EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (TRANSFER OF SUMS AND ASSETS) (AMENDMENT) REGULATIONS 2015

2015 No. 633

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 amends the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (S.I. 2006/499) ("the 2006 Regulations") in light of flexibilities introduced by the Taxation of Pensions Act 2014 ("TOPA") for certain types of pension annuities issued on or after 6 April 2015.

2.2 The new flexibilities are not intended to apply in relation to annuities issued before 6 April 2015 and this instrument removes any scope to take unintended advantage of the flexibility by transferring an old annuity to one issued on or after 6 April 2015.

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

3.1 None.

4. Legislative Context

4.1 These Regulations are to be made under paragraphs 3(2B) and (2C), 6(1B) and (1C), 17(3) and (4), 20(1B) and (1C) and 27C(2) and (3) and 27H(2) and (3) of Schedule 28 to the Finance Act 2004. Of these powers, all but paragraphs 3(2B), 6(1B), 17(3) and 20(1B) were inserted by TOPA and are being used for the first time.

4.2 Part 4 of the Finance Act 2004 sets out the regime for the registration of pension schemes and the system of tax reliefs that apply to them. Part 4 provides that registered pension schemes are only authorised to make certain types of payments, including in particular pensions specified in the pension rules in section 165 and the pension death benefit rules in section 167.

4.3 Those rules provide that only certain types of annuities are authorised to be paid to a member in respect of money purchase arrangements. These are;

- lifetime annuities (defined in paragraph 3 of Schedule 28 to the Finance Act 2004),
- short-term annuities (paragraph 6),
- dependants' annuities (paragraph 17),
- dependants' short-term annuities (paragraph 20),

- nominees' short-term annuities (paragraph 27C), and
- successors' short-term annuities (paragraph 27H).

4.4 **Lifetime annuities** are purchased from insurance companies, payable at least annually for life and may only decrease in prescribed circumstances. Paragraph 3(1A) of Schedule 28 (inserted by TOPA) will permit lifetime annuities to which individuals become entitled on or after 6 April 2015 to reduce. Regulation 6 of the 2006 Regulations prescribes the circumstances in which a new lifetime annuity acquired following the transfer of sums or assets from an original lifetime annuity will be treated for pensions tax purposes in the same way as the original annuity.

4.5 **Short-term annuities** are a type of drawdown pension, being annuities payable for a term which does not exceed five years and which may only decrease in prescribed circumstances. Paragraph 6(1ZA) (inserted by TOPA) will permit short-term annuities to which individuals become entitled on or after 6 April 2015 to reduce. Regulation 7 of the 2006 Regulations prescribes the circumstances in which a new short-term annuity acquired following the transfer of sums or assets from an original short-term annuity will be treated for pensions tax purposes in the same way as the original annuity.

4.6 **Dependants' annuities and dependants' short-term annuities** represent death benefits payable in respect of a money purchase arrangements to individuals who were dependants of the member when the member died. The term "dependant" is defined in paragraph 15 of Schedule 28. Paragraphs 17(1)(za) and 20(1)(ca) (inserted by TOPA) will increase the circumstances in which annuities may be paid to dependants on or after 6 April 2015. Regulations 10 and 11 of the 2006 Regulations prescribe the circumstances in which a new dependants' annuity or dependants' short-term annuity acquired following the transfer of sums or assets from an original annuity will be treated for pensions tax purposes in the same way as the original annuity.

4.7 **Nominees' and successors' short-term annuities** introduced by TOPA are new types of short-term annuities that are similar to dependants' short-term annuities but may be paid to individuals who are not dependants of the pension scheme member.

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 The flexibilities introduced by TOPA included the removal of a number of restrictions for certain types of pension annuities (for example by allowing payments under a new lifetime annuity to be reduced beyond certain limits), but only where these annuities are issued on or after 6 April 2015.

7.2 The aim of this instrument is to ensure that individuals with annuities issued before 6 April 2015 should not be able to take advantage of the new flexibilities by transferring their old annuity to a new annuity issued after 6 April 2015. This instrument ensures that an annuity acquired on or after 6 April 2015 following the transfer of sums or assets from an annuity originally acquired before 6 April 2015, will only be treated as a lifetime annuity for the purposes of the pensions tax rules where it is issued on a 'like for like' basis i.e. the terms of the new annuity do not allow it to be reduced beyond the limits that applied to the original annuity.

7.3 The instrument also ensures that dependants' annuities must be transferred on a similar 'like for like' basis where the dependant became entitled to the annuity after 6 April 2015 but the scheme member became entitled to a related lifetime annuity before 6 April 2015. Dependants' and lifetime annuities are commonly related where they are issued under a Joint Life annuity contract.

7.4 The flexibilities introduced by TOPA also extended the type of death benefits that may be provided from drawdown funds beyond dependants' short-term annuities, to include short-term annuities for a wider range of individuals - nominees and successors of deceased scheme members.

7.5 This instrument ensures that nominees' or successors' short-term annuities are treated in the same way as dependents' short-term annuities, so they may only be transferred to another nominees' or successor's short-term annuity. If they are transferred to any other type of annuity or pension arrangement, the sums or assets transferred will be treated as unauthorised payments liable to tax charges of up to 55%.

8. Consultation outcome

8.1 This instrument was subject of a 4 week consultation period with the Pensions Sector (ending on 16 January 2015) in line with the Tax Consultation Framework.

9. Guidance

9.1 Draft guidance published on 21 October 2014 for the Pensions Flexibilities introduced in the Taxation of Pensions Act 2014 is to be extended to include the provisions included in the Regulations addressed by this Explanatory Memorandum.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not expected to be significant.

10.2 The impact on the public sector is not expected to be significant.

10.3 An updated Tax Information and Impact Note for TOPA was published on 10 December 2014 to reflect decisions relating to pension flexibility. It remains an accurate summary of the impacts that apply to the overall policy of this instrument.

10.4 The Tax Information and Impact Note is available on the GOV.UK website at https://www.gov.uk/government/publications/pension-flexibility-2015.

11. Regulating small business

11.1 This instrument applies to small firms. It is expected to impact on small and large firms in the same way and the impacts are not expected to be significant.

12. Monitoring & review

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

13. Contact

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pensions.policy@hmrc.gsi.gov.uk for any queries regarding the instrument.