

EXPLANATORY MEMORANDUM TO

THE PENSION SCHEMES (INFORMATION REQUIREMENTS – REPAYMENT OF OVERSEAS TRANSFER CHARGE) REGULATIONS 2018

2018 No. [XXXX]

THE PENSION SCHEMES (INFORMATION REQUIREMENTS – QUALIFYING OVERSEAS PENSION SCHEMES, QUALIFYING RECOGNISED OVERSEAS PENSION SCHEMES AND CORRESPONDING RELIEF)(AMENDMENT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The first instrument sets out the detail relating to a claim for the repayment of the tax charge on transfers of UK pension savings to qualifying recognised overseas pension schemes (QROPS).
- 2.2 The tax charge is the overseas transfer charge.
- 2.3 The second instrument aligns the existing QROPS information requirements with those requirements in the first instrument to prevent a conflict in the rules.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of these instruments is the United Kingdom.
- 4.2 The territorial application of these instruments is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 UK pension savings that have received tax relief can be transferred free of UK tax to QROPS. Chapter 6 of Part 4 of the Finance Act (“FA”) 2004 sets out the tax rules that apply to QROPS. Schedule 4 to FA 2017 amends that chapter to introduce the overseas transfer charge in sections 244A to 244N of FA 2004 and insert the information requirements for the overseas transfer charge in regulations 3AE to 3AL of the Pension Schemes (Information Requirements for Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 (“S.I. 2006/208”).
- 6.2 With effect from 9 March 2017, the 25% overseas transfer charge is deducted from transfers of UK pension savings to QROPS except where the circumstances set out in sections 244B to 244G apply:
- Section 244B: the individual and the pension scheme receiving the transfer are in the same country;
 - Section 244C: the individual and the pension scheme receiving the transfer are both in a country within the European Economic Area;
 - Section 244D: the individual is an employee of the employer that operates the pension scheme;
 - Section 244E: the individual is an employee of an international organisation and the pension scheme is operated by that international organisation;
 - Section 244F: the individual is in public service and the pension scheme meets the definition of being an overseas public service scheme;
 - Section 244G: the funds have already been subject to overseas transfer charge, were transferred or a request to transfer had been made before 9 March 2017.
- 6.3 For the information required in relation to the repayment of overseas transfer charge in S.I. 2006/208:
- Regulations 3AE to 3AG set out the information that must be provided when a transfer of funds subject to overseas transfer charge is made;
 - Regulation 3AH sets out how those operating pension schemes account for overseas transfer charge;
 - Regulation 3AI sets out how HMRC assesses unpaid overseas transfer charge;
 - Regulations 3AJ and 3AK set out how interest applies to overseas transfer charge;
 - Regulation 3AL sets out the main information requirements for a claim to repayment of overseas transfer charge.
- 6.4 If a transfer has been subject to the overseas transfer charge, section 244M provides for a repayment of that charge if, within five tax years of the transfer, the circumstances have changed so that the charge would not now apply under sections 244B to 244F.
- 6.5 These instruments expand on the repayment of overseas transfer charge introduced by FA 2017, in Part 4 FA 2004; section 244M and regulation 3AL of S.I. 2006/208.

- 6.6 Section 244M(7) allows HMRC, by regulations, to make provisions for the details of repayment of the overseas transfer charge.
- 6.7 The first instrument introduces the provisions for the repayment of the overseas transfer charge including setting out the conditions for making a claim, the procedure for processing a claim, making provisions for appeals and specifying to whom the repayment must be made.
- 6.8 The second instrument confirms the information that is required when a claim for repayment of overseas transfer charge is made.
- 6.9 Both instruments will have effect from 24 April 2019.

7. Policy background

What is being done and why?

- 7.1 These instruments provide the detail that individuals, pension scheme administrators, pension scheme managers and HMRC need for the process of claiming a repayment of overseas transfer charge in certain specified situations, including who should make that claim and how to make the claim and the repayment.
- 7.2 The first instrument also covers the repayment of overseas transfer charge where it was deducted and paid in error.
- 7.3 This will enable the right people to make the right claim for overseas transfer charge within the time limits. Without this instrument individuals, pension scheme administrators, pension scheme managers and HMRC would not know the process for claiming or making a repayment.
- 7.4 As a result of the first instrument, the second instrument clarifies the information needed under the repayment claims process to ensure that correct claims for the repayment of overseas transfer charge can be made by schemes and then paid by HMRC.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 These instruments do not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 Consolidation is not being done.

10. Consultation outcome

- 10.1 A consultation in respect of the repayment of the overseas transfer charge did not take place because it was part of the introduction of the overseas transfer charge, which is an anti-avoidance provision that took effect from the day after announcement.
- 10.2 The draft regulations are being published for a technical consultation to enable the pensions industry an opportunity to comment.

11. Guidance

- 11.1 Once the regulations are in force, guidance on the detailed process for claiming and reporting repayments of overseas transfer charge will be included in the next available update of the HMRC Pensions Tax Manual.
- 11.2 Overseas transfer charge guidance has been published in the HMRC Pensions Tax Manual.

12. Impact

- 12.1 The impact on business is expected to be negligible because some individuals may choose not to transfer rather than incur a 25% tax charge, although there will be minor one off costs in relation to the familiarisation with the new rules, as well as one off administration costs.
- 12.2 Also HMRC publishes figures on the number of transfers of pension funds from UK registered pension schemes to QROPS every year. Since the introduction of the overseas transfer charge there has been a reduction in the number of transfers to QROPS, which has impacted the number of potential transfers subject to overseas transfer charge and, therefore, the number of repayment claims that could be made.
- 12.3 No impact on charities or voluntary bodies is foreseen as historically they have not been connected to transfers to QROPS.
- 12.4 There is no, or no significant, impact on the public sector as since April 2015 many public sector schemes have not been able to make transfers to pension schemes that provide different benefits to the ones provided in public sector schemes.
- 12.5 There is no, or no significant, impact on HMRC costs in operating the repayment of the overseas transfer charge, as the process will be part of the HMRC business as usual process.
- 12.6 A Tax Information and Impact Note covering the overseas transfer charge was published on 8 March 2017 and is available on the website at <https://www.gov.uk/government/publications/qualifying-recognised-overseas-pension-schemes-charge-on-transfers/qualifying-recognised-overseas-pension-schemes-charge-on-transfers>. It remains an accurate summary of the impacts that apply to these instruments.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses as pension transfers subject to overseas transfer charge can be made to any size pension scheme.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was that it would not be appropriate for the policy to apply differently according to the size of the firm.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is through communication with taxpayer groups including, for example, industry representatives on the Pensions Forum.

15. Contact

- 15.1 Karen Bishop at HMRC, telephone: 03000 512336 or email: pensions.policy@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Joanne Gibson, Deputy Director for Pensions Policy, at HM Revenue & Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 John Glen MP at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

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