EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSIONS SCHEMES (PROVISION OF INFORMATION) (AMENDMENT) REGULATIONS 2015

2015 No. [XXXX]

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 (Provision of Information) Regulations 2006 (S.I. 2006/567) ("the 2006 Regulations"). It changes the existing information requirements in two circumstances:

a) in the Event Report to assist HMRC compliance to tackle pension liberation activities and to support the changes that were made to the Finance Act 2004 ("FA04") by the Finance Act 2014 ("FA14") in that regard; and
b) to support changes made by the Taxation of Pensions Act 2014 ("TOPA14") that allow certain pensions paid after the death of a pension scheme member to be paid tax-free.

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

3.1 None.

4. Legislative Context

4.1 Tax relief is provided on pension savings in order that those savings can be used to provide benefits later in life for the member and their beneficiaries. Part 4 of FA04 sets out the regime for the registration of pension schemes and the system of tax reliefs that apply to them. Chapter 2 of Part 4 concerns the registration of pension schemes for tax relief and Chapter 7 of Part 4 enables HMRC to monitor compliance with the pensions tax regime and ensures that individuals and scheme administrators have the right information to pay any tax that may be due.

4.2 Regulation 3 of the 2006 Regulations sets out the information that a scheme administrator must provide to HMRC on the annual Event Report should one or more of the prescribed events set out in regulation 3 occur. Regulation 8 sets out the information that a scheme administrator must provide to personal representatives of the member on their death where death benefits are paid that are tested against the member's lifetime allowance. Regulation 10 sets out the information that personal representatives must provide to HMRC if there is a lifetime allowance charge arising following the payment of death benefits.

4.3 Changes to FA04 were made by Schedule 7 to FA14, to add to the circumstances in which HMRC could refuse to register a pension scheme or could de-register an existing registered pension scheme. These changes were introduced to combat the growing threat of pension liberation, which involves individuals being encouraged to access their pension funds earlier than the permitted normal minimum pension age (currently age 55 for most people).

4.4 Clause 3 and Schedule 2 of TOPA14, extends the category of people who can inherit unused pension funds on the death of the member or beneficiary. It also provides that where the death occurs before age 75, then the payments of income withdrawal can be made tax free to the recipient.

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 Government provides tax relief on pensions savings to encourage individuals to save for their retirement on the basis that the pension savings are used to provide an income for life in retirement for the member and/or death benefits for their dependants. Therefore if pension benefits are accessed before age 55, or the pension fund is not used to pay a pension, this will normally involve an unauthorised payment being made. Unauthorised payments are subject to tax charges, because they involve tax relieved funds being used other than as intended by Parliament.

7.2 Changes were introduced in TOPA14 to provide greater flexibility for individuals to access their money purchase pension savings from age 55. These changes removed the requirement that a money purchase pension should be payable for life, but retained the principle that tax relieved pensions savings should not be accessed before age 55. Changes were also made to allow death benefits paid to beneficiaries from a drawdown pension fund to be paid tax free where the member, or in some cases the beneficiary, died before age 75. If funds that can be paid tax free are transferred from one registered pension scheme to another, the receiving scheme administrator needs to know whether tax should be paid on that pension or not. This instrument therefore imposes new requirements on scheme administrators who are transferring pension funds, to provide appropriate information to the receiving scheme administrator so that they can ensure that the correct tax treatment is applied to future payments.

7.3 Accessing pension benefits before age 55 is not illegal, but carries significant tax charges for the member. Some products claim to unlock, liberate or give early access to pension savings without giving rise to tax charges. However this is not the case and individuals receiving money from their pension scheme before age 55 will usually be subject to tax charges, as well as having to pay large fees to the promoter and are therefore putting at risk their retirement savings. This is known as pension liberation.

7.4 The Government wants to ensure that individuals with pension funds are protected and those funds are available to provide benefits for the individual later in their life. This will mean that those who should be able to take advantage of the new flexibilities being introduced from April 2015, will be able to do so. Changes were made in FA14 to when HMRC could refuse to register a pension scheme. These were intended to tackle the growing threat of pension liberation. However those changes did not prevent a scheme being set up legitimately and then changing its structure to become a scheme that is more likely to be the target of pension liberation. This instrument therefore amend the information that must be provided to HMRC when a scheme changes its structure or range of number of members, to enhance HMRC's compliance activities to combat pension liberation.

7.5 The instrument also amends the reporting requirements in connection with the payment of death benefits that are tested against the lifetime allowance to include any designations into drawdown which will be subject to the new BCE 5C introduced by TOPA 14. It also introduces new reporting requirements on scheme administrators where a beneficiary receives payments from a drawdown fund that can be paid tax free and the drawdown fund is transferred to another provider.

- Consolidation

7.6 There are currently no plans to consolidate the 2006 Regulations.

8. Consultation outcome

8.1 This instrument was subject to a 4 week consultation period in line with the Tax Policy Framework.

9. Guidance

9.1 Draft guidance was published on 21 October 2014 on the clauses in the Taxation of Pensions Bill as it was introduced to Parliament. Further guidance will be provided to include the requirements introduced by this instrument.

10. Impact

10.1 The legislation will have a negligible impact on business and no impact on charities or voluntary bodies is foreseen.

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

10.3 An updated Tax Information and Impact Note for the Taxation of Pensions Act 2014 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 and this instrument.

10.4 The Tax Information and Impact Note is available on the GOV.UK website at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385370/OLD_complete_v3.pdf

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

Neeta Ruparelia at HMRC Tel: 03000 564289 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.