HM Revenue
& Customs

Creating a secondary annuity market: tax framework

Consultation document

Publication date: 20 April 2016
Closing date for comments: 15 June 2016

Subject of this consultation:	The proposed secondary market for pension annuities.
Scope of this consultation:	This consultation explores the detail of the proposed tax framework for a future secondary market for annuities.
Who should read this:	This policy will be of interest to individuals who receive income from an annuity purchased from the proceeds of tax advantaged pension savings, the providers of those annuities, potential buyers of those annuities, financial advisers and the pensions industry more widely.
Duration:	8 weeks, starting on the 20 April 2016 and ending on 15 June 2016.
Lead officials:	Jon Prothero: HMRC Pensions Policy team Hugo Popplewell: HMT Personal Tax, Welfare and Pensions
How to respond or enquire about this consultation:	Email responses to: pensions.policy@hmrc.gsi.gov.uk Telephone contact (to voicemail): 03000 512336 Please send written responses to: HM Revenue & Customs Savings & Pensions Policy Room G53, 100 Parliament Street Westminster London SW1A 2BQ
Additional ways to be involved:	HMRC will meet with a range of stakeholders during the consultation period including representative organisations, subject to demand and availability. If you would like to arrange a meeting please email: pensions.policy@hmrc.gsi.gov.uk.
After the consultation:	Subject to the detail, the government intends to make some of the various changes to the tax legislation by means of secondary legislation. It is intended that draft legislation will be published for consultation later this year, with a view to having effect from 6 April 2017. It is also intended that any remaining changes will be included in primary legislation for which draft legislation will be published for consultation in Autumn 2016. The intention is that this will be included in Finance Bill 2017 and will have effect from 6 April 2017.
Getting to this stage:	The government published a consultation in March 2015 on the proposed policy framework around the future secondary market for annuities. This consultation closed in June, and in December the government published its response. In that document the government summarised the responses received, and outlined its intention to consult on the details of the tax framework for sellers and buyers in Spring 2016.

Contents

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Introduction

1.1 In the March Budget 2015, the government announced its intention to create a secondary market for consumers to sell their annuity income in exchange for a lump sum. The government's proposals will, in effect, extend the Pensions Freedoms and Flexibilities to people who retired prior to April 2015 and had little choice except to buy a pensions annuity with their defined contribution pension pots.

1.2 The government published a consultation in March 2015 on the proposed policy framework around the future secondary market for annuities. This consultation closed in June, and in December the government published its response. In that document the government summarised the responses received, and outlined its intention to further implement in the market by:

- Consulting on the details of the tax framework for sellers and buyers in Spring 2016;
- Introducing secondary legislation to amend the Regulated Activities Order (RAO)[1] and associated secondary legislation under the Financial Services and Markets Act (FSMA) 2000, to make it easier for the FCA to supervise UK firms participating in the secondary annuities market;
- Introducing secondary legislation to amend the By Way of Business Order[2] under FSMA 2000, to make clear that those buying rights to annuity income streams in this market will be deemed to be doing so by way of business, and will therefore be subject to the requirement to be authorised or exempt under FSMA and the RAO;
- Legislating under the power given by the Bank of England and Financial Services Bill to define who will be required to take appropriate financial advice prior to selling their annuities, and what would constitute appropriate financial advice; and
- Examining whether it is necessary to amend pension legislation to make clear that parties to an annuity contract may agree to vary contractual prohibitions on the assignment of annuities.

1.3 This consultation lays out the proposed detail of the tax framework for the secondary market for annuities. The government welcomes views on the detail of the proposed framework and has raised specific questions on a number of issues.

---

[1] The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)

[2] The Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way Of Business) Order 2001 (S.I. 2001/1177)

2. Scope

2.1 The creation of the Secondary Annuity market is intended to extend the pensions flexibilities introduced from 6 April 2015 by removing tax rules that currently deter individuals from assigning or surrendering rights to receive income payments under pension annuities.

2.2 In its response to the consultation into the Secondary Annuities market, the government confirmed that individuals will be permitted to assign or surrender annuities in their name and that are payable to them. It is recognised that some individuals receiving payments under annuities purchased in the name of the scheme may assume that the annuity is in their name, but it is also understood that trustees may, if they wish, assign the rights to receive these payments to members.

2.3 Subject to meeting certain conditions, it is proposed that unauthorised payments will not arise where individuals assign or surrender rights to payments under annuities payable to them that were purchased with sums and assets from a registered pension scheme, including 'deferred' annuities that have yet to come into payment.

2.4 The new tax rules will permit individuals to assign or surrender annuities payable to them that were purchased in respect of money purchase or defined benefit arrangements, regardless of whether the annuity being assigned or surrendered is treated under the current tax rules as a lifetime annuity or a scheme pension, or represents rights in respect of a beneficiary under an annuity that is a dependants' annuity, a nominees' annuity, a successors' annuity or a dependants scheme pension.

2.5 As confirmed in the government's response to the consultation, it is not intended that these new tax rules will override any other contractual, (non-tax) legislative or other legal restrictions that prevent individuals from assigning or surrendering annuities that are not in their name.

2.6 The annuities capable of being assigned or surrendered will include annuities that were purchased as replacements for the annuities described above that were originally purchased with sums and assets from a registered pension scheme (for example, following the transfer of an annuity from one provider to another).

2.7 The government has also confirmed that individuals will be able to assign or surrender pension annuities currently in payment that were bought before 6 April 2006 by:

- schemes which subsequently became treated as a registered pension scheme under paragraph 1(1) of Schedule 36 to Finance Act 2004,
- schemes that would have been in the category above had they not opted out under paragraph 2 of Schedule 36, and
- schemes that wound up before 6 April 2006 (in the manner of article 2(1) of SI 2006/572 – Taxation of Pensions (Transitional Provisions) Order 2006) regardless of whether the conditions of article 2(3) of the same Order were met.

2.8 The changes to the tax rules will not affect the various categories of ‘short term’ annuities in Part 4 of Finance Act 2004 (annuities bought from drawdown funds that are paid for no more than five years), nor will they affect ‘non-pension’ annuities i.e. annuities purchased with funds that did not originate from registered pension schemes (or the predecessor tax advantaged pension schemes identified in the previous paragraph). So, for example, the usual tax treatment under Chapter 9 of Part 4 of Income Tax (Trading and other Income) Act 2005 will apply to gains realised on the assignment or surrender of a Purchased Life Annuity (PLA).

Annuities issued by insurers outside the UK

2.9 The government recognises that there could be a range of different implications for individuals assigning or surrendering annuities whilst resident outside the UK, and for individuals assigning or surrendering annuities purchased with sums or assets from relevant non UK schemes, whether or not the individual is resident outside the UK.

2.10 The government welcomes views on the number and scale of annuities purchased by relevant non UK schemes that are currently in payment, and whether there are any particular restrictions on the surrender or assignment of such annuities imposed by non UK authorities.

Q1 - There may be some annuities still in payment that were bought in respect of certain ‘old code’ predecessor schemes not covered by the paragraph 1 Schedule 36 categories. Should annuities issued in respect of other categories of tax advantaged pension scheme be included in the market?

Q2 - Do you have any views on the number and scale of annuities purchased by relevant non UK schemes that are currently in payment?

Q3 - Are there any particular restrictions on the surrender or assignment of such annuities imposed by non UK authorities?

3. Conditions for assignment or surrender

Options for sellers

3.1 The government's response to the consultation confirmed that the new tax rules will provide individuals with three options:

- for the proceeds from an assignment or surrender of their annuity to be paid directly to them as a lump sum, or
- for the proceeds from an assignment or surrender to be paid by the buyer into a flexi-access drawdown fund in favour of the individual, or,
- for the proceeds to be paid by the buyer to purchase a flexible annuity payable to the individual (a new category of annuity introduced from 6 April 2015, under which the annual rate of payments can go down as well as up).

3.2 The current unauthorised payment rules will be overridden on assignment or surrender subject to meeting a range of conditions, depending on whether the annuity has been assigned or surrendered in return for a taxable payment, or whether the proceeds have been paid by the buyer to a flexi-access drawdown fund or a flexible annuity. Where the various conditions are satisfied, the taxable lump sums and payment of proceeds will be authorised payments. Payments that are subsequently made from new flexi-access funds and new flexible annuities will be authorised payments subject to meeting the usual requirements for such payments.

3.3 Although the new rules will apply only where the rights to receive payments under the annuity have been assigned by the individual receiving payments under the annuity, it is intended that schemes should be able to assign annuities in their name to members. Such assignments will not be treated as unauthorised payments where the annuity contract provides the benefits that would otherwise have been paid by the scheme and, bar the change of ownership, the annuity is unchanged following the assignment to the member who continues to receive the same payments under the annuity.

Conditions applicable where the proceeds are paid as a lump sum

3.4 The new rules will apply where the person assigning or surrendering rights to payments under the annuity contract is:

- the person receiving payments under the annuity (or to receive payments under a deferred annuity) and who is or was a member of a registered pension scheme (or pre A day scheme as per paragraph 2.7 above) from which sums/assets were used to buy the annuity (or the original annuity in the case of a transferred annuity);
- the person who is entitled to a dependants or other beneficiaries annuity in respect of a person who is or was a member of the registered or pre A day pension scheme (the 'original' annuitant); or

- the personal representatives of such persons - where the annuity continues in payment following their death.

3.5 As confirmed in the government's response to the Secondary Annuity Consultation, individuals must assign or surrender all of the rights under the contract. They will not be permitted to assign or surrender only some of those rights. The current unauthorised payment rules will therefore be overridden only where all of the rights to payments under the annuity contract have been assigned to a single buyer, or where all of the rights to payments under the contract are extinguished following a surrender.

3.6 To mitigate the risk of abuse and to facilitate the operation of PAYE, the new rules will apply only where the proceeds are paid by the assignee or the issuing insurer to the person giving up their rights to the annuity payments, or to their personal representatives.

3.7 For annuities that include contingent rights for dependants or other beneficiaries, it is intended that the proceeds must be payable to the person with the actual rather than contingent rights under the contract (or linked contract if the contingent rights are provided under a separate contract), and whose death would trigger the commencement of annuity payments to a dependant or other beneficiary.

3.8 The new rules for lump sum payments are intended to apply only where the proceeds from the assignment or surrender are paid to the individual in the form of a single lump sum, rather than as a series of payments.

3.9 The new rules will only apply where at the time of assignment or surrender the person receiving the lump sum payment has reached the normal minimum pension age of 55 or, if lower, their protected pension age (for individuals with rights at 5 April 2006 to receive their pension at an age below 55 – see paragraphs 21 to 23ZA of Schedule 36 to Finance Act 2004).

3.10 The new rules will also apply where the individual assigning or surrendering their annuity is less than age 55 and became entitled to payments under the annuity on the grounds of ill health.

3.11 To protect against abuse of the new tax rules, the payment of proceeds will not be treated as an authorised payment where an annuity is assigned:

- to a person connected to the person giving up their rights;
- to a sponsoring employer, or a person connected to the sponsoring employer;
- to a close company to which the seller is connected; or
- where the assignment or surrender of the annuity is part of a scheme of which the main object or one of the main objects is the avoidance of tax.

Q4 - Do you have any views on the extent to which annuity contracts in members' names may have more than one individual with an actual or deferred entitlement to receive payments under the contract – other than contingent rights to receive payments following the death of a person?

Q5 – Do the proposed connected entity and anti-avoidance rules strike an appropriate balance between protecting against the risk of abuse and facilitating the new market?

Conditions applicable where the proceeds are paid to a flexi-access drawdown fund, or to purchase a new flexible annuity

3.12 In these circumstances the same conditions will apply as for assigning or surrendering an annuity in return for a lump sum except that:

- The proceeds payable in respect of the surrender of all the rights under an annuity contract must be either:
  - used by the insurer to whom rights are being surrendered as consideration for the purchase of a new flexible annuity issued by the same or a different insurer; or
  - paid by the insurer to whom rights are being surrendered into a flexi-access drawdown fund with the same insurer or a different provider, where no other sums or assets are held in the fund.
- The proceeds payable in respect of the assignment of all the rights under an annuity contract must be either:
  - paid by the buyer to whom rights are being assigned for purchase of a new flexible annuity issued by the same or a different insurer; or
  - paid by the buyer to whom rights are being assigned into a flexi-access drawdown fund with the buyer or a different provider, where no other sums or assets are held in the fund.

3.13 The proceeds payable in respect of the surrender or assignment are intended to be the proceeds payable after any deductions for administration charges or payments made by the buyer or insurer to a financial adviser to meet the cost of advice provided by the adviser to the annuitant. Payments made by the insurer or buyer will be authorised payments (as scheme administration member payments) only in so far as the payments are genuinely commercial, and were made in respect of pensions advice related to the potential assignment or surrender of the annuity (rather than advice in relation to other savings, for example ISAs).

3.14 It is intended that the transition from old to new product will broadly follow the current treatment of transferred annuities, with the ‘like for like’ requirements eased so that the proceeds from the surrender or assignment of an annuity in payment that is:

- a defined benefits scheme pension may only be paid to a flexi-access drawdown fund for the member or be used to purchase a lifetime annuity (that is a flexible annuity) for the member;
- a dependants’ scheme pension may only be paid to a dependant’s flexi-access drawdown fund for the dependant or be used to purchase a new dependants’ annuity for the dependant;
- a lifetime annuity may only be paid to a flexi-access drawdown fund for the member or used to purchase a new lifetime annuity (that is a flexible annuity) for the member;
- a dependants’ annuity may only be paid to a dependant’s flex-access drawdown fund for the dependant or used to purchase a new dependants’ annuity for the dependant;
- a nominees’ annuity may only be paid to a nominee’s flexi-access drawdown fund for the nominee or used to purchase a new nominees’ annuity for the nominee;
- a successors’ annuity may only be paid to a successor’s flex-access drawdown fund for the successor or used to purchase a new successor’s annuity for the successor; and
- a ‘pre-A Day’ annuity may only be paid to a flexi-access drawdown fund for the member or dependant or be used to purchase a lifetime annuity/ dependant’s annuity.

3.15 The intention is to replicate the broad effect of the current tax rules dealing with transferred annuities, so that payment of proceeds from an annuity in payment to a new flexi-access fund or to purchase a new annuity will not give rise to a further benefit crystallisation event for lifetime allowance purposes, will not provide any entitlement to a further tax exempt pension commencement lump sum, and will not count as contributions for annual allowance purposes.

3.16 As for assigning or surrendering an annuity in return for a lump sum, the new rules will only apply where the rights under the new annuity contract or flexi-access drawdown fund are all attributable to the person with an actual rather than a contingent right under the annuity that was assigned or surrendered (the ‘original annuitant’).

3.17 As an exception to this rule, the government proposes that the proceeds from the surrender or assignment of the original annuity may be used to acquire both a lifetime annuity and a dependants’ annuity, with the latter payable only on the death of the individual with an actual rather than a contingent right to receive payments under the original annuity. This exception is intended to allow individuals to convert joint life annuities into ‘flexible’ joint life annuities, and for individuals with single life annuities to convert these into joint life annuities.

3.18 Existing rules for flexi-access drawdown funds already provide scope for individuals to provide benefits after their death to beneficiaries in the form of lump sums, annuities or income withdrawal, and no change is considered necessary to provide similar flexibility.

3.19 For deferred annuities , it is intended that individuals will be able to surrender or assign such annuities and arrange for the proceeds to be paid to a new deferred flexible annuity or an uncrystallised money purchase arrangement (in anticipation of taking flexi-access drawdown at a later time) before reaching the normal minimum pension age of 55. However they will not be able to receive payments under the new annuity or uncrystallised arrangement before reaching age 55. Where the individual has reached age 55 but the annuity being assigned or surrendered has not yet come into payment, it is intended that the proceeds must be paid to a flexi-access drawdown fund (if the proceeds have not been used to purchase a new flexible annuity).

Q6 - Do you foresee wider implications for adviser charging in respect of the assignment or surrender of annuities affected by the proposed changes?

Q7 - Do you have views on the extent to which individuals assigning or surrendering annuities in return for paying proceeds to another pension product may have a protected pension age?

Q8 - Should the protected pension age also apply for the purposes of payments/withdrawals under the new product?

4. Treatment of sellers

Tax treatment upon surrender or assignment

4.1 Where the various conditions have been met, lump sum proceeds payable directly to a member on the surrender or assignment of an annuity in payment that is within scope of the changes will not trigger unauthorised payment tax charges but will instead be treated as pension income liable to tax on the member receiving the lump sum, at the members' marginal rate of income tax.

4.2 Where the various conditions have been met, the payment by the buyer/insurer of proceeds from the assignment or surrender of an annuity that are paid to a flexi-access drawdown fund or used to buy a replacement annuity will not trigger unauthorised payment tax charges and will not be taxable. The new flexi-access drawdown fund will be treated as fully designated (without triggering a further test for the lifetime allowance) and available for the payment of a drawdown pension. Income that is subsequently drawn from the new flexi-access drawdown fund or paid from the replacement annuity will be taxable in the usual way.

4.3 To ensure that the proceeds from an assignment or surrender are treated in the same way as the annuity income they replace, lump sum proceeds paid to the dependant or beneficiary will be exempt from tax where the dependants or beneficiaries annuity being assigned or surrendered, is itself exempt from tax, under sections 646B and 646C ITEPA (where the annuities are paid to dependants or beneficiaries following the death of the member before age 75).

4.4 Similarly, where a dependants or beneficiaries annuity being assigned or surrendered is itself exempt from tax under sections 646B and 646C ITEPA, and the proceeds are paid by the buyer or insurer to buy a new dependents/beneficiaries annuity or to a dependents/beneficiaries flexi-access drawdown fund, it is intended that income paid from the new annuity or drawn from the new fund will be exempt from tax.

Operation of PAYE

4.5 Where taxable lump sum proceeds are paid directly to a member following the surrender or assignment of an annuity within scope of the changes, those proceeds will be treated as pension income subject to tax under PAYE.

4.6 Where an annuity has been surrendered, the issuing insurer will already have been applying PAYE to payments under the annuity and it is intended that the lump sum proceeds will be treated as the final payment under an ongoing source, so that the insurer should apply the existing tax code for the annuity to the taxable lump sum proceeds, and then issue a P45 in the usual way.

4.7 Where an annuity has been assigned, the source of payments to the original annuitant will come to an end and the issuing insurer will then be required to issue form P45 to the annuitant in the usual way.

4.8 Where the buyer of the annuity that has been assigned pays a taxable lump sum to the assignor, the buyer will be a person paying PAYE pension income and so will be obliged to operate PAYE on the lump sum. It is intended that the buyer would then operate PAYE in the usual way, so that where they have received a form P45 from the assigning annuitant before making the lump sum payment, they would apply the PAYE code included in the P45 on a cumulative basis. Where the buyer has not received a P45 before making the payment and has not otherwise been issued with a PAYE code for the assignor by HMRC, the buyer would then operate the emergency PAYE code on a non-cumulative basis.

4.9 Where the buyer of the annuity is based outside the UK, the requirement to operate PAYE will continue to apply where the buyer has a tax presence in the UK such as a branch, agency or UK representative office, as it does for the operation of PAYE more generally.

4.10 Whether or not the PAYE code applied to an individual's annuity income prior to surrender or assignment is applied to the taxable lump proceeds, overpayments of tax may still arise as for individuals who flexibly access their pension pot. In such cases, it is intended that individuals will be able to claim repayment before the end of the tax year, using similar processes as for pensions flexibility more generally.

4.11 Once an annuity has been assigned, it is not intended that the insurer making payments under the ongoing annuity to the new payee will be required to operate PAYE on those payments. The insurer making payments under the ongoing annuity may however be required to deduct income tax at the basic rate from these payments (see paragraph 6.6 below).

Money Purchase Annual Allowance

4.12 As for Pensions Flexibility more widely, individuals who flexibly access annuities (whether or not purchased before 6 April 2015) by surrendering or assigning their rights in return for taxable lump sums will be subject to the money purchase annual allowance, as will individuals receiving payments under a flexible annuity or drawing income from a flexi-access drawdown fund acquired with proceeds from the assignment or surrender of the original annuity.

4.13 The government does however propose that individuals surrendering or assigning low value annuities purchased before 6 April 2016 in return for taxable lump sums will not be subject to the Money Purchase Annual Allowance ("MPAA"). With the proposed new authorised payment applicable to the surrender of annuities in return for a lump sum, it is not intended that the trivial commutation/small pots rules should continue to apply in respect of annuities for the assignment of surrender of annuities. The government will therefore develop an appropriate definition of low value annuities for the MPAA exclusion and will work with the FCA to make sure that any such definition works in conjunction with regulatory interventions.

Lifetime Allowance (LTA)

4.14 As it is intended that individuals who have reached their normal minimum pension age should be allowed to surrender or assign deferred annuities that have not yet come into payment in return for a lump sum, a new benefit crystallisation event (BCE) will be introduced for lifetime allowance purposes. This new BCE will apply where the assignment or surrender took place before the annuity has come into payment and the conditions for the new authorised payment have been met. The amount crystallised by the new BCE will be the amount of the proceeds paid to individuals by reason of the assignment or surrender.

4.15 As deferred annuities are themselves registered pension schemes, it is intended that the scheme administrator for the registered pension scheme will account for tax due under any LTA charge and report this to HMRC in the usual way.

4.16 It is not however intended that the assignment or surrender of a deferred annuity will trigger a BCE where the assignment or surrender is made before the individual reaches the normal minimum pension age and the proceeds have been used to buy a new deferred flexible annuity, or have been paid to an uncrystallised fund. Instead, a BCE would arise in the normal way where the flexible annuity comes into payment or the fund is designated as available for drawdown.

4.17 Although the funds used to purchase annuities before A Day will not generally have been tested against the LTA, the Government does not propose including these annuities within the proposed new BCE.

Tax treatment on death

4.18 The government intends that any money remaining from a taxable lump sum received by an individual for assigning or surrendering their annuity will form part of their estate upon death. Gifts made during their lifetime will be subject to the usual IHT rules on such gifts.

4.19 It is also intended that funds put into a flexi-access drawdown fund following the surrender or assignment of an annuity will be treated in line with the recently introduced rules for drawdown. This means that where that individual dies below age 75 with unused funds held in a flexi-access drawdown fund, they will be able to pass these free of income tax to any beneficiary who is an individual. Where an individual dies having reached the age of 75 with unused funds held in a flexi-access drawdown fund, they will be able to pass these to any beneficiary, who will then be able to draw down on these, or buy an annuity – in each case liable to income tax at their marginal rate on the payments from the fund or annuity. In each case, payments to beneficiaries will be free of inheritance tax where the payments are subject to the discretion of the relevant trustees.

Unauthorised payments

4.20 The current tax rules treat the assignment or surrender of an annuity as giving rise to unauthorised payment tax charges, subject to certain exceptions (for example where an assignment arises because of a pension sharing order).

4.21 Where there is an unauthorised payment, charges would usually arise for the member (the unauthorised payments charge) and potentially for the pension scheme administrator who purchased the annuity in the first place (the scheme sanction charge). Current rules do however recognise that the scheme administrator may not be party to the trigger for the unauthorised payment and provides that they may be discharged from the scheme sanction charge arising on an assignment or surrender.

4.22 To maintain an effective deterrent, unauthorised payment charges will continue to apply for members in respect of assignments or surrenders that do not meet the new rules or that fall outside the existing exceptions. It is also proposed that the scheme sanction charge should continue to apply, together with the existing scope for the charge to be discharged.

4.23 Once an annuity has been assigned and is no longer treated as pension income, it may not be appropriate for unauthorised payments to arise in respect of the ongoing annuity, depending on the nature of the buyer. The government proposes that following the assignment of an annuity, that annuity will no longer be subject to Part 4 of Finance Act 2004, unless purchased by a registered pension scheme.

4.24 Where purchased by a registered pension scheme, it is intended that the scheme should receive income tax relief on payments received under the annuity but should the annuity be payable to a member of the scheme, those payments would not be authorised payments.

Q9 - Do you have any views on the extent to which LTA charges are likely to arise as a result of the proposed new benefit crystallisation event?

Q10 - The government recognises that aspects of the various transactions may be beyond some pension scheme administrators' control. Do you believe that retaining the existing unauthorised payment discharge is an appropriate approach?

Q11 - Do you have any views on the wider implications of taking relevant annuities outside the Registered Pension Scheme environment?

5. Information requirements

5.1 The Government intends to introduce new information requirements, providing consistency with pensions flexibility more widely. These new obligations will apply, variously, to insurers who issued the annuities being surrendered or assigned, to entities buying the annuities and to individuals assigning or surrendering their annuities.

5.2 Insurers who have issued the annuities being surrendered or assigned, will be required to notify HMRC by means of three new Real Time Information fields to identify:

- that a taxable 'pension' annuity has been surrendered by an individual in return for a lump sum paid to the individual;

- that a taxable 'pension' annuity has been assigned by an individual in return for a lump sum paid to the individual; and,

- that a taxable annuity has been surrendered or assigned by an individual with proceeds paid to an income drawdown fund or used to buy a new annuity.

5.3 Insurers who have issued annuities being surrendered will also be required to enter the amount of proceeds from the surrender into existing taxable/non-taxable RTI fields, depending on whether the proceeds have been paid to an individual or have been paid to a new flexi-access drawdown fund/flexible annuity.

5.4 Entities buying annuities and operating PAYE on lump sums that they pay to the original annuitant will be required to notify HMRC that they have paid a taxable lump sum to an individual in respect of the assignment and provide the amount of the proceeds paid.

5.6 It is also proposed that insurers whose annuities are being assigned will be required to provide a statement to individuals assigning their annuity in return for a taxable lump sum, to flag individuals' responsibilities for notifying taxable amounts to HMRC where PAYE has not been applied. It is envisaged that this statement could be incorporated into other written material.

5.7 In line with pensions flexibility, the requirement to issue flexible access statements will also apply so that statements must be issued to the member flexibly accessing their annuity:

- where a taxable lump sum is paid on the assignment or surrender of an annuity, by the person making the payment, or

- where the member first draws down from a flexi-access drawdown fund into which proceeds from the assignment or surrender of an annuity have been paid, by the provider of the flex-access fund, or

- where the first payment is made under a flexible annuity acquired with proceeds from the surrender or assignment of an annuity, by the insurer making payments under the flexible annuity.

5.8 It is also intended that a provider issuing a flexible annuity or granting rights under a new flexi-access drawdown fund should be notified that the funds received by them arose from the surrender or assignment of an annuity, and where payable to a beneficiary, whether or not that annuity was exempt from tax.

Q12 - Insurers who have issued annuities being assigned could also be required to provide information about the amount of the proceeds arising from the assignment, which they would need to obtain from the individual or from the buyer. What are your views on this possible approach?

Q13 – Views are welcomed into the most appropriate way to achieve the proposed notification to the new provider?

6. Treatment following sale

6.1 Once the annuity has been assigned, it is proposed that the payments under the annuity should no longer be treated as pension income and so would no longer be treated as PAYE pension income to which PAYE should be applied.

6.2 Once payments under the annuity are no longer treated as pension income, a ‘pension’ annuity that has been assigned will treated for tax purposes as a Purchased Life Annuity (PLA), being an annuity purchased with money in the ordinary course of a business of granting annuities on human life (section 423 ITTOIA 2005). Payments made under the annuity after assignment will be taxed as savings income unless otherwise taxed – for example as employment income, as trading income or under the loan relationship rules.

UK Insurers whose annuities are being assigned

6.3 The government has confirmed that payments made on the assignment or surrender of an annuity will only be treated as authorised payments where all of the rights under the annuity contract are assigned or all of the rights are surrendered (so all of the rights to receive payments under the contract are extinguished).

6.4 In considering the tax implications, it is assumed that the ‘buyback’ of an annuity by the issuing insurer could only be effected by a surrender of rights, and that any ‘reassignment’ of an annuity between the original contracting parties (so that the issuing insurer becomes the new payee under the ongoing contract) would not be a legal or equitable assignment.

6.5 Where the annuity has been assigned so that payments under the annuity continue and are paid to an entity other than the issuing insurer, it is proposed that the ongoing annuity will continue to be treated as pensions business rather than being switched to Basic Life Assurance and General Annuity Business (BLAGAB).

6.6 As with PLAs, UK insurers may in certain cases be required to deduct income tax at the basic rate from ongoing payments under the annuity, through section 901 Income Tax Act 2007. The requirement to deduct tax will depend on the nature of the buyer, but entities for which there is no requirement for tax to be deducted include UK companies, registered pension schemes and ISA managers (chapters 6 and 11 of Part 15 of Income Tax Act 2007).

6.7 In its response to the consultation into the Secondary Annuities Market, the government has confirmed that once sold, the annuity payments will no longer be treated as pension income in the hands of the buyer, but will instead be treated as trading income, investment or other income, depending on the nature and business activities of the buyer. The government’s view of the likely tax treatments for certain buyers is set out below, although it will engage with stakeholders to explore the implications in more detail.

Trading

Individuals/partnerships

6.8 The trader would bring the annuities in as trading stock and any gains on resale (and income while held) would be trading receipts.

Limited Companies

6.9 Income from the PLA and any gains, or losses, on resale would be a trading receipt or loss.

Insurers and Friendly Societies

6.10 If the purchased annuity is linked or matched to BLAGAB then credits of any loan relationship (or miscellaneous income) is bought into the I-E calculation. If linked to pensions business, the annuity will be wholly exempt as GRB.

Investment

Individuals

6.11 In the hands of a purchaser who is an individual, the annuity income will be subject to income tax at the individual's marginal rate (section 422 ITTOIA 2005). The existing tax exemption for part of each payment made under PLAs does not apply where the annuity is purchased from another annuitant rather than the insurer and to mitigate the risk of unacceptable tax planning, the government does not intend that the exemption should apply.

6.12 However, as PLAs are treated as savings income, it is intended that the personal savings allowance will apply for pension annuities that fall to be PLAs after assignment, as it does for PLAs generally.

6.13 Should an individual subsequently sell their PLA any gain would be subject to the Chargeable Event Gain regime, although legislation will be changed so that the amount of the consideration paid to acquire the annuity will be deducted in calculating any gain ('TD' in section 494 ITTOIA 2005), and basic rate tax will not be treated as paid (section 530 ITTOIA 2005).

Companies

6.14 In its response to the consultation into the Secondary Annuities Market, the Government confirmed that annuities acquired by companies following assignment will be treated as creditor loan relationships. This will ensure that they are treated in the same way as PLAs, although legislation will be changed to ensure that the 'pension' annuities assigned will not fall outside the loan relationships regime as relevant excluded annuities.

6.15 The accounting treatment would be to fair value the instrument with the resulting debits and credits being taxed, or relieved, in line with what is shown in the accounts. Any income received from the annuity would be taxed as a non-trading loan relationship credit. Over the life of the instrument any gain (or loss) would therefore be appropriately taxed or relieved.

Investment funds

6.16 The government recognises that the relevant Statements of Recognised Practice for Authorised Investment Funds and Investment Trust Companies are unlikely to cater for PLAs, and will engage on the detail directly with relevant stakeholders.

Registered Pension schemes

6.17 The income and gains from most investments made by registered pension schemes are not taxable, and annuities purchased through the secondary market are likely to fall into this category.

Q14 - Do you have any views on the proposed treatment of annuities following sale?

7. Assessment of Impacts

Summary of Impacts

<table>
<tr><td rowspan="3">Exchequer impact (£m)</td><td>2015-16</td><td>2016-17</td><td>2017-18</td><td>2018-19</td><td>2019-20</td><td>2020-2021</td></tr>
<tr><td>0</td><td>0</td><td>+485</td><td>+475</td><td>-150</td><td>-145</td></tr>
<tr><td colspan="6">These figures are set out in Table 2.2 of Budget 2016 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside March Budget 2015.</td></tr>
<tr><td>Economic impact</td><td colspan="6">This measure is not expected to have any significant macroeconomic impacts.</td></tr>
<tr><td>Impact on individuals and households</td><td colspan="6">These changes will allow individuals greater choice in retirement by being able to sell their annuity in return for a lump or a different pension product, if they choose to do so.

It is estimated that up to five million individuals receive payments under pension annuities and that some 300,000 of these individuals will choose to sell their annuity. Some of these individuals will choose to receive a taxable lump sum and these lump sums will be treated for tax purposes in the same way as taxable lump sums received under pensions flexibility more widely, by means of PAYE. This same treatment will include scope for individuals to make use of the same in-year tax refund claims process as applies for pensions flexibility more widely.

The measure is not expected to impact on family formation, stability or breakdown.</td></tr>
<tr><td>Equalities impacts</td><td colspan="6">See Chapter 5 of government’s response to the consultation into the Secondary Annuity market, published on 15 December 2015</td></tr>
<tr><td>Impact on businesses and Civil Society Organisations</td><td colspan="6">There will be some additional ongoing reporting burdens for insurers who permit the surrender or assignment of annuities issued by them, and for buyers of assigned annuities – providing information to HMRC by means of RTI about the surrender or assignment of annuities.

There will also be some one-off burdens for pension schemes, insurers and advisers, including legal and consultation advice, training and familiarisation.

This measure is expected to have an overall negligible impact on businesses and civil society organisations.</td></tr>
</table>

Impact on HMRC or other public sector delivery organisations	The additional costs for HM Revenue and Customs in implementing this measure are initially estimated to be in the region of £425,000 for IT changes and about £2M of other costs, including staff costs.
Other impacts	Small and micro-business assessment: the impact on small and micro businesses has been considered. As the changes are intended to provide individuals with greater flexibility in how they take their pension benefits, it would not be appropriate for the measure to apply differently according to the size of the firm. Other impacts have been considered and none have been identified.

8. Summary of Consultation Questions

Q1 - There may be some annuities still in payment that were bought in respect of certain 'old code' predecessor schemes not covered by the paragraph 1 Schedule 36 categories. Should annuities issued in respect of other categories of tax advantaged pension scheme be included in the market?

Q2 - Do you have any views on the number and scale of annuities purchased by relevant non UK schemes that are currently in payment?

Q3 - Are there any particular restrictions on the surrender or assignment of such annuities imposed by non UK authorities?

Q4 - Do you have any views on the extent to which annuity contracts in members' names may have more than one individual with an actual or deferred entitlement to receive payments under the contract – other than contingent rights to receive payments following the death of a person?

Q5 – Do the proposed connected entity and anti-avoidance rules strike an appropriate balance between protecting against the risk of abuse and facilitating the new market?

Q6 - Do you foresee wider implications for adviser charging in respect of the assignment or surrender of annuities affected by the proposed changes?

Q7 - Do you have views on the extent to which individuals assigning or surrendering annuities in return for paying proceeds to another pension product will have a protected pension age?

Q8 - Should the protected pension age also apply for the purposes of payments/withdrawals under the new product?

Q9 - Do you have any views on the extent to which LTA charges are likely to arise as a result of the proposed new benefit crystallisation event?

Q10 - The government recognises that aspects of the various transactions may be beyond some administrators' control. Do you believe existing that retaining the existing unauthorised payment discharge is an appropriate approach?

Q11 - Do you have any views on the wider implications of taking relevant annuities outside the Registered Pension Scheme environment?

Q12 - Insurers who have issued annuities being assigned could also be required to provide information about the amount of the proceeds arising from the assignment, which they would need to obtain from the individual or from the buyer. What are your views on this approach?

Q13 – Views are welcomed into the most appropriate way to achieve the proposed notification to the new provider?

Q14 - Do you have any views on the proposed treatment of annuities following sale?

9. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 8.

Responses should be sent by 15 June 2016, by e-mail to pensions.policy@hmrc.gsi.gov.uk

or by post to:
HM Revenue & Customs
Savings and Pensions Policy team
Room G/53, 100 Parliament Street
Westminster
LondonSW1A 2BQ

Telephone enquiries (to voicemail) 03000 512336 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC Inside Government. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

Oliver Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.