EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (TRANSFER OF SUMS AND ASSETS) (AMENDMENT) (NO. 2) REGULATIONS 2011

2011 No. 1790

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 make consequential and other minor amendments to existing regulations in respect of transfers from one pension arrangement to another to reflect changes made by the Finance Act 2011 ("FA 2011") to the pensions tax regime contained in Finance Act 2004 ("the Act") which remove the effective need to take an annuity by age 75.

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 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 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 are those specified in section 164 of the Act. Pensions and/or lump sums paid which do not meet these rules are treated as unauthorised payments and are subject to various tax charges on the payer and the recipient as set out in sections 208, 209 and 239 of the Act respectively.

4.3 One category of authorised payment is a recognised transfer which is defined in section 169 of the Act and includes a transfer of a pension received by way of income withdrawal.

4.4 Section 169(1D) in conjunction with section 169(1E) of the Act provide powers to make Regulations:

- providing that a transfer of a member or dependant's unsecured or alternatively secured pension fund is not a recognised transfer unless no sums and assets other than the sums and assets transferred are held under the new arrangement; and

- providing that where there has been a recognised transfer in these circumstances, the new arrangement will be treated as the old arrangement for certain purposes.

Regulation 12 of The Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (S.I. 2006/499; "the principal Regulations") was made under this power.

4.5 Schedule 16 to FA 2011 amended the Act as it related to the tax rules relating to registered pension schemes that apply to individuals reaching the age of 75. Paragraph 66 of Schedule 16 amended s169(1D) of the Act by replacing the reference to unsecured and alternatively secured pension funds with a reference to a drawdown pension fund. This instrument amends the principal Regulations in consequence of the changes made by Schedule 16 to FA 2011.

4.6 The amendments made by this instrument have retrospective effect for the tax year 2011-12 under the power contained in section 282(A1) of the Act as it has effect under paragraph 108 of Schedule 16 to FA 2011.

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

7.1 The Government provides tax relief to encourage individuals to take responsibility for retirement planning and in recognition that pensions have traditionally been less flexible than other forms of savings. The Government's pension benefit reforms contained in FA 2011 make the pension tax system simpler by removing rules that create an effective obligation to purchase an annuity by age 75 and removing the age 75 cap which applies to most authorised lump sum payments made from registered pension schemes. The reforms give individuals who are able to demonstrate that they have a secure pension income for life full access (referred to as "flexible drawdown") to their drawdown funds without any annual cap. This supports the Government's objective to reinvigorate private pensions and provides people with greater flexibility to choose the retirement options that are best for them.

7.2 These regulations amend the principal Regulations by substituting a new regulation 12 which replaces references to unsecured pensions and alternatively secured pensions with references to drawdown pensions. This means a transfer of sums and assets from one drawdown pension arrangement ("the old arrangement"), to a new drawdown pension arrangement under which no other sums or assets are held, is a recognised transfer (and so an authorised payment within section 164 of the Act).

7.3 Tables 3 and 4 in new regulation 12 specify the purposes for which the new arrangement will be treated as the old arrangement when there is a transfer. These Regulations add new entries to these tables to make provision for transfers where a member or dependant has met the conditions for flexible drawdown in relation to the old arrangement so that these conditions are treated as having been met in relation to the new arrangement. Amendments are made to existing entries in respect of the drawdown pension year and basis amount to reflect changes made by FA 2011. The Regulations also make minor changes to regulation 12, which are not consequential but ensure consistency with the new entries.

- ***Consolidation***

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

8. Consultation outcome

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

8.2 The draft Regulations were published for comment on the HMRC website on 8 June 2011 and no responses were received on the proposed draft legislation. No changes were made as a result of the consultation.

9. Guidance

9.1 Draft guidance on the age 75 changes was 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 recognised transfers between drawdown pension arrangements.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note covering this instrument was published 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 and is available on the HMRC website at www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does apply to small business.

11.2 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 HMRC databases, tax returns, receipts and other 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.