EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (PRESCRIBED REQUIREMENTS OF FLEXIBLE DRAWDOWN DECLARATION) REGULATIONS 2011

2011 No. 1792

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 These Regulations set out the conditions which a scheme member, or their dependant, needs to meet for a declaration to be valid for the purposes of taking flexible drawdown.

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 FA 2011. The annex to the Explanatory Memorandum for the Registered Pension Schemes (Miscellaneous Amendment) 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 Finance Act 2004 ("the Act"), which came into force on 6 April 2006, makes provision for registered pension schemes. Section 160(1) of the Act provides that the only payments which a registered pension scheme is authorised to make to or in respect of a person who is or has been a member of a registered pension scheme, or a dependant of such a person, are those specified in section 164 of the Act. Pension payments permitted by the pension rules are set out in section 165 (for a member) and section 167 (for a dependant) and Schedule 28 of the Act.

4.3 Under sections 165 and 167 of FA 2004, rules are set out as to the payment of pensions by a registered pension scheme ("the pension rules"), which if satisfied, in turn make a pension payment an 'authorised payment'. Paragraph 1 of Schedule 16 to the Finance Act 2011 amends sections 165 and 167 of the Act by inserting a new subsection (3A) and (2A) respectively. These new subsections introduce a new facility (flexible drawdown) which enables scheme members, or their dependant, to fully access their drawdown funds without any annual cap, providing certain conditions are met and a valid declaration to that effect is made and accepted by the scheme administrator.

The conditions are set out in new subsections (3B) and (2B) respectively of sections 165 and 167 of the Act. One of these conditions is that the member must satisfy a minimum income requirement as provided for in paragraphs 14A and 24A of Schedule 28 to FA 2004 as inserted by paragraphs 1 and 11 of Schedule 16 to FA 2011.

4.4 Paragraphs 14E(1) and 24G(1) of Schedule 28 to FA 2004 contain powers for HMRC to prescribe the requirements of a valid declaration. These Regulations are made under the above powers and set out what constitutes a valid declaration. This is the first time that an instrument has been made using these powers.

4.5 The Regulations make further provision for the procedure to be followed if a scheme member of their dependant wishes to make a valid declaration but does not qualify for a national insurance number.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to 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's pension benefit reforms make the pension tax system simpler by removing unnecessarily restrictive and outdated rules applying to annuities and income drawdown arrangements, and simplifying the pensions tax framework. The reforms provide greater flexibility for individuals over how and when they can access pension savings in retirement through the introduction of a new type of drawdown (flexible drawdown) which, providing certain conditions are met, enables scheme members and their dependants to fully access their drawdown funds without any annual cap.

7.2 In order for the scheme administrator to make flexible drawdown payments to the scheme member, or their dependant, they must have received and accepted a valid declaration made by the scheme member, or their dependant, declaring that they meet the flexible drawdown conditions.

7.3 These regulations set out the conditions that the declaration made by the scheme member, or their dependant, must meet in order to be valid.

- Consolidation

7.4 There are no plans to consolidate the instrument that is being laid.

8. Consultation outcome

8.1 The Government held a formal consultation which concluded on 10 September on its proposals to remove the requirement to annuitise by age 75. A consultation document "Removing the requirement to annuitise by age 75" was published on 15 July 2010, inviting views on the issues around the precise design of the new rules required to do so. A summary of responses to this consultation was published on 9 December 2010.

8.2 The draft Regulations relating to the flexible drawdown regulations were published for comment on the HMRC website on 31 March 2011 and 5 responses were received on the draft legislation.

8.3 Changes have been made in response to responses received to provide for individuals who do not qualify for National Insurance numbers to be able to make a valid declaration and to remove the requirement for the member to report the tax year in which the first payment from a source of relevant income was made.

9. Guidance

9.1 Draft guidance on the age 75 changes was also published on the HMRC website on 31 March 2011 at http://www.hmrc.gov.uk/budget-updates/march2011/pensions-draft-guidance.pdf . It will be updated at the next available opportunity to reflect the final legislation.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible as this instrument relates to the declaration that an individual must make to their scheme administrator in order to qualify for flexible drawdown.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note ('TIIN') covering this instrument was published on the HMRC website on 9 December 2010 alongside draft legislation for the Finance (No.3) Bill 2011 concerning the removal of the effective requirement to annuitise by age 75. This is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm and remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The impact on small firms has been considered as part of the consultation. It would however not be appropriate for the policy to apply differently according to the size of the firms within which the affected individuals operate.

12. Monitoring & review

12.1 The policy will be monitored through information collected from pension schemes and through external financial services statistics.

13. Contact

13.1 Sarah Mee at HMRC, telephone: 0115 974 3013 or email: pensions.policy@hmrc.gsi.gov.uk, can answer any queries regarding this instrument.