EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (NOTICE OF JOINT LIABILITY OF THE ANNUAL ALLOWANCE CHARGE) REGULATIONS 2011

2011 No. 1793

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 instrument

2.1 This instrument provides details of the information an individual must give in a notice to their pension scheme administrator if they wish the pension scheme administrator to meet their annual allowance charge in return for a consequential adjustment to their pension benefits.

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

3.1 None.

4. Legislative context

4.1 This instrument is one of a group of instruments which are part of the changes made to the pension tax regime introduced by the Finance Act 2011 ("FA 2011"). The table annexed to the Registered Pension Schemes (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/1751) shows the full list of instruments that are expected to be laid following the coming into force of FA 2011.

4.2 Part 4 of the Finance Act 2004 ("the Act") came into force on 6 April 2006 and makes provision for registered pension schemes. The Act put in place a single regime for tax privileged pension saving, with a number of key controls including the annual allowance which acts as an annual cap on tax-relieved pension saving – section 228 of the Act. Any pension savings that exceed the annual allowance are subject to an annual allowance charge - section 227 of the Act.

4.3 Paragraph 15 of Schedule 17 to FA 2011 inserts new sections 237A to 237F into the Act enabling members of registered pension schemes to require, in certain circumstances, the scheme administrator to pay an annual allowance charge. Section 237E provides that a consequential adjustment must be made to the member's pension benefits.

4.4 Section 237B of the Act provides that the individual may give notice to the scheme administrator specifying that they and the scheme administrator are to be jointly and severally liable in respect of the amount of annual allowance charge specified in the notice. Sub section (5)(b) sets out that the notice must be given in such a manner and form and contain such particulars as may be prescribed by the Commissioners for HMRC and sub section (5)(c)sets out that the notice may be amended by giving the scheme administrator notice in accordance with regulations

made by the Commissioners of HMRC. It is these powers, as well as powers in section 251 of the Act, that this instrument is being made under. This is the first time that any instrument has been made using the power in section 237B of the Act.

5 Territorial Extent and Application

5.1 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

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

7.1 The Government provides generous tax relief on pension savings to encourage individuals to take responsibility for retirement planning and to recognise that pensions are less flexible than other forms of saving. However, the cost of tax relief on pensions doubled over the past decade. Reform to pensions tax relief is an integral part of the Government's deficit reduction package and as part of these reforms the Government has introduced restrictions to the amount of tax-free pension savings that can be made to ensure that pensions tax relief remains fair, affordable and sustainable.

7.2 The level of the annual allowance has reduced from £255,000 in the 2010-11 tax year to £50,000 for the 2011-12 tax year onwards. This reduction means more individuals will be affected by the annual allowance charge than previously. Although the Government anticipates that most individuals, employers and pension schemes will adapt so that pension savings remain below the annual allowance it is possible some people will trigger tax charges that could be difficult to manage from their current income, particularly in the early years of the regime.

7.3 To help such individuals manage their tax charges, following a consultation, the Government has legislated to provide an option for individuals to elect for their pension scheme to meet part or all of their annual allowance charge from their pension benefits in certain circumstances. Changes to the Department for Work and Pensions legislation have also been made to ensure pension schemes can reduce a member's accrued pension benefits.

7.4 The information individuals have to provide to their pension schemes when they elect for their pension scheme to meet their annual allowance charge out of pension benefits is set out in this instrument.

- ***Consolidation***

7.5 The instrument does not amend another instrument so consolidation is not appropriate.

8. Consultation outcome

8.1 The Government held an informal consultation which concluded on 27 August 2010 on its proposed approach to restricting pensions tax relief, involving reform of existing allowances. A discussion document "Restriction of pensions tax relief: a discussion document on the alternative approach" was published in July 2010, inviting views on a range of issues around the precise design of any such regime. A Summary of Responses document "Restricting pensions tax relief through existing allowances: a summary of the discussion document responses" was published in October 2010 in which the Government said it would consider options to enable individuals to meet the annual allowance charge out of their pension benefits, rather than current income.

8.2 A further informal consultation "Options to meet high annual allowance charges from pension benefits: a discussion document" was published in November 2010 and concluded on 7 January 2011. A Summary of Responses document "Options to meet high annual allowance charges from pension benefits: a summary of the discussion document responses" was published on 3 March 2011 setting out that the Government intended to legislate for the facility for annual allowance charges being met from pension benefits.

8.3 The instrument was published in draft for comment on the HMRC website on 23 May 2011 and 9 responses were received on the proposed draft legislation. Minor changes were made to the instrument as a result of the consultation.

9. Guidance

9.1 Draft guidance on the annual allowance has been available on HMRCs website since 14 October 2010 at www.hmrc.gov.uk/pensionschemes/annual-allowance/index.htm. HMRC are in the process of finalising the guidance to reflect the final legislation including this instrument. Guidance on the process for registered pension schemes to meet annual allowance charges from pension benefits will be published on HMRCs website shortly.

10. Impact

10.1 There will be an impact on businesses if the business is a pension scheme and a member of that scheme elects for the pension scheme administrator to be jointly liable for an annual allowance tax charge. Affected businesses will be required to make an adjustment to the member's pension benefits and the impact of doing so is included within the Tax Information and Impact Note. There is no additional impact on charities or the voluntary sector.

10.2 There is no additional impact on the public sector, although public sector pension schemes would be included as businesses and are impacted as set out above.

10.3 A Tax Information and Impact Note covering the primary legislation and this instrument was published on 9 December 2010 alongside draft legislation for Finance Bill 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 and is available on the HMRC website at

http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to the overall policy and this instrument.

11. Regulating small business

11.1 The legislation does apply to small businesses.

11.2 The impact on small businesses has been considered as part of the consultation but is likely to be less than on large businesses as they will have fewer individuals who are affected by the policy.

12. Monitoring & review

12.1 The policy will be monitored through information collected from HMRC databases, tax returns, receipts and other statistics.

13. Contact

13.1 Angela Miles at HMRC, telephone: 020 7147 3635 or email: pensions.policy@hmrc.gsi.gov.uk, can answer any queries regarding this instrument.