EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES ETC. (INFORMATION) (PRESCRIBED DESCRIPTIONS OF PERSONS) REGULATIONS 2010

2010 No. 650

THE REGISTERED PENSION SCHEMES (ENHANCED LIFETIME ALLOWANCE) (AMENDMENT) REGULATIONS 2010

2010 No. 651

THE REGISTERED PENSION SCHEMES AND OVERSEAS PENSION SCHEMES (ELECTRONIC COMMUNICATION OF RETURNS AND INFORMATION) (AMENDMENT) REGULATIONS 2010

2010 No. 652

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instruments

2.1 These instruments relate to the collection and provision of information by and to HMRC in relation to the taxation of pension schemes. Some existing powers under which HMRC obtains such information about pension schemes are being replaced by the provisions in Schedule 36 to the Finance Act 2008 ("Schedule 36") with effect from 1st April 2010. These instruments make provision as a consequence of the replacement of existing powers by those new powers.

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

3.1 None.

4. Legislative Context

4.1 The tax regime for registered pension schemes is set out in Part 4 of the Finance Act 2004 ("the 2004 Act"), and came into effect on 6th April 2006. Part 4 included powers for HMRC to require information or documents to be provided, and to carry out inspections.

4.2 A comprehensive review of HMRC's powers across the range of its responsibilities has recently taken place. The review has resulted in many of the powers previously exercisable by HMRC's predecessors – the Inland Revenue and Her Majesty's Customs and Excise – being consolidated and brought into line with each other. In relation to information gathering,

HMRC's new powers are set out in Schedule 36, as amended by Schedule 48 to the Finance Act 2009 in relation to pension schemes. Those amendments come into force on 1st April 2010, by virtue of the Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009 (S.I. 2009/3054). That Order also repeals the specialist information powers relating to registered pension schemes in sections 252, 253 and 259 of the 2004 Act from the same date.

4.3 As a consequence of those repeals and the new information gathering powers in relation to registered pension schemes, amendments to other secondary legislation are required. These instruments make those amendments.

5. Territorial Extent and Application

5.1 These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

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

7.1 The HMRC Review of Powers, Deterrents and Safeguards began in 2005, following the merger of the Inland Revenue and Her Majesty's Customs and Excise, to provide a framework of law and practice for HMRC that supports the Government's objectives of a tax system that is fair and better adapted to the needs of customers. One of the main outputs of the Review was a harmonised set of powers with which HMRC may carry out checks into a person's tax position. That is contained in Schedule 36, which came into effect on 1st April 2009 in relation to the main taxes administered by HMRC. Section 96 of the Finance Act 2009 applies those powers to most of the other taxes administered by HMRC and Schedule 48 to that Act amends Schedule 36 to accommodate its extension to other taxes and includes some provisions which enable a larger number of specialist information gathering powers, including those relating to pension schemes, to be repealed.

7.2 These instruments make various provisions that are consequential on the repeals of provisions that allowed HMRC to gather information in relation to pension schemes and their replacement by the provisions in Schedule 36.

7.3 The Registered Pension Schemes etc. (Information) (Prescribed Descriptions of Persons) Regulations 2010 ("the PDP Regulations"). Schedule 36 enables HMRC to seek information from taxpayers about their tax position and also from third parties. It also allows HMRC to seek information from a third party in relation to a taxpayer whose identity is not known.

7.4 Under paragraph 34B of Schedule 36, a notice requiring information from a third party in relation to a pensions matter must be copied to the scheme administrator for the registered pension scheme or the person responsible for the employer financed benefit scheme, as the case may be, the notice relates to. That requirement is lifted if the notice requiring information is served on a person who falls within a description prescribed in regulations.

7.5 The PDP Regulations prescribe descriptions of person for that purpose and in particular provide that where an information notice is served on a scheme administrator or responsible person it need not also be copied to those individuals, to avoid unnecessary duplication. They also provide that where the information notice is served on a third party for the purposes of identifying the scheme administrator or responsible person the notice need not be copied to those individuals, to avoid uncertainty about HMRC's powers to serve information notices in those circumstances.

7.6 The Registered Pension Schemes (Enhanced Lifetime Allowance) (Amendment) Regulations 2010 ("the ELA Regulations"). Part 4 of the 2004 Act includes provision that an individual has a lifetime allowance in the amount of pensions savings that may benefit from tax relief. In some cases, an individual can have an enhanced lifetime allowance, provided that notice of intention to rely on the provisions that allow for this ("an intention notice") is given in accordance with regulations.

7.7 Part 4 of the 2004 Act also includes provision for a charge to income tax: the lifetime allowance charge; and paragraph 12 of Schedule 36 to that Act provides, in certain circumstances, that there is no liability to the charge if an intention notice in relation to that paragraph is given in accordance with regulations.

7.8 The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 contain the provisions about the giving of intention notices. They also contain additional provisions of an administrative nature, in particular to do with compliance checks by HMRC. Following the review of powers, Schedule 36 now also contains an administrative procedure in connection with compliance checks. Accordingly, those Regulations are amended by the ELA Regulations to refer to the procedural steps set out for compliance checks in Schedule 36.

7.9 The Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) (Amendment) Regulations 2010 ("the ECRI Regulations"). Schedule 2 to the Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) Regulations 2006 sets out various pieces of information in relation to pensions that may be sent by and to HMRC in electronic form. The ECRI Regulations amend those Regulations to remove entries that are redundant following the repeals and revocations made as a consequence of Schedule 36. The ECRI Regulations also make equivalent provision for information about pensions to be sent by and to HMRC by electronic means under Schedule 36.

- ***Consolidation***

7.10 The ELA Regulations and the ECRI Regulations make minor amendments to existing regulations which deal with a wider range of matters than information gathering. Accordingly, HMRC does not consider it necessary to consolidate those regulations at this time.

8. Consultation outcome

8.1 The provisions that became Schedule 36 were fully consulted on. The fact that having a single set of powers would enable existing information powers to be repealed or revoked was made clear in the consultation and welcomed by respondents. As part of a second consultation in relation to proposed legislation in the 2009 Finance Bill, the specialist powers that were to be repealed by the Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009 were set out in draft legislation. Pensions industry stakeholders and representative bodies were also individually consulted and were content with the proposals that HMRC should rely on Schedule 36 in place of specialist information gathering provisions in relation to pensions. There has been no separate consultation on these instruments because they are needed purely as a consequence of the Finance Acts 2008 and 2009 to ensure the pensions tax legislation continues to work as intended.

9. Guidance

9.1 Guidance on the new powers in Schedule 36 has been published and commented on.

9.2 There is no additional guidance being published to support these Regulations as there is no change to the records that have to be kept by taxpayers as a result of them. But the guidance in HMRC's Registered Pension Schemes Manual will be updated at the next available opportunity to reflect the new information gathering arrangements (www.hmrc.gov.uk/manuals/rpsmmanual/index.htm).

10. Impact

10.1 There are no additional costs for business as a result of HMRC relying on Schedule 36 to obtain information in relation to pensions. Accordingly, there is no impact on business, charities or voluntary bodies and an Impact Assessment has not been produced for these instruments.

10.2 The impact on the public sector is the same as the impact on the private sector.

11. Regulating small business

11.1 The legislation only applies to small businesses if they are involved in registered pension schemes.

11.2 These are compliance-related requirements and as such they should apply to small business in the same way as anyone else. It is not appropriate to exempt small business from information requirements.

12. Monitoring & review

12.1 An Implementation Forum, chaired by HMRC, but with a majority of its members drawn from representative bodies was set up to monitor the application of Schedule 36. The Forum will also consider how Schedule 36 is being applied following its amendment by the Finance Act 2009.

13. Contact

Sue Marsh at HMRC, telephone: 0115 974 3068 or email: pensions.policy@hmrc.gsi.gov.uk, can answer any queries regarding these instruments.