EXPLANATORY MEMORANDUM TO

THE PERSONAL PENSION SCHEMES (APPROPRIATE SCHEMES) (AMENDMENT) REGULATIONS 2006

2006 No. 147

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. Description

2.1 The Personal Pension Schemes (Appropriate Schemes) Regulations (the "Principal Regulations") set out conditions which must be satisfied by schemes holding "protected rights", which derive mainly from the investment of contracted-out National Insurance rebates.

2.2 This instrument

(i) updates definitions in the Principal Regulations,

(ii) allows contracted out personal pension schemes ("appropriate schemes") to include an arrangement - such as a Self Invested Personal Pension Scheme (SIPPS) - which does not meet the normal conditions set out in the Principal Regulations, providing that only non protected rights are held in that section of the scheme, and

(iii) allows the authorised corporate director of an Open Ended Investment Company (OEIC) to establish an "appropriate scheme" for the investment of protected rights in an OEIC.

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

3.1 None.

4. Legislative Background

4.1 The Principal Regulations have the effect that a scheme may only be an appropriate scheme (ie authorised to hold protected rights) if it takes one of the forms specified in the regulations. At present, an entirely separate scheme would have to be set up if the individual wished to invest non protected rights in a scheme, such as a SIPPS, which does not take one of the specified forms. This entails extra administrative cost. This instrument will allow such an arrangement to be held within the appropriate scheme 'wrapper' without invalidating its contracting-out certificate, providing the arrangement holds non protected rights only.

4.2 The forms of schemes which appropriate schemes may take is also extended to include an OEIC.

5. Extent

5.1 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

7.1 Extra requirements apply to protected rights funds and to the schemes which are authorised to hold such funds, over and above the general rules applying to tax-approved personal pensions. These additional requirements recognise the National Insurance rebates received by the fund and the fact that the appropriate personal pension must provide a retirement income in place of state second pension foregone through contracting out.

7.2 Amendment of the Principal Regulations is necessary from April 2006 to update some definitions based on cross-references which will become obsolete from that date.

7.3 A consultation exercise was carried out on draft amending regulations which would also have had the effect of making clear that no form of SIPPS could be an appropriate scheme holding protected rights. Eighteen responses were received to the consultation paper. A number of consultees argued in favour of permitting SIPPS to hold protected rights in future. If the Government was not prepared to relax restrictions in this way, some consultees called for an easement to allow a SIPP arrangement, holding non protected rights only, to operate under the same 'wrapper' as an appropriate scheme. This would avoid duplication of administrative work through having to set up two entirely separate schemes for the same client. It was also pointed out that certain products offered by insurance companies - 'Personal Managed Funds', which offer some self investment choices - had been allowed to hold protected rights for some years, and that the proposed draft regulations would have had the effect of disturbing these long-established arrangements. There were also a number of technical comments received on the draft regulations.

7.4 The Government has decided to revise the draft regulations so as to have the effect of leaving the existing position in respect of SIPPS and protected rights unchanged. The revised regulations will allow 'Personal Managed Fund' plans - which, as insurance products, are subject to additional regulatory requirements by the Financial Services

Authority - to continue to hold protected rights. Trust-based SIPPS will continue to be restricted to holding non protected rights only. The regulations introduce an easement, however, allowing a SIPP arrangement holding non protected rights to sit within the 'wrapper' of an appropriate scheme without invalidating that scheme's contracting-out status. The position will also be reviewed again in due course, in the light of possible changes to the regulatory provisions for various types of pension products which may take effect from 2007. These regulatory arrangements are currently the subject of a consultation exercise being undertaken by the Treasury.

7.5 The full Government response to the comments made in the consultation exercise is available on the Department for Work and Pensions website at http://www.dwp.gov.uk/consultations/2005/contractedoutregs_amdts/govt_response.pdf.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it imposes no new costs on business, charities or voluntary bodies.

8.2 This instrument imposes no costs on the public sector.

9. Contact

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