EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2004 (SPECIFIED PENSION SCHEMES) ORDER 2019

2019 No. 1425

1. Introduction

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

2. Purpose of the instrument

2.1 This Treasury Order enables pension schemes established by or under an enactment of parliament of a country or territory, or sub-division of a country or territory, other than the United Kingdom (UK) to apply to become a registered pension scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 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 The Order extends the definition of 'public service pension scheme' for the purposes of Part 4 of the Finance Act 2004 (FA04) to include pension schemes established by or under an enactment of a country or territory other than the UK or a political sub-division of that country or territory.

7. Policy background

What is being done and why?

7.1 UK tax relief is available on investment income and growth of pension schemes that are registered in the UK. Schemes do not need to be resident in the UK to become UK registered pension schemes.

7.2 In a recent First-tier Tribunal decision the judge held that, as per his interpretation of FA04, pension schemes established under an enactment of a country or territory other than the UK are not eligible to apply to be registered pension schemes. The court held that this inability to register and receive tax relief on UK investment income was contrary to European Union (EU) law. As a result the scheme was allowed to claim tax relief on their UK investments.

7.3 It has, however, always been the intention to allow foreign equivalents of UK pension schemes to apply to become registered pension schemes so they can obtain UK pensions tax relief and be subject to the same conditions as their UK-based counterparts.

7.4 The Order will ensure the policy intention is met and remove any doubt to this interpretation.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

9.1 Consolidation of legislation is not being done.

10. Consultation outcome

10.1 A consultation has not taken place as the purpose of the Order is to clarify legislation and deliver policy intent.

11. Guidance

11.1 Existing guidance will not be updated, as the Order clarifies legislation and delivers policy intent.

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 as it contains no substantive changes to tax policy.

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 regulation does not include a statutory review clause for the purposes of the Small Business Enterprise and Employment Act 2015 as it does not have a regulatory effect on business.

15. Contact

15.1 Sinthuja Path at HM Revenue & Customs, Telephone: 03000 512336 or email: pensions.policy@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Guy Hooper, Deputy Director for Pensions Policy, at HM Revenue & Customs 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.