EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (TRANSFER OF SUMS AND ASSETS) (AMENDMENT) REGULATIONS 2014

2014 No. 1449

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.

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

2. Purpose of the instrument

2.1 This instrument makes a minor change to clarify the application of the existing legislation when measuring a pension against the lifetime allowance ("LTA"), where the pension was in payment at 6 April 2006 ("A-day") and has subsequently been transferred prior to the first benefit crystallisation event ("BCE") in respect of the member.

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

3.1 The instrument has effect in respect of transfers made on or after 6 April 2014, which is before the instrument comes into force. Section 282(A1) of the Finance Act 2004 ("FA04") permits retrospection provided that the change does not increase any person's liability to tax.

4. Legislative Context

4.1 The Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (S.I. 2006/499) ("the Regulations") provide for the treatment of pensions and pension savings where there has been a transfer of sums or assets between pension schemes. This instrument makes a minor technical change to the Regulations to clarify the application of the LTA where a pension that was being paid at A-day has subsequently been transferred prior to the first BCE.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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 FA04 introduced the LTA for tax relieved pension savings. The LTA sets the limit for the amount of tax relieved pension savings that an individual can make during their lifetime, with any savings above that limit being liable to the LTA charge. The LTA charge is a stand alone tax charge of 55% on pension savings taken as a lump sum and 25% on pension savings taken as a pension. Pension savings taken as a pension are also liable to income tax under PAYE in the usual way.

7.2 To calculate the value of the benefits that are liable to the LTA charge, FA04 sets out how and when an individual's benefits are to be valued and measured against the LTA. These events are referred to as benefit crystallisation events or BCEs. Paragraph 20 of Schedule 36 to FA04 sets out how to value a pension that was being paid before A-day, when the FA04 legislation came into force.

7.3 Although a pension that was being paid before A-day does not attract an LTA charge, if a BCE subsequently occurs in relation to the individual, the pension in payment at A-day must be valued and measured against the LTA. This establishes how much of the LTA remains available to determine whether the BCE might attract the LTA charge. If no LTA remains available, then the full BCE would be liable to the LTA charge, but the pre A-day pension would not attract an LTA charge.

7.4 The Regulations, which came into force on 6 April 2006 set out how sums and assets of pension schemes are to be treated where there has been a transfer of sums or assets between pension schemes, for example when an individual transfers their pension fund to another pension provider or when an employer merges one pension scheme with another.

7.5 HMRC believes that the interaction between paragraph 20 of Schedule 36 and the Regulations would benefit from clarification where there has been a post A-day transfer prior to the first BCE. The instrument amends the Regulations to provide that clarification.

- **Consolidation**

7.6 There are no plans to consolidate the Regulations at present.

8. Consultation outcome

8.1 As the amendment clarifies the operation of the existing legislation, and does not change the policy or affect the operations of the pensions industry no consultation has been necessary.

9. Guidance

9.1 As the amendment clarifies the operation of the existing legislation, the guidance in the Registered Pension Schemes Manual does not need to be updated.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible as the amendment clarifies the operation of the existing legislation.

10.2 The impact on the public sector is negligible as the amendment clarifies the operation of the existing legislation.

10.3 A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The instrument applies to small business.

11.2 The instrument applies to small business in the same way as it does to any other business. Because the legislation is concerned with calculating an individual's liability to tax it would not be appropriate for different requirements to apply to small business.

12. Monitoring & review

12.1 The impact of the instrument will be kept under review through communication with affected taxpayer groups.

13. Contact

Samantha Skill at HMRC Tel: 03000 564149 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.