EXPLANATORY MEMORANDUM TO

THE PENSION SCHEMES (CATEGORIES OF COUNTRY AND REQUIREMENTS FOR OVERSEAS PENSION SCHEMES AND RECOGNISED OVERSEAS PENSION SCHEME) REGULATIONS 2006 No. 206

THE PENSION SCHEMES (INFORMATION REQUIREMENTS – QUALIFYING OVERSEAS PENSION SCHEMES, QUALIFYING RECOGNISED OVERSEAS PENSION SCHEMES AND CORRESPONDING RELIEF) REGULATIONS 2006 No. 208

THE PENSION SCHEMES (APPLICATION OF UK PROVISIONS TO RELEVANT NON-UK SCHEMES) REGULATIONS 2006 No. 207

THE REGISTERED PENSION SCHEMES (AUTHORISED PAYMENTS) REGULATIONS 2006 No. 209

THE EMPLOYER-FINANCED RETIREMENT BENEFITS (EXCLUDED BENEFITS FOR TAX PURPOSES) REGULATIONS 2006 No. 210

THE PENSION SCHEMES (RELEVANT MIGRANT MEMBERS) REGULATIONS 2006 No. 212

THE REGISTERED PENSION SCHEMES (SURRENDER OF RELEVANT EXCESS) REGULATIONS 2006 No. 211

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before The House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1. This memorandum follows the Explanatory Memorandum for Statutory Instruments 3448 to 3458 laid before the House of Commons on 15 December 2005, and the Explanatory Memorandum for Statutory Instruments 129 to 138 laid before the House of Commons on 26 January 2006.

2.2. These 7 sets of Regulations are the third part of the Government's measures to simplify the taxation of pensions. They flow from Part 4 of the Finance Act 2004 as amended.

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

3.1. The Select Committee is respectfully referred to the Explanatory Memorandum for Statutory Instruments 3448 to 3458 laid before the House of Commons on 15 December 2005 and the Explanatory Memorandum for Statutory Instruments 129 to 138 laid before the House of Commons on 26 January 2006.

3.2. The table annexed to the memorandum of 15 December 2005 showed the full list of Instruments that are expected to be laid for Part 4 of the Finance Act 2004 on the 6th April 2006. These Statutory Instruments are the third tranche of Regulations to be laid and they will have effect from 6th April 2006.

3.3. Further instruments will follow in the next few weeks.

3.4. An explanation of each instrument follows:

The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Scheme) Regulations 2006 no.

An overseas pension scheme is a bona fide non-UK pension scheme. Contributions to a scheme which meets the definition of an "overseas pension scheme" may be eligible for UK tax relief. So tax relief will be available for example where foreign workers come to work in the UK and continue to make contributions to their home schemes. And if a non-UK scheme meets the definition of a "recognised overseas pension scheme" this will allow a transfer of a member's rights to it from a registered pension scheme.

These Regulations prescribe the requirements which must be satisfied to enable a pension scheme to be—

- an overseas pension scheme, and
- a recognised overseas pension scheme,

for the purposes of Part 4 of the Finance Act 2004.

The Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 No.

An overseas pension scheme is a bona fide non-UK pension scheme. Contributions to a scheme which meets the definition of an "overseas pension scheme" may be eligible for UK tax relief. So tax relief will be available for example where foreign workers come to work in the UK and continue to make contributions to their home schemes. And if a non-UK scheme meets the definition of a "recognised overseas pension scheme" this will allow a transfer of a member's rights to it from a registered pension scheme.

These Regulations prescribe the information which—

- a qualifying overseas pension scheme, and
- a qualifying recognised overseas pension scheme

must undertake to provide to Her Majesty's Revenue and Customs, and the time limits by which the information must be provided.

The Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 No.

A scheme is a relevant non-UK scheme if—

- relief from tax has been given in respect of contributions paid under the scheme by virtue of the legislation and the relief has been given at any time after 5th April 2006 by double tax arrangements,
- a member or members of the scheme have been exempt from income tax by virtue of section 307 of Income Tax (Earnings and Pensions) Act 2003 at any time after 5th April 2006 when the scheme was an overseas pension scheme, or

- there has been a relevant transfer at any time after 5th April 2006 when the scheme was a qualifying recognised overseas pension scheme.

These Regulations serve two purposes—

- to provide a method of computing the amount to be charged to UK tax in respect of a payment by a relevant non-UK pension scheme; and
- to modify the provisions of Part 4 of the Finance Act 2004 ("the Act") to ensure that the new regime for registered pension schemes works in the context of relevant non-UK schemes.

The Registered Pension Schemes (Authorised Payments) Regulations 2006 No.

Section 164 of the Finance Act 2004 lists the payments which a registered pension scheme is authorised to make to or in respect of a member of the pension scheme. It also provides for regulations to be made which may prescribe additional categories of authorised payment. These Regulations prescribe as authorised member payments—

- lump sum payments arising from the commutation of equivalent pension benefits pursuant to the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997, or the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997, and
- payments of state scheme premiums pursuant to section 55 of the Pension Schemes Act 1993, or section 51 of the Pension Schemes (Northern Ireland) Act 1993.

The Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2006 No.

The tax provisions that will apply from 6 April 2006 to employer-financed retirement benefit schemes, which are schemes that are not registered pension schemes, mean that some non-accidental death lump sum benefits from injury or compensation schemes which are currently not taxed would become taxable. These Regulations ensure that non-accidental death lump sum benefits provided under the rules of a scheme on the date these regulations come into force are "excluded benefits" and are therefore not subject to income tax.

The Pension Schemes (Relevant Migrant Members) Regulations 2006 No.

Schedule 33 to the Finance Act 2004 contains provisions about migrant member relief in respect of contributions to overseas pension schemes. Paragraph 4 of that Schedule sets out the conditions an individual member of an overseas pension scheme would need to satisfy in order to be considered a relevant migrant member of that scheme. These Regulations prescribe an alternative condition to that already contained in paragraph 4(c) of Schedule 33, so that an individual can qualify as a relevant migrant member of an overseas pension scheme if he was entitled to tax relief on contributions paid under the pension scheme in the country of residence at any time in the 10 years prior to coming to the United Kingdom.

The Registered Pension Schemes (Surrender of Relevant Excess) Regulations 2006 No.

Section 218 of the Finance Act 2004 provides that an individual has a standard lifetime allowance on the amount of pension savings that may benefit from tax relief. Schedule 36 to the Finance Act 2004 contains transitional provisions for

pension rights at 5th April 2006 and provides for enhanced lifetime allowance protection. This means there is no liability to the lifetime allowance charge to income tax if an individual has one or more relevant existing arrangements provided notice of intention to rely on enhanced protection has been given to Her Majesty's Revenue and Customs. Notice of intention may not be given unless the individual surrenders any relevant excess rights as determined by regulations. These regulations specify the rights to be treated as representing relevant excess rights.

4. Legislative Background

4.1. The powers to make these regulations and order are contained in sections 150, 164, 169 and 172A, paragraphs 4 and 5 of schedule 33, paragraphs 3, 4, 7, 12, and 19 of schedule 34 and paragraphs 3, 12 and 51 of schedule 36 of the Finance Act 2004, section 393B of Income Tax (Earnings and Pensions) Act 2003, sections 132 and 133 of the Finance Act 1999 and sections 135 and 136 of the Finance Act 2002.

4.2 Regulations under these provisions may variously specify, modify, prescribe and restrict the application of Part 4 of the Finance Act 2004 as amended by Schedule 10 to the Finance Act 2005.

5. Extent

5.1. These instruments apply throughout the United Kingdom.

6. European Convention on Human Rights

6.1. These instruments are subject to annulment and do not amend primary legislation. Accordingly no statement of compatibility is required.

7. Policy Background

7.1. The Government wants to encourage today's workers, tomorrow's pensioners, to save for their retirement and offers generous tax incentives to encourage people to save in a pension. Following extensive consultation, pensions tax simplification was legislated for in Part 4 of the Finance Act 2004. As a result of ongoing consultation a package of supplementary measures were introduced in Finance Act 2005. The objectives are to increase individual choice and flexibility and cut industry costs by tackling the complexity and fragmentation caused by the current rules.

7.2. From 6 April 6 2006, a new unified pensions tax regime will replace the numerous existing regimes. The new regime will contain two key controls on tax relief for pension savings, a lifetime allowance and an annual allowance, which will replace the plethora of controls currently in existence.

8. Impact

8.1. The impact of these regulations is contained within the Simplifying the taxation of pensions Regulatory Impact Assessment and Appendix which can be found at www.hmrc.gov.uk/ria/simplifying-pensions.pdf and www.hmrc.gov.uk/ria/simplifying-pensions-appendix.pdf

9. Contact

Kevin Golightly at HM Revenue & Customs (tel: 020 7147 2825 or e-mail: Kevin.Golightly@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.