EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (PROVISION OF INFORMATION)(AMENDMENT) REGULATIONS 2011

2011 No. 301

AND

THE REGISTERED PENSION SCHEMES (ACCOUNTING AND ASSESSMENT)(AMENDMENT) REGULATIONS 2011

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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.

2. Purpose of the instruments

2.1 These instruments make changes to the items of information about individuals which a scheme administrator of a registered pension scheme is required to report to Her Majesty's Revenue and Customs (HMRC) and also, as a consequence, the information that individuals are required to report to scheme administrators. The need for these changes has come about as a result of increased emphasis on protecting taxpayer information. HMRC's Pension Schemes Online system is being redesigned accordingly.

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

3.1 None

4. Legislative Context

4.1 The Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567) impose obligations on various parties (including scheme administrators, scheme members, insurance companies and HMRC) to provide specified information to each other and to HMRC at particular times. These regulations ("the 2006 Regulations") came into force on 6 April 2006.

4.2 The Registered Pension Schemes (Accounting and Assessment) Regulations 2005 (S.I. 2005/3454) require a scheme administrator to notify HMRC when certain types of tax chargeable payments have been made from their registered pension schemes, and to make payment of the tax due. These regulations ("the 2005 Regulations") also came into force on 6 April 2006.

4.3 From 6th April 2011, the 2005 and 2006 Regulations will be amended so that the number of items of information about an individual that a pension scheme administrator is required to provide to HMRC is reduced.

4.4 Under regulation 3 of the 2006 Regulations, a scheme administrator is required to notify HMRC of certain details in relation to any events specified in that regulation. For some events this includes personal information about the individual to whom the event relates. The notification is to be made online, as an event report.

4.5 Under regulation 3 of the 2005 Regulations, a scheme administrator is required to notify HMRC of certain personal information about individuals for whom a lifetime allowance charge is due. The notification is to be made online, as an accounting for tax return.

4.6 HMRC's Pension Schemes Online system is being redesigned to enhance the data security it provides by reducing the amount of information it holds. The individual's date of birth and address are no longer required but it is now obligatory to provide the national insurance number. So where previously the scheme administrator was only required to provide HMRC with the individual's national insurance number if it was known to the scheme administrator, on reports, returns and amendments (subject to the exception below) submitted from 6th April 2011 onwards HMRC will require the individual's national insurance number in all cases. Where the individual does qualify for a national insurance number, there is now an obligation for the individual to provide it to the scheme administrator on request.

4.7 There may be instances where an individual whose details are to be included in the event report or the accounting for tax return does not qualify for a national insurance number. In these cases the amendments to the 2005 and 2006 Regulations introduce an obligation on the individual to provide written confirmation of this, together with their date of birth and address, to the scheme administrator. The scheme administrator must then obtain an alternative reference number from HMRC to provide in place of the national insurance number.

4.8 The individual must provide the national insurance number or, where the individual does not qualify for a national insurance number, the information described above, within 60 days of the date on which the scheme administrator requests the information. Penalties under section 98 of the Taxes Management Act 1970 apply to the failure to provide this information and for the fraudulent or negligent provision of this information.

4.9 There is one exception to the new requirements. This applies where there is an amendment (delivered on or after 6th April 2011) to an event report or accounting for tax return which was first delivered before 6th April 2011 where the amendment relates to an individual whose details are already contained in the report or return which is being amended. In these circumstances, where the national insurance number is not known to the

scheme administrator, the scheme administrator may provide the date of birth in place of the national insurance number.

4.10 There is also a new provision in respect of the information required when a scheme makes an unauthorised payment. In these circumstances, where the person to whom the payment is made is neither an individual nor a company, the scheme administrator must obtain a number from HMRC and provide this in the event report. This amendment reflects current practice.

5. Territorial Extent and Application

5.1 These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 In order to inform HMRC's compliance strategy, scheme administrators are required to provide HMRC with certain information where a particular eventuality has occurred in their pension schemes. These may be events which result in a tax charge falling due where HMRC will issue an assessment or where scheme administrators are required to pay the charge without an assessment. Or they may be events which HMRC needs to monitor or otherwise be aware of for compliance purposes. Scheme administrators are required to submit this information to HMRC on the Pension Schemes Online system.

7.2 In order to make it easier for HMRC to protect the taxpayer data in its possession, changes are being made to the Pension Schemes Online system.

7.3 The Government decided that the amount of data held on the system in respect of an individual should be reduced from name, address, date of birth and in many cases national insurance number, to name and national insurance number (or an alternative reference number, where applicable) only. Where the individual does not qualify for a national insurance number, HMRC will keep a separate record of the individual's name, address and date of birth outside the online system.

7.4 Changes to regulations are needed to introduce the revised requirements.

- ***Consolidation***

7.6 There are no plans to consolidate these regulations.

8. Consultation outcome

8.1 HMRC explained the changes at a meeting of the Pension Schemes Stakeholder Forum on 23 September 2010. There was no negative feedback and the reaction was positive. Following this, on 10 December 2010 HMRC published a Newsletter and draft Guidance Note on its website for comment. Since then, HMRC has also consulted informally with the pensions industry on draft versions of both sets of amending regulations.

8.2 The comments that HMRC have received on the draft regulations and guidance are as follows:

- Concerns about individuals who are overseas and who do not qualify for a national insurance number.

  Earlier drafts of the regulations required an individual to obtain written confirmation from the Department for Work and Pensions that they did not qualify for a national insurance number. This would entail attending a Job Centre Plus office for interview. Comments were made that this would be very onerous for individual who are overseas. The process now requires an individual to provide written confirmation that they do not qualify for a national insurance number to the scheme administrator, along with their date of birth and address.

- Concerns that scheme administrators would be unable to submit their reports and returns if an individual does not provide the scheme administrator with either the required written confirmation or the national insurance number.

  There is now a 60 day time limit for the individual to provide the information to the scheme administrator. If an individual does not comply with this obligation, a penalty would apply to the individual under section 98 Taxes Management Act 1970. It is in any case best practice for pension schemes to hold in their records the national insurance numbers of their members.

- A query as to whether the new requirements were retrospective in application.

  HMRC does not consider that they are retrospective as they apply to reports, returns and amendments to reports and returns made on or after 6th April 2011.

9. Guidance

9.1 A Pensions Newsletter was published on HMRC's website on 10 December 2010 alongside guidance to scheme administrators on the new reporting requirements and associated procedures. Revised guidance and another Newsletter article is being published to draw attention to the changes made to the process originally publicised resulting from pension industry

comments. The Registered Pension Schemes Manual guidance will be updated at the earliest opportunity. The Pension Schemes Online system contains help text to assist scheme administrators when compiling their reports online and revised help text will be operational along with the revised screens from 6 April 2011.

10. Impact

10.1 There is no impact on charities or voluntary bodies. The impact is on scheme administrators of registered pension schemes.

10.2 The impact on the public sector is the same as on the private sector, as the reporting requirements in Finance Act 2004 and the 2005 and 2006 regulations apply equally to all scheme administrators, whether public or private sector.

10.3 An Impact Assessment has not been prepared for this instrument, because the impact on pension scheme administrators and the public has been assessed as negligible.

11. Regulating small business

11.1 The legislation applies to small business in the same way as to larger businesses. The legislation affects those who act as a scheme administrator of a registered pension scheme and applies to all scheme administrators. The new legislation will mean that scheme administrators have to report fewer items of information to HMRC. A small business operating as a scheme administrator for a relatively small number of pension schemes will benefit proportionately from the changes.

12. Monitoring & review

12.1 HMRC will monitor the operation of the new process for compliance with the new requirements, and will review the guidance where necessary.

13. Contact

Sue Marsh at Her Majesty's Revenue and Customs can answer any queries regarding these two instruments.
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