

EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES (PROVISION OF INFORMATION) (AMENDMENT NO. 2) REGULATIONS 2016

2016 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.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567) (the "2006 Regulations").
- 2.2 It sets out the information that the scheme administrator of a registered pension scheme must provide when specified lump sum death benefits are paid on or after 6 April 2016 to the trustees of a trust. It also sets out the information that the trustees that have received these payments must provide when making a payment out of those funds to a beneficiary of the trust.
- 2.3 It also makes minor technical changes to regulation 14A of the 2006 Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument sets out the information that the trustees who received certain taxable lump sum death benefits from a registered pension scheme must provide when paying out of those funds to a beneficiary.
- 3.2 If the lump sum death benefit is taxable the pension scheme will have deducted tax at 45% before paying the lump sum death benefit to the trustees. This tax is the liability of the scheme administrator. Individual beneficiaries may be able to get a refund of some or all of the tax paid by the scheme administrator. To do so they will need information on the tax paid by the scheme administrator and the amount of the lump sum they received before tax was deducted as this is the figure on which they will have to pay income tax.
- 3.3 The requirement for the scheme administrator to pass this information to the trustees is set out in new regulation 10A of the 2006 Regulations, inserted by regulation 3 of this instrument. The trustees are then required by new regulation 10B of the 2006 Regulations, also inserted by regulation 3 of this instrument, to provide two figures to any beneficiary to whom they make onwards payment of the lump sum death benefit: the amount that the beneficiary has to declare for income tax purposes and the amount of tax that was paid by the pension scheme administrator on the proportion of the lump sum death benefit that has been passed on to the beneficiary.

- 3.4 There is an overlap between the information required under regulation 10B(2)(a)(ii) and (b). This is required to ensure that the beneficiary receives the information that they need to make any refund claim without having to undertake any calculations themselves. The information is the gross value of the lump sum payment that they received (paragraph (2)(a)) and the amount of tax paid by the scheme administrator in respect of that sum (paragraph (2)(b)). These are the figures that the beneficiary will need to include in any refund claim.

Other matters of interest to the House of Commons

- 3.5 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument amends the 2006 Regulations.
- 4.2 To ensure that taxpayers have the information they require to deal with their tax affairs in connection with registered pension schemes under Part 4 of Finance Act (“FA”) 2004, there are requirements for scheme administrators of registered pension schemes and others to provide certain information to members of registered pension schemes and others. The power to make this instrument is set out in sections 251 and 282(A1) of Part 4 of FA 2004.
- 4.3 Section 21 of Finance (No. 2) Act 2015 (“FA 2015”) inserted an additional power into section 251 FA 2004 to allow HMRC to require information to be provided when payments are made either directly or indirectly out of lump sum death benefits that have been charged to tax under section 206. The information is provided by the person making the payment to the recipient of the payment. This instrument is the first use of this power.
- 4.4 As this instrument will have effect from 6 April 2016 it is retrospective. The authority for this is contained in section 282(A1) FA 2004 which provides that regulations made under Part 4 of FA 2004 may have effect in relation to times before they are made provided that the provision does not increase anyone’s tax liability.
- 4.5 The Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2016 (S.I. 2016/308) amended the 2006 Regulations to change the information requirements for scheme administrators as a consequence of the introduction of the tapered reduction in the annual allowance for “high-income” individuals from 6 April 2016. This instrument makes minor technical changes to those requirements.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 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 In September 2014 the Chancellor of the Exchequer announced that from 6 April 2016 certain lump sum death benefits paid by a registered pension scheme to an individual would be subject to income tax at the marginal rate. Before 6 April 2016, those lump sum death benefits were taxed at a flat rate 45%, which was the liability of the scheme administrator.
- 7.2 On or after 6 April 2016, if one of these lump sum death benefits is paid directly from the pension scheme to an individual (or someone who will hold the funds for an individual as a bare trustee) then income tax will be deducted under normal PAYE rules. For most recipients this will mean that less tax is paid on the amount that they receive.
- 7.3 However, the scheme administrator will continue to be liable to tax at 45% when certain taxable lump sum death benefits are paid to someone other than an individual (or to an individual in an official capacity such as a company director). If a taxable lump sum death benefit is paid to a trust then the scheme administrator will be liable to tax at 45%.
- 7.4 It is intended that the individual who receives a payment from the trust out of the funds that have been subject to the 45% pension tax charge, will be in broadly the same tax position as an individual who received a taxable lump sum death benefit directly from the pension scheme. To achieve this the individual will be credited with such amount of the tax paid by the scheme administrator as relates to the amount the individual received from the trust, but their own income tax liability on that amount will be at marginal rate. In many cases this will mean that there has been an overpayment of tax which will be either set against other tax the individual owes or refunded to the individual, as appropriate.
- 7.5 This instrument ensures that the trustees of the trust receiving one of these lump sum death benefits that has been taxed at 45% will have enough information to carry out their obligations. It requires the scheme administrator to tell the trustees how much the original lump sum death benefit was and how much tax was paid on it. It also requires the trustees to tell individual recipients the amount they will need to report for income tax purposes and how much tax was previously paid on that amount by the scheme administrator. This will enable the individual who receives a payment out of a taxable lump sum death benefit that has been paid to a trust, to have enough information to pay income tax on the amount of the lump sum reported to them by the trustees of the trust and to claim the 45% tax paid by the pension scheme administrator as a credit. This will ensure that they pay their marginal rate of tax on the payment.
- 7.6 Regulation 14A of the 2006 Regulations sets out the information that a scheme administrator of a registered pension scheme must provide to a member in relation to the annual allowance.
- 7.7 Changes to FA 2004 were made by Schedule 4 to FA(2)2015, to introduce a taper so that the standard annual allowance (currently £40,000) is reduced by £1 for every £2 of “adjusted income” that a “high-income” individual has over £150,000, with the maximum reduction being to £10,000 for those with incomes of £210,000 and above.

- 7.8 To assist the application of the taper Schedule 4 to FA(2)2015 also made changes to FA 2004 that aligned the period by reference to which an individual's pension savings are measured against the annual allowance with the tax year from 6 April 2016, with transitional rules for tax year 2015-16.
- 7.9 This instrument makes minor technical changes to the annual allowance information given to members in consequence of the transitional rules for 2015-16 and the introduction of the taper.

Consolidation

- 7.10 There is no current plan to consolidate the 2006 Regulations.

8. Consultation outcome

- 8.1 This instrument will be subject to a short technical consultation.

9. Guidance

- 9.1 Once the four-week consultation has concluded, guidance on this instrument will be included in the next available update of the HMRC Pensions Tax Manual.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is expected to be limited. It will require information to be sent by pension scheme administrators to trusts and by trustees to individuals. If the trustees make more than one payment out of a taxable lump sum death benefit to an individual or pay more than one individual, they will have to apportion the information provided by the pension scheme administrator accordingly.

- 10.2 There is no impact on the public sector.

- 10.3 A Tax Information and Impact Note was published on 8 July 2015 as part of the Summer Budget and is available on the website at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443242/5013_Taxation_of_lump_sum_death_benefits.pdf It remains an accurate summary of the impacts that apply to regulation 3 of this instrument.

- 10.4 A Tax Information and Impact Note has not been prepared for regulations 4 and 5 of this instrument as they contain no substantive changes to tax policy.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 There is no special provision to minimise the impact of the requirements on small businesses (employing up to 50 people), as the legislation requires information of a type that pension scheme administrators and trustees are used to providing.

12. Monitoring & review

- 12.1 The measure will be monitored through communication with affected taxpayer groups.

13. Contact

- 13.1 Beverley Davies (regulation 3) or Anne Smith (regulations 4 and 5) at HMRC, telephone: 03000 512336 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Withdrawn - do not use