrew Griffith, Economic Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.