

EXPLANATORY MEMORANDUM TO

[THE OVERSEAS PENSION SCHEMES (MISCELLANEOUS) REGULATIONS 2015]

[2015] No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument aligns the provisions for overseas pension schemes more closely with those for registered pension schemes following the changes introduced by the Taxation of Pensions Act 2014, which received Royal Assent on 17 December 2014.

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

3.1 None

4. Legislative Context

4.1 These Regulations amend the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 (S.I. 2006/206), the Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 (S.I. 2006/208) and the Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567).

4.2 Pension contributions to overseas pension schemes that meet the conditions to be a qualifying overseas pension scheme (QOPS) can receive UK tax relief. Transfers of UK pension savings that have received tax relief can be made free of UK tax to overseas pension schemes that meet the conditions to be a qualifying recognised overseas pension scheme (QROPS).

4.3 S.I. 2006/206 sets out the conditions to be an 'overseas pension scheme' which a scheme must meet in order to be a QOPS. This instrument amends those conditions so that funds that have received UK tax relief are not required to use 70% of those funds to provide an income for the individual now that funds of registered pension schemes can be flexibly accessed. It also requires schemes established outside the European Economic Area that are not regulated as a pension scheme by a body in their home country to be operated by a pension provider that is regulated to provide pensions who is regulated to provide the scheme in question.

4.4 S.I. 2006/206 also sets out the conditions to be a 'recognised overseas pension scheme' which a scheme must meet in order to be a QROPS. This instrument amends

those conditions so that pension benefits payable under a scheme as far as they relate to funds that have received UK tax relief, must be payable no earlier than they would be under the rules that apply to a UK registered pension scheme.

4.5 S.I. 2006/208 sets out the information that a scheme manager of a QROPS is required to undertake to provide to meet the scheme's obligations as a QROPS. This instrument amends those requirements. It sets out categories of information that a scheme manager is required to provide and removes the need, in the majority of cases, for the scheme manager, when reporting information, to consider whether the individual(s) has been in the last five full tax years) UK resident. It also changes the timing of the reporting of information so that a scheme manager of a QROPS has to report a payment within 91 days of the payment being made.

4.6 S.I. 2006/567 sets out the information that must be provided by the registered pension scheme to Her Majesty's Revenue and Customs. Part 6 of Schedule 1 to the Taxation of Pensions Act 2014 amends the regulations so that information can be provided to individuals and scheme administrators when an individual flexibly accesses their pension rights under registered pension schemes.

4.7 This instrument introduces a requirement for an individual making a transfer of pension savings from a registered pension scheme to a QROPS to supply information to the registered pension scheme when an individual flexibly accesses their pension rights. There is a new requirement for registered pension schemes to send that information about the individual member, and some extra information, to HMRC. The timing of reporting of information has also changed for a UK scheme. It will have to report a transfer within 91 days of it being made.

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 tax regime for pension savings provides that individuals who come to the UK can contribute to pension schemes they were a member of before coming to the UK and individuals leaving the UK can transfer their tax-relieved pension savings to a pension scheme established in another country. The intention is to allow migrant workers UK tax

relief for their pension provision that is similar to that in registered pension schemes. Provided the overseas pension scheme meet certain conditions, UK tax relief is available on contributions and transfers can be made free of UK tax (where the transfer is subject only to a charge on any funds above the lifetime allowance, currently £1.25 million.)

7.2 In order for UK tax relief to be available, some overseas schemes are required to provide in their scheme rules that at least 70% of UK funds must be used to provide the individual with an income for life. This was one of the provisions used to ensure that the pension schemes were similar to registered pension schemes. From April 2015 when pension flexibility takes effect, the provisions would no longer have been aligned. This instrument removes that requirement.

7.3 This instrument makes two further changes to more closely align registered pension schemes and overseas schemes. Unless a scheme is regulated or established in the European Economic Area, it will only meet the conditions to be an overseas pension scheme if the pension provider is regulated in the scheme's country of establishment to provide pensions business in general and that scheme in particular. Secondly, in order to be able to accept transfers of UK tax-relieved pension savings free of UK tax, all schemes will need to provide that pension benefits from the transferred funds are payable no earlier than they would be under the rules of a registered pension scheme. This is intended to discourage people from transferring to overseas schemes so that they can access their UK tax-relieved pension savings before they would be able to under a registered pension scheme.

7.4 For a transfer to be made free of UK tax the scheme receiving the transfer must meet certain requirements. One of the conditions that a scheme can meet is that there is a double taxation agreement between the UK and the country in which the scheme is established which contains provisions about the exchange of information between the parties. This provision has now been extended to include tax information exchange agreements made under section 173 of Finance Act 2006. This will cover agreements that were not in existence when S.I. 2006/206 was first made.

7.5 This instrument also mirrors the information requirements that arise from pension flexibility for registered pension schemes. This is so that members of registered schemes and of overseas schemes where UK tax relief has been provided will receive similar treatment for tax purposes. It also prevents individuals from being able to transfer from a registered pension scheme simply to avoid the reporting requirements under a registered pension scheme.

Consolidation

7.6 The Regulations will amend S.I. 2006/206, SI 2006/208 and S.I. 2006/567. None of the regulations will be consolidated.

8. Consultation outcome

8.1 This instrument has been published today for a four-week technical consultation 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 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to restrict some of the reporting and processes requirements together with delaying the introduction of re-notification of QROPS.

12. Monitoring & review

12.1 The impact of the changes will be monitored through information collected from HM Revenue & Customs databases, tax returns, receipts and other statistics.

13. Contact

Beverley Davies at the HM Revenue & Customs Tel: 03000 585266 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.