EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (RELIEF AT SOURCE) REGULATIONS 2005 No. 3448

THE REGISTERED PENSION SCHEMES (PRESCRIBED INTEREST RATES FOR AUTHORISED EMPLOYER LOANS) REGULATIONS 2005 No. 3449

THE REGISTERED PENSION SCHEMES (MINIMUM CONTRIBUTIONS) REGULATIONS 2005 No. 3450

THE REGISTERED PENSION SCHEMES (PRESCRIBED SCHEMES AND OCCUPATIONS) REGULATIONS 2005 No. 3451

THE REGISTERED PENSION SCHEMES (DISCHARGE OF LIABILITIES UNDER SECTIONS 267 AND 268 OF THE FINANCE ACT 2004) REGULATIONS 2005 No. 3452

THE EMPLOYER-FINANCED RETIREMENT BENEFIT SCHEMES (PROVISION OF INFORMATION) REGULATIONS 2005 No. 3453

THE REGISTERED PENSION SCHEMES (ACCOUNTING AND ASSESSMENT) REGULATIONS 2005 No. 3454

THE REGISTERED PENSION SCHEMES AND EMPLOYER-FINANCED RETIREMENT BENEFITS SCHEMES (INFORMATION) (PRESCRIBED DESCRIPTIONS OF PERSONS) REGULATIONS 2005 No. 3455

THE REGISTERED PENSION SCHEMES (AUDITED ACCOUNTS) (SPECIFIED PERSONS) REGULATIONS 2005 No. 3456

THE TAXES MANAGEMENT ACT 1970 (MODIFICATIONS TO SCHEDULE 3 FOR PENSION SCHEME APPEALS) ORDER 2005 No. 3457

THE REGISTERED PENSION SCHEMES (RESTRICTION OF EMPLOYERS' RELIEF) REGULATIONS 2005 No. 3458

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before The House of Commons by Command of Her Majesty.

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

2. Description

2.1. These 11 sets of Regulations are part of the Government's measures to simplify the taxation of pensions. They flow from Part 4 of the Finance Act 2004 as amended.

2.2. The table annexed to this memorandum shows the full list of Instruments that are expected to be laid for Part 4 on the 6th April 2006.

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

3.1. The Government provides generous tax relief to encourage people to save to provide for a secure income in retirement. However, the existing tax rules for pension schemes are complex and confusing with several different tax regimes each with its own set of rules. This imposes unnecessary inflexibility and creates complication that discourages people from saving in a pension.

3.2. The Government legislated for the new simplified pensions tax regime in Finance Act 2004, which will take effect from 6 April 2006. The numerous controls and limits in the existing regimes are replaced by 2 key controls in the new simplified regime, a Lifetime Allowance - set initially at £1.5 million and an Annual Allowance, set initially at £215,000.

3.3. These regulations supplement the new simplified tax regime as enacted in Finance Act 2004 by setting out details for the operation of pension tax simplification. They will have effect from 6 April 2006.

3.4. An explanation of each regulation follows:

The Registered Pension Schemes (Relief at Source) Regulations 2005 No

These regulations make provision for relief from tax on payments made to scheme administrators of registered pension schemes. There are two main methods of delivering tax relief in respect of an individual's pension contributions: net pay, where the contribution is deducted from an individual's remuneration before tax is charged, and relief at source, which is what these regulations provide for. Under relief at source, a pension contribution is made net of basic rate tax. The basic rate tax is then paid by the Government to the pension scheme and any higher rate tax relief is claimed by the individual. These regulations make various detailed provisions for the operation of Relief at Source in relation to contributions into registered pensions schemes, including;

(a) Information to be given to the scheme administrator
(b) Declaration that the relevant individual is entitled to tax relief
(c) Declaration about accuracy of information and

(d) Penalty provisions for recovery of amounts payable to HM Revenue and Customs ("Revenue and Customs").

The Registered Pension Schemes (Prescribed Interest Rates For Authorised Employer Loans) Regulations 2005 No.

These regulations prescribe the rate of interest payable on a loan made by a registered pension scheme to a sponsoring employer. Under the new simplified regime, registered schemes will be able to make loans to a sponsoring employer of the scheme, provided the employer pays at least a commercial rate of interest on the loan. These regulations make provision about the minimum rate of interest required to be paid.

The Registered Pension Schemes (Minimum Contributions) Regulations 2005 No.

HMRC are required to pay a minimum contribution out of the National Insurance Fund (or the Northern Ireland equivalent) where an employed individual holds an appropriate personal pension scheme and has contracted out of the State Second Pension.

Section 202 FA2004 maintains existing tax treatment of these payments into the individual's registered pension scheme. These regulations supplement the provisions of section 202 so that Revenue and Customs may recover amounts representing basic rate tax in respect of minimum contributions they were not required to pay.

The Registered Pension Schemes (Prescribed Schemes and Occupations) Regulations 2005 No.

These regulations list the prescribed pension schemes and occupations whose members can preserve their full entitlement to benefits, including retirement before normal minimum retirement age, in the event that they take such benefits after 6 April 2006 but before they reach normal minimum pension age.

The Registered Pension Schemes (Discharge Of Liabilities Under Sections 267 and 268 Of The Finance Act 2004) Regulations 2005 No.

These regulations make supplementary provisions to sections 267 and 268 of the Finance Act 2004 in connection with applications by scheme administrators of a registered pension scheme to be discharged from;

(a) a lifetime allowance charge,
(b) an unauthorised payment charge and/or
(c) a scheme sanction charge.

The regulations specify the time limits by which an application may be made and require the application to set out the grounds relied upon.

The Employer-Financed Retirement Benefit Schemes (Provision Of Information) Regulations 2005 No.

These regulations set out the prescribed information that must be supplied to Revenue and Customs by administrators of employer-financed retirement benefit schemes. These are schemes that are not registered pension schemes and the

regulations require the scheme administrators to notify Revenue and customs within certain time limits of:
(a) when a scheme first comes into operation; and
(b) to supply details of the relevant benefits provided to recipients during the year of assessment.

The Registered Pension Schemes (Accounting And Assessment) Regulations 2005 No.

These regulations make provision in relation to the making of assessments and related matters with charges to tax under Part 4 of FA 2004. Under the new regime, there will be occasions when the scheme administrator of a registered pension scheme will have to account to Revenue and Customs for tax. These regulations prescribe those occasions and the particulars to be reported.
The tax will be due without the making of an assessment but if the incorrect tax has been paid, Revenue and Customs may make assessments. These regulations provide for:
(a) the making of assessments and the person assessable,
(b) the right of appeal against any assessment,
(c) interest to be charged for tax which is not paid on or before the due date,
(d) scheme administrators to make amended returns if they discover an error has been made, and
(e) adjustment of, and repayment and interest on, tax overpaid.

The Registered Pension Schemes and Employer-Financed Retirement Benefits Schemes (Information) (Prescribed Descriptions Of Persons) Regulations 2005 No.

To ensure compliance with the legislation there will be times when Revenue and Customs will need to examine the records of pension schemes in detail. These regulations describe the persons to whom an officer of Revenue and Customs may give a notice requiring the production of documents and information about registered pension schemes and employer-financed retirement benefit schemes.

The Registered Pension Schemes (Audited Accounts) (Specified Persons) Regulations 2005 No.

These regulations prescribe the persons who may audit the accounts of a registered pension scheme. Revenue and Customs may serve a notice requiring the scheme administrator of a registered pension scheme to make or deliver specified information or audited accounts. Audited accounts means audited by a person of a description specified in regulations. These regulations prescribe, with some exceptions, those persons as being those eligible as scheme auditors under the Companies Act 1989 or Companies (Northern Ireland) Order 1990 and professional advisers eligible as a scheme auditor under the Pensions Act 1995 or the Pensions (Northern Ireland) Order 1995.

The Taxes Management Act 1970 (Modifications To Schedule 3 For Pension Scheme Appeals) Order 2005 No.

This Order makes modifications to the Taxes Management Act 1970 (TMA) in respect of appeals to the General Commissioners by scheme administrators.

Under the new legislation, the liability attaching to a pension scheme will actually be charged on an individual known as the scheme administrator.
Under paragraph 2 of Schedule 3 to TMA, an appeal may be heard in the taxpayer's place of:
(a) residence,
(b) business or
(c) employment.
This choice suits the vast majority of taxpayers, but for scheme administrators it may be unreasonably restrictive.

These regulations ensure that the scheme administrator, and those liable as scheme administrators, is be able to elect for the appeal to be heard at the places listed in paragraph 2 of Schedule 3 to TMA or a further place, to be one of:
(a) the place in the United Kingdom where the administration of the pension scheme is carried out;
(b) the place in the United Kingdom where a sponsoring employer carries on its trade or business; or
(c) the place in the United Kingdom which is the place of residence of a trustee of any trust that comprises the pension scheme.

The Registered Pension Schemes (Restriction of Employers' Relief) Regulations 2005 No.

These regulations restrict in certain circumstances the extent to which contributions paid by an employer under a registered pension scheme in respect of an individual are subject to tax relief. Finance Act 2004 restricts relief on employer contributions to a pension scheme so that a deduction is allowed at the time of the contribution only where the contribution is to a registered pension scheme. For unregistered schemes the deduction is deferred until the benefit is paid out to the employee. The Finance Act 2005 introduced a measure to prevent this rule being circumvented by routing the funding for an unregistered scheme through a registered scheme. These regulations set out the extent to which contributions may be restricted for tax relief.

4. Legislative Background

4.1. The powers to make these regulations and order are contained in sections 156, 159, 179, 192, 196A, 202, 250, 252, 253, 254, 255, 267, 268, 271 of, and paragraphs 19 and 23 of Schedule 36, to the Finance Act 2004.

4.2 Regulations under these provisions may make provisions specifying, modifying, prescribing and restricting the application of the relevant legislation in relation to Part 4 of the Finance Act 2004 as amended.

5. Extent

5.1. These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1. These regulations are subject to annulment and do not amend primary legislation. Accordingly no statement of compatibility is required.

7. Policy Background

7.1. The Government wants to encourage today's workers, tomorrow's pensioners, to save for their retirement and offers generous tax incentives to encourage people to save in a pension. Following extensive consultation, pensions tax simplification was legislated for in Part 4 of the Finance Act 2004. As a result of ongoing consultation a package of supplementary measures were introduced in Finance Act 2005. The objectives are to increase individual choice and flexibility and cut industry costs by tackling the complexity and fragmentation caused by the current rules.

7.2. From 6 April 6 2006, a new unified pensions tax regime will replace the numerous existing regimes. The new regime will contain two key controls on tax relief for pension savings, a lifetime allowance and an annual allowance, which will replace the plethora of controls currently in existence.

8. Impact

8.1. The impact of these regulations is contained within the Simplifying the taxation of pensions Regulatory Impact Assessment and Appendix which can be found at www.hmrc.gov.uk/ria/simplifying-pensions.pdf and www.hmrc.gov.uk/ria/simplifying-pensions-appendix.pdf

9. Contact

Kevin Golightly at HM Revenue & Customs (tel: 020 7147 2825 or e-mail: Kevin.Golightly@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

Annex

List of Instruments anticipated to be laid for Part 4 Finance Act 2004 on the 6th April 2006

The Registered Pension Schemes (Relief at Source) Regulations 2005 No.

The Pension Schemes (Prescribed Interest Rates For Authorised Employer Loans) Regulations 2005 No.

The Registered Pension Schemes (Minimum Contributions) Regulations 2005 No.

The Pension Schemes (Prescribed Schemes And Occupations) Regulations 2005 No.

The Pension Schemes (Discharge Of Liabilities Under Sections 267 And 268 Of The Finance Act 2004) Regulations 2005 No.

The Employer-Financed Retirement Benefit Schemes (Provision Of Information) Regulations 2005 No.

The Registered Pension Schemes (Accounting And Assessment) Regulations 2005 No.

The Registered Pension Schemes And Employer-Financed Retirement Benefits Schemes (Information) (Prescribed Descriptions Of Persons) Regulations 2005 No.

The Registered Pension Schemes (Audited Accounts) (Specified Persons) Regulations 2005 No.

The Taxes Management Act 1970 (Modifications To Schedule 3 For Pension Scheme Appeals) Order 2005 No.

The Pension Schemes (Restriction Of Employers' Relief) Regulations 2005 No.

The Pension Schemes (Categories Of Country And Requirements For Overseas Pension Schemes) Regulations 2005 N0.

The Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes And Corresponding Relief) Regulations 2005 No.

The Pension Schemes (Application Of UK Provisions To Relevant Non-UK Schemes) Regulation 2005 No

The Pensions Schemes (Provision Of Information) Regulations 2005 No.

The Registered Pension Scheme (Authorised Payments) Regulations 2005 No.

The Registered Pension Schemes And Overseas Pension Schemes (Electronic Communication Of Returns And Information) Regulation 2005 No

The Pension Benefits (Insurance Company Liable As Scheme Administrator) Regulations 2005 No.

The Pension Scheme (Relevant Migrant Members) Regulations 2005 No.

The Pension Schemes (Meaning Of Pension Commencement Lump Sums) Regulations 2005 No.

The Pension Schemes (Modification Of Rules Of Existing Schemes) Regulations 2005 No.

The Pension Schemes (Co-ownership of Living Accommodation) Regulations 2006

The Pension Schemes (Reduction in Pension Rates) Regulations 2005 No.

The Social Security (Contributions) (Amendment No. x) Regulations 2005 No.

The Armed Forces and Reserve Forces (Compensation Scheme) (Excluded Benefits for Tax Purposes) Regulations 2005 No.

The Registered Pension Schemes (Defined Benefits Arrangements: Uprating of Opening Value) Regulations 2005 No.

The Registered Pension Schemes (Relevant Annuities) Regulations 2005 No

The Pension Schemes (Enhanced Lifetime Allowance) Regulations 2005 No.

The Employer-Financed Retirement Benefits (Excluded Benefits For Tax Purposes) Regulations 2005 No.

The Pension Schemes (Authorised Surplus Payments) Regulations 2005 No

The Pension Schemes (Surrender Of Relevant Excess) Regulations 2005 No

The Registered Pension Schemes (Authorised Payments) (Transfers to the Pensions Protection Fund) Regulations 2006 No

The Registered Pension Schemes (Authorised Member Payments) Regulations 2005 No.

The Pension Schemes (Transfer of Sums And Assets) Regulations 2005 No.

The Registered Pension Schemes (Prescribed Manner of Determining Amount Of Annuities) Regulations 2005 No

The Registered Pension Schemes (Splitting of Schemes) Regulations 2005 No.

The Registered Pension Schemes (Consequential Amendments) Regulations 2005 No

The Finance Act 2004, Part 4 (Pension Schemes) (Consequential Amendments) Order 2005 No

The Pension Schemes (Part 4 Of The Finance Act 2004 Transitional And Transitory Provisions) Order 2005 No (Composite transitional provisions Order)