EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (ASSIGNMENT, FORFEITURE, BANKRUPTCY ETC.) (AMENDMENT) REGULATIONS 2011

2011 No. 1801

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

The instrument is, in part, consequential on measures in the Finance Act 2011 which received Royal Assent on 19th July. It removes a legislative barrier which would otherwise prevent a consequential reduction to a scheme member's benefits for the purpose of paying an Annual Allowance tax charge on behalf of that member, either in accordance with the new statutory regime provided for in that Act, or on a voluntary basis. Paying the Annual Allowance by way of a surrender of a member's scheme benefits is known as "scheme pays".

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

None

4. Legislative Context

4.1 On 14 October 2010 the Government announced reforms to pensions tax relief to ensure that it remains fair, affordable and sustainable. As part of these reforms, from the 2011-12 tax year, the annual allowance (AA) for tax-privileged pension saving will be reduced from £255,000 to £50,000.

4.2 Individuals who exceed these limits may incur an annual allowance tax charge. The Government published a consultation document on 30 November 2010[1] setting options to manage high annual allowance tax charges from pension benefits.

4.3 Following this consultation, the Government decided that individuals who incur high tax charges as a result of exceeding the reduced annual allowance will, in some circumstances, have the right to meet these charges from their pension benefits, with a commensurate reduction in their pension rights. Legislation to this effect has been included in the provisions of the Finance Act 2011.

[1]The consultation document is available at http://www.hmtreasury.gov.uk/consult_pensionsrelief.htm

4.4 Existing legislation prohibits a member of an occupational pension scheme from surrendering their pension rights which prevents schemes from making this reduction. Consequently, these regulations provide an exemption which permits surrender of pension benefits for the purpose of meeting an annual allowance tax charge.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 In most cases an individual who has an annual allowance tax charge in excess of £2,000 will be able to elect, under the new statutory regime provided for in the Finance Act 2011, for their pension scheme to pay their annual allowance charge in return for an actuarial adjustment to their accrued benefits within the scheme. Where there is no legal obligation on the scheme to pay some or all of the annual allowance charge (that is, in circumstances where the new statutory regime does not bite), the Government wants the member to be able to seek to reach a voluntary arrangement with the scheme for the payment of the tax charge.

7.2 The Pensions Act 1995, however, prohibits a member of an occupational pension scheme from surrendering their pension rights which would prevent schemes from making a reduction in accrued rights for these purposes. Consequently, these regulations provide for an exemption which allows the surrender of pension benefits for the purpose of meeting an annual allowance tax charge.

7.3 These regulations disapply the restriction on the surrender of pension scheme benefits present in existing legislation where:

- The scheme meets an obligation to pay an annual allowance charge arising from provisions of the Finance Act 2004, or
- The scheme and the member agree between them to meet the annual allowance charge from scheme benefits, in circumstances where the statutory regime does not apply, or instead of applying that regime.

7.4 As these regulations are consequential to the Finance Act 2011 and need to be in force as soon as possible after Royal Assent the Regulations are being laid when Parliament is not sitting.

7.5 The regulations need to be in force as soon as possible after Royal Assent as Annual Allowance charges could arise as soon as the Finance Act comes into force and members who want to use "scheme pays" need their scheme to be able to make the consequential adjustment straight away. In particular, it is possible that individuals retiring in the 2011/12 tax year will incur Annual Allowance charges as soon as the Finance Act comes into force. If these individuals wish to nominate their pension scheme to pay their Annual Allowance charge out of their pension benefits, they are required to make a nomination before the benefits come into payment. Where the scheme satisfies an individual's Annual Allowance charge, they must make a consequential adjustment to the individual's benefits. To avoid unauthorised payment charges, the scheme needs to make the consequential adjustment before the pension goes into payment.

Consolidation

7.6 Informal consolidation of this instrument will be included in due course in the Department's "the Law Relating to Social Security" (the Blue Volumes). These are free on the internet at: http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-lawrelating-to-social-security/

8. Consultation outcome

8.1 The Government consulted on these Regulations for four weeks from 20 May 2011 to 17 June 2011. The consultation was shortened from the usual 12 weeks to allow for the provisions to be brought into force as soon as possible after the Finance Act 2011 received Royal Assent to avoid creating a situation where the Finance Act 2011 provisions are inoperable because of the restrictions in section 91 of the Pensions Act 1995.

8.2 A shortened consultation period was considered appropriate in this case as:

- the Government has previously consulted extensively on the changes to the annual and lifetime allowances and on options to manage high annual allowance charges from pension benefits,[2] which are now provided for within the Finance Act 2011;
- the regulations are permissive and allow schemes to fulfil their obligations under the Finance Act 2011 or to enter into a voluntary arrangement for the same purposes if they wish;
- the purpose of the consultation on these regulations was to address consequential and technical provisions made under

[2] All the consultation papers and responses are listed on the HMT website at http://www.hm-treasury.gov.uk/consult_pensionsrelief.htm . The relevant documents are: "Options to meet high annual allowance charges from pension benefits", and "Options to manage high annual allowance charges from pension benefits: a summary of the discussion document responses".

section 94 of the Pensions Act 1995 to allow those proposals to operate;

- the consultation was targeted at those who are likely to have an opinion on the technical aspects of the regulations.

8.3 The consultation document was sent to 25 organisations with a specific interest in private pensions, and to people who had expressed an interest in the issue during previous HMRC consultation. It was also published on the Department's website. Ten formal responses were received by the Department, most of which focussed on technical drafting aspects. Some minor amendments of a technical nature were made to the regulations to take on board certain consultation responses. A number of other responses were received raising technical issues about the operation of "scheme pays" but that did not affect the operation of the regulations, and these were referred to HMRC for further consideration.

8.4 The Government will publish a more detailed response to the consultation on the DWP website http://www.dwp.gov.uk/consultations/

9. Guidance

As the regulations are technical and consequential and have no direct effect, no guidance is necessary.

10. Impact

10.1 The regulations impose no costs on business or the voluntary sector.

10.2 A Tax Information and Impact Note, covering the impact of this measure was published by HMRC on 9 December 2010 alongside draft legislation for the Finance Act 2011 concerning the restriction of pensions tax relief. This was updated on 3 March 2011 to reflect further decisions relating to the restriction of pensions tax relief.

11. Regulating small business

11.1 These Regulations will apply to small businesses.

11.2 As the Regulations make technical and consequential changes to existing statutory requirements, there is no impact of these Regulations on small businesses.

12. Monitoring & review

12.1 This instrument will not be reviewed or monitored on a regular basis as it is consequential to measures in the Finance Act 2011. Any necessary reviews will be undertaken by HMRC.

13. Contact

David Hone at the Department for Work & Pensions, Tel: 020 7449 7376 or email: david.hone@dwp.gsi.gov.uk, can answer any queries regarding this instrument.