EXPLANATORY MEMORANDUM TO

THE TAXATION OF EQUITABLE LIFE (PAYMENTS) ORDER 2011

2011 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before each House of Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To provide that payments authorised by the Treasury in cases where persons have been adversely affected by maladministration in the regulation before December 2001 of the Equitable Life Assurance Society, to which section 1 of the Equitable Life (Payments) Act 2010 ("the Act") applies, are disregarded for the purposes of specified taxes or for the purpose of determining entitlement to child and working tax credits.

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

3.1 None

4. Legislative Context

4.1 The Equitable Life (Payments) Act 2010 makes provision for the Treasury to incur expenditure for or in connection with making payments to persons adversely affected by maladministration in the regulation before December 2001 of the Equitable Life Assurance Society. Section 1(3) of the Act provides that such payments authorised by the Treasury may be disregarded to any extent for the purposes of any liability to tax or entitlement to a tax credit.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury, Mark Hoban MP, has made the following statement regarding Human Rights:

In my view the provisions of the Taxation of Equitable Life (Payments) Order 2011 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Where a person receives a payment of the nature contemplated by the Act the payment may, depending on the circumstances of the person, give rise to liability to a number of taxes. Similarly, the payment may be brought into account in determining a person's income for tax credit purposes. The policy intention is to ensure that authorised payments do not give rise to tax liabilities for the recipients or affect their entitlement to tax credits.

7.2 The effect of the Order is that an authorised payment will not give rise to liability to capital gains tax, corporation tax or income tax. In relation to inheritance tax, the value of rights to, or interests in, an authorised payment will not be treated as part of the estate of a deceased person in cases where the payment is made in respect of a person who died before the payment is made. Similarly, in determining the value of relevant property comprised in a settlement and liable to a ten-year anniversary charge, the value of rights to, or interests in, an authorised payment will be disregarded if the payment was made after the ten-year anniversary. In relation to tax credits an authorised payment is disregarded in computing investment income, which is an element in determining a person's or a couple's overall amount of income: the amount of a person's or a couple's income helps to determine the level of a tax credits award.

- ***Consolidation***

7.3 There are no plans to consolidate the provisions of this instrument.

8. Consultation outcome

No consultation has been conducted in relation to this instrument. However, HM Treasury has received representations with persuasive arguments that the payments should be tax-free.

9. Guidance

Guidance on the provisions of this Order will be published by HMRC and will be available on its website at www.hmrc.gov.uk .

10. Impact

10.1 There is a negligible impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as it has a negligible effect on business, charities or voluntary bodies.

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

No particular monitoring or review arrangements are required, because the tax and tax credit treatment provided by the Order is confined to the specific circumstances of the Equitable Life Assurance Society and the scheme for payments to members of the society.

13. Contact

Anne Macadam at HM Treasury Tel: 020 7270 6195 or email; anne.macadam@hmtreasury.gsi.gov.uk can answer any questions regarding this instrument.