EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (PROVISION OF INFORMATION) REGULATIONS 2006

2006 No. 567

THE REGISTERED PENSION SCHEMES (PRESCRIBED MANNER OF DETERMINING AMOUNT OF ANNUITIES) REGULATIONS 2006

2006 No. 568

THE REGISTERED PENSION SCHEMES (SPLITTING OF SCHEMES) REGULATIONS 2006

2006 No. 569

THE REGISTERED PENSION SCHEMES AND OVERSEAS PENSION SCHEMES (ELECTRONIC COMMUNICATION OF RETURNS AND INFORMATION) REGULATIONS 2006

2006 No. 570

THE REGISTERED PENSION SCHEMES (AUTHORISED MEMBER PAYMENTS) (NO. 2) REGULATIONS 2006

2006 No. 571

THE TAXATION OF PENSION SCHEMES (TRANSITIONAL PROVISIONS) ORDER 2006

2006 No. 572

THE PENSION SCHEMES (TRANSFER, RE-ORGANISATION AND WINDING UP) (TRANSITIONAL PROVISIONS) ORDER 2006

2006 No. 573

THE REGISTERED PENSION SCHEMES (AUTHORISED SURPLUS PAYMENTS) REGULATIONs 2006

2006 No. 574

THE PENSION PROTECTION FUND (TAX) REGULATIONS 2006

2006 No. 575

THE REGISTERED PENSION SCHEMES (AUTHORISED PAYMENTS - ARREARS OF PENSION) REGULATIONS 2006

2006 No. 614

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and 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 This memorandum follows the Explanatory Memoranda for -

- Statutory Instruments 2005/3448 to 3458 (laid before the House of Commons on 15 December 2005),
- Statutory Instruments 2006/129 to 138 (laid before that House on 26th January 2006),
- Statutory Instruments 2006/206 to 212 (laid before that House on 2nd February), and
- Statutory Instruments 2006/364 and 365 (laid before that House on 17th February).
- Statutory Instruments 2006/497 to 499 (laid before that House on 28th February).

2.2 These 10 instruments relate to, and supplement, Part 4 of the Finance Act 2004 as amended.

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

3.1. The Select Committee is respectfully referred to the Explanatory Memorandum for Statutory Instruments 2005/3448 to 3458 laid before the House of Commons on 15th December 2005.

3.2. These Statutory Instruments form the sixth tranche of the Regulations to be laid. They will have effect from 6th April 2006.

3.3. An explanation of each instrument follows.

4. Legislative Background

4.1. The powers to make these regulations and order are contained in:

- The Registered Pension Schemes (Provision of Information) Regulations 2006 (SI 2006/) - sections 220(5), 221(6), 251(1)(a) and (b), (4)(a) and (b), (5) and (6) and 256, paragraphs 7(1)(b), 12(1), and 18(6) of Schedule 36 to the Finance Act 2004.

- The Registered Pension Schemes (Prescribed Manner of Determining Amount of Annuities) Regulations 2006- paragraphs 3(1)(d), 6(1)(e), 17(1)(c) and 20(1)(e) of Schedule 28 to the Finance Act 2004.

- The Registered Pensions Schemes (Splitting of Schemes) Regulations 2006 - section 274A of the Finance Act 2004.

- The Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) Regulations 2006 - sections 132 and 133(2) of the Finance Act 1999 and sections 135 and 136 of the Finance Act 2002

- The Registered Pension Schemes (Authorised Member Payments) (No. 2) Regulations 2006 - section 164(f) of the Finance Act 2004

- The Taxation of Pension Schemes (Transitional Provisions) Order 2006 - section 283(2) of the Finance Act 2004

- The Pension Schemes (Transfer, Re-organisation and Winding Up) (Transitional Provisions) Order 2006 - section 283(2) of the Finance Act 2004

- The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 - section 177 of the Finance Act 2004

- The Pension Protection Fund (Tax) Regulations 2006 - section 102 of the Finance Act 2005

- The Registered Pension Schemes (Authorised Payments - Arrears of Pension) Regulations 2006 - section 164(f) of the Finance Act 2004

4.2. Regulations under these provisions may variously amend primary legislation by Order, specify, modify, prescribe and restrict the application of Part 4 of the Finance Act 2004 as amended by Schedule 10 to the Finance Act 2005

5. Extent

5.1. These instruments apply throughout the United Kingdom.

6. **European Convention on Human Rights**

6.1. The instruments are subject to annulment and do not amend primary legislation. Accordingly, no statement of compatibility with the European Convention on Human Rights 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 6th April 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.

7.3. An explanation of each instrument follows:

The Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006 No. 567)

Within the new unified pension tax regime, each registered pension scheme will be expected to appoint a scheme administrator to carry out various tax obligations on behalf of the scheme. These regulations specify the requirements for the provision of information in connection with registered pension schemes. In particular the Regulations prescribe the information that

- a scheme administrator shall provide to Her Majesty's Revenue and Customs in the form of an annual event report, when a pension scheme is wound -up and when a person ceases to be a scheme administrator;
- a company shall provide when it receives an unauthorised employer payment;

The Regulations also prescribe the information that scheme administrators and insurance companies shall provide to scheme members and the personal representatives of deceased scheme members, to enable them to ascertain the percentage of standard lifetime allowance expended by benefit crystallisation events in respect of the member. This information is needed so that a member can monitor the amount of their available lifetime allowance and to determine any liability to a lifetime allowance charge.

In addition, the Regulations prescribe the information that a scheme administrator is required to provide to other scheme administrators where there is a transfer of member's rights between schemes and the records that must be preserved in relation to a registered pension scheme.

The Registered Pension Schemes (Prescribed Manner of Determining Amount of Annuities) Regulations 2006 (S.I. 2006 No. 568)

The regulations provide for the amount by which a lifetime annuity may vary where the amount of that annuity is linked with changes in one of the factors set out in the regulations, such as changes in the retail prices' index or the market value of assets. The regulations will apply to annuities where the amount of an annuity can in some circumstances vary downwards, but will not apply where the amount of the annuity can only either stay level or increase. Providing that the variation in the amount of the annuity is linked with one or more of the factors specified in the regulations then the annuity will be within the definition of a lifetime annuity in paragraph 3 of Schedule 28 Finance Act 2004. These regulations do not prevent a change in one of the factors with which the amount of an annuity is linked, or, for example, a change from an annuity that is covered by these regulations, to an annuity where the amount may either stay level or increase.

- The regulations also provide for the amount by which the following annuities may vary:
- dependants' annuities;
- short-term annuities;
- dependants' short-term annuities.

The Registered Pension Schemes (Splitting of Schemes) Regulations 2006 (S.I. 2006 No. 569)

Within the new unified pension tax regime, each registered pension scheme will be expected to appoint a scheme administrator to carry out various tax obligations on behalf of the scheme.
In the vast majority of schemes, the scheme administrator will be one person or a group of persons discharging duties on behalf of the whole scheme. But in some very large schemes, spread over a number of employers, particularly those in the public sector, the administrative functions generally are devolved from the centre, reflecting the devolved powers of the employers concerned. In such cases, the schemes are effectively controlled at a local level.
Such de-centralised schemes are currently organised so that they have separate administrators for each fund or scheme making up the registered pension scheme. In effect, each part of the scheme, which deals with one or more separate employers or groups of employers is a distinct entity in terms of how it is administered.
These Regulations provide for:

- certain registered pension schemes together with any successor scheme to be split and treated as if they were a number of separate sub-schemes; and
- the scheme administrator of such sub-schemes shall assume the various tax liabilities and responsibilities of the scheme administrator of the split scheme.

The Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) Regulations 2006 (S.I. 2006 No. 570)

These regulations make provision about the use of approved methods of electronic communication for the purposes of delivering information required under part 4 of the Finance Act 2004. These provisions will not commence until a date to be appointed by Her Majesty's Revenue and Customs imposing a requirement that information must be delivered electronically. Until then any such requirement is to be read as merely permitting electronic delivery.

The Registered Pension Schemes (Authorised Member Payments) (No. 2) Regulations 2006 (S.I. 2006 No. 571)

This regulation provides that certain payments to which a member was entitled before 6th April 2006, if made on or after that date, will be exempt from the unauthorised payments surcharge.

The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006 No. 572)

This Order contains transitional provisions in relation to the new provisions for pension schemes coming into force on 6th April 2006.

The Pension Schemes (Transfer, Re-organisation and Winding Up) (Transitional Provisions) Order 2006 (S.I. 2006 No. 573)

This Order preserves the protection of certain pre A-Day rights in the event of particular types of transfer from one pension scheme to another. First, any right to take benefits before the normal minimum pension age is protected in the event of a transfer under the TUPE Regulations having taken place between 10 December 2003 and 6th April 2006.
Secondly, the Order protect rights to take benefits before the normal minimum pension age where a sponsoring employer has reorganised its pension schemes during the period between 10 December 2003 and 6th April 2006.
Thirdly, any right to take benefits before the normal minimum pension age, or to a tax-free lump sum in excess of 25% of uncrystallised rights, is protected in the event of the scheme winding up after A-Day and benefits being secured by an annuity contract.

The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 (S.I. 2006 No. 574)

These regulations make provision to allow for surplus funds in a registered occupational pension scheme (OPS) to be paid to a sponsoring employer subject to a tax charge at 35% on the payment. Provision has been made for such authorised surplus payments to be allowed in circumstances where such payments are made in accordance with Department of Work and Pensions(DWP) legislation relating to payments to employers. However, not all OPSs are covered by DWP legislation, for example Small Self Administered Schemes, so provision has also been made to allow for surplus payments to be paid from OPS's that are not covered by DWP rules. In addition, these regulations prescribe when surplus payments can be made to sponsoring employers where surplus funds arise on the death of a member. These rules have been designed to prevent potential tax avoidance where there is a connection between the deceased member and sponsoring employer, and where the member dies aged 75 or over and the deceased member's fund is an alternatively secured pension fund (ASP) to ensure that any remaining funds in an ASP fund should be used first and foremost to fund dependants' benefits.

The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006 No. 575)

These Regulations make provision, in relation to the Pension Protection Fund and the Fraud Compensation Fund, bodies established under the Pensions Act 2004, and managed by the Board of the Pension Protection Fund. The Regulations exempt the two funds from tax, and provide that the Pension Protection Fund receives the same tax treatment as the occupational pension schemes it is designed to protect.
The Regulations contain the principal provision, providing that the Tax Acts apply to the Pension Protection Fund in the same way as they apply to a registered pension scheme. The regulations also include provision to ensure that gains and losses accruing on disposals of investments held by the Board for the purposes of the Pension Protection Fund or the Fraud Compensation Fund are not chargeable gains or allowable losses, and to eliminate any

possibility that receipt of a fraud compensation payment or of one of a number of related payments may be liable to capital gains tax or to corporation tax on chargeable gains.

The Registered Pension Schemes (Authorised Payments - Arrears of Pension) Regulations 2006 (S.I. 2006 No. 614)

This regulation provides for arrears of pension to be paid to a member as an authorised payment where a scheme is required to pay this amount for the period up until the member becomes actually entitled to the pension in accordance with section 165(3) Finance Act 2004. The sum will be taxable pensions' income.

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

9.1. 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.