EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (MODIFICATION OF THE RULES OF EXISTING SCHEMES) REGULATIONS 2006

2006 No. 364

AND

THE REGISTERED PENSION SCHEMES (UNAUTHORISED PAYMENTS BY EXISTING SCHEMES) REGULATIONS 2006

2006 No. 365

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and 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 Memoranda for Statutory Instruments 2005/3448 to 3458 (laid before the House of Commons on 15 December 2005), Statutory Instruments 2006/129 to 138 (laid before that House on 26th January 2006) and 2006/206 to 212 (laid before that House on 2nd February).

2.2. These two instruments relate to, and supplement, Part 4 of the Finance Act 2004 as amended.

2.3. They deal with the rules of those pension schemes in existence on 5th April 2006 which become registered pension schemes on 6th April 2006

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 2005/3448 to 3458 laid before the House of Commons on 15th December 2005.

3.2. The table annexed to this memorandum reflects developments since the 15th December 2005 to the full list of Instruments that are expected to be laid in time for the coming into force of Part 4 of the Finance Act 2004 on 6th April 2006. These Statutory Instruments form the fourth tranche of the Regulations to be laid. They will have effect from 6th April 2006.

3.3. Further instruments will follow in later in the week.

3.4. An explanation of each instrument follows:

4. Legislative Background

4.1. Regulations under paragraph 3 of Schedule 36 to the Finance Act 2004 may make provision modifying the rules of existing schemes in respect of the transitional period for that scheme.

4.2. The transitional period (which is set out in paragraph 3(2) of the Schedule) was

originally to have been the period beginning with 6th April 2006 and ending on the earlier of 5th April 2009 or the date upon which the rules of the scheme were first amended on or after 6th April 2006. However paragraph 3(2) was amended by paragraph 51 of Schedule 10 to the Finance Act 2005 so as to provide that modifications under the paragraph should continue to have effect until—

- the first date after 5th April 2006 on which amendments of the rules of the pension scheme which state that the modifications no longer apply to it take effect; or

- the end of the tax-year 2010-11 or such later date as the Board of Inland Revenue may by regulations prescribe.

4.3. The Regulations under paragraph 3 of Schedule 36 ("the Modification Regulations") are supplemented by the Registered Pension Schemes (Unauthorised Payments by Existing Schemes) Regulations 2006 ("the Unauthorised Payments Regulations").

5. Extent

5.1. These instruments apply throughout the United Kingdom.

6. European Convention on Human Rights

6.1. Both of these instruments are subject to annulment. Neither amends primary legislation. Accordingly no statement of compatibility with the European Convention on Human Rights is required.

7. Policy Background

7.1. From 6th April 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.

7.2. The Modification Regulations operate so as to treat a number of features of the existing taxation regime as being automatically imported into the rules of schemes which are in existence on 5th April 2006 and which become subject to the regime for registered pensions schemes on 6th April 2006 by virtue of paragraph 1 of Schedule 36 to the Finance Act 2004. Their principal effect is to preserve the *status quo* in relation to the application of rules which expressly or by necessary implication limited benefits, liabilities or entitlement to make contributions.

7.3. Without the modifications, schemes which had relied upon limits laid down (for example) in Part 14 of the Income and Corporation Taxes Act 1988 to restrict such benefits, liabilities or entitlement may have found themselves having difficulty reconciling competing pressures for funds. Therefore, where a scheme would (but for the Regulations) have had to make a payment in excess of a limit which applied before 6th April 2006, the trustees are instead given a discretion to make such payments. Where they do exercise that discretion the payments so made are, by virtue of the Unauthorised Payments Regulations, not scheme chargeable payments (under the new taxation regime for pensions) to the extent that they are referable to entitlement accrued, or contributions paid, prior to 6th April 2006. Similar payments made by schemes to which the Modification Regulations do not apply, or to which they have ceased to apply, are treated in the same way.

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

9.1. 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.

Annex

List of Instruments laid for Part 4 Finance Act 2004 and coming into force on the 6th April 2006

Laid before the House of Commons 15th December 2005

The Registered Pension Schemes (Relief at Source) Regulations 2005 No. 3448

The Registered Pension Schemes (Prescribed Interest Rates for Authorised Employer Loans) Regulations 2005 No. 3449

The Registered Pension Schemes (Minimum Contributions) Regulations 2005 No. 3450

The Registered Pension Schemes (Prescribed Schemes and Occupations) Regulations 2005 No. 3451

The Registered Pension Schemes (Discharge Of Liabilities Under Sections 267 And 268 of the Finance Act 2004) Regulations 2005 No. 3452

The Employer-Financed Retirement Benefit Schemes (Provision Of Information) Regulations 2005 No. 3453

The Registered Pension Schemes (Accounting and Assessment) Regulations 2005 No. 3454

The Registered Pension Schemes and Employer-Financed Retirement Benefits Schemes (Information) (Prescribed Descriptions of Persons) Regulations 2005 No. 3455

The Registered Pension Schemes (Audited Accounts) (Specified Persons) Regulations 2005 No. 3456

The Taxes Management Act 1970 (Modifications to Schedule 3 For Pension Scheme Appeals) Order 2005 No. 3457

The Registered Pension Schemes (Restriction of Employers' Relief) Regulations 2005 No. 3458

Laid before the House of Commons 26th January 2006

The Registered Pension Schemes (Relevant Annuities) Regulations 2006 No 129

The Registered Pension Schemes (Uprating Percentages for Defined Benefits Arrangements and Enhanced Protection Limits) Regulations 2006 No.130

The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 No. 131

The Armed Forces and Reserve Forces (Compensation Scheme) (Excluded Benefits for Tax Purposes) Regulations 2006 No. 132

The Registered Pension Schemes (Co-ownership of Living Accommodation) Regulations 2006 No. 133

The Registered Pension Schemes (Authorised Payments) (Transfers to the Pension Protection Fund) Regulations 2006 No 134

The Registered Pension Schemes (Meaning of Pension Commencement Lump Sum) Regulations

2006 No. 135

The Pension Benefits (Insurance Company Liable as Scheme Administrator) Regulations 2006 No. 136

The Registered Pension Schemes (Authorised Member Payments) Regulations 2006 No. 137

The Pension Schemes (Reduction in Pension Rates) Regulations 2006 No. 138

Laid before the House of Commons 2nd February 2006

The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 No. 206

The Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulation 2006 No. 207

The Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 No. 208

The Registered Pension Scheme (Authorised Payments) Regulations 2006 No. 209

The Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2006 No. 210

The Registered Pension Schemes (Surrender of Relevant Excess) Regulations 2006 No. 211

The Pension Schemes (Relevant Migrant Members) Regulations 2006 No. 212

List of Instruments anticipated to be laid for Part 4 Finance Act 2004 on the 6th April 2006

The Registered Pensions Schemes (Provision of Information) Regulations 2006 No.

The Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication Of Returns And Information) Regulation 2006 No

The Social Security (Contributions) (Amendment No. x) Regulations 2006 No.

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

The Registered Pension Schemes (Transfer of Sums And Assets) Regulations 2006 No.

The Registered Pension Schemes (Prescribed Manner of Determining Amount Of Annuities) Regulations 2006 No

The Registered Pension Schemes (Splitting of Schemes) Regulations 2006 No.

The Pension Protection Fund (Tax) Regulations 2006 No

The Registered Pension Schemes (Consequential Amendments) Regulations 2006 No

The Finance Act 2004, Part 4 (Pension Schemes) (Consequential Amendments) Order 2006 No

The Pension Schemes (Part 4 of the Finance Act 2004 Transitional and Transitory Provisions) Order 2006 No (Composite transitional regulation)

The Registered Pension Schemes (Block Transfers) (Permitted Membership Period) regulations

2006 No.