

**EXPLANATORY MEMORANDUM TO
THE REGISTERED PENSION SCHEMES (AUTHORISED MEMBER PAYMENTS)
REGULATIONS 2007**

2007 No. 3532

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

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

2. **Description**

- 2.1 These Regulations provide for an additional category of payment to be an authorised member payment for the purposes of section 164 of the Finance Act 2004.

- 2.2 The payments in question are those made to with-profit policyholders as part of a scheme which makes a reattribution of the inherited estate of a person who carries on with-profits business where the payments are made to with-profits policyholders in exchange for giving up their rights and interests over the inherited estate.

- 2.3 The effect of these Regulations is that payments to which the Regulations apply and which are made to with-profits policyholders do not fall within the charges to income tax imposed on unauthorised payments under Part 4 of the Finance Act 2004.

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

None

4. **Legislative Background**

- 4.1 Part 4 of the Finance Act 2004 (consisting of sections 149 to 284 of that Act) makes new provision for pension schemes. The new legislation came into force on 6 April 2006.

- 4.2 Section 160(1) of the Finance Act 2004 provides that the only payments which a registered pension scheme is authorised to make to or in respect of a person who is or has been a member of the pension scheme are those specified in section 164 of that Act.

- 4.3 All other payments are unauthorised payments and the member of the pension scheme on whose behalf they are made is chargeable to income tax under section 208 of the Finance Act 2004 and may also be chargeable to income tax under section 209 of that Act. The tax charges are respectively known as the unauthorised payments charge and the unauthorised payments surcharge. Currently, the rate of the unauthorised payments charge is 40% and the rate of the unauthorised payments surcharge is 15%.

- 4.4 In the absence of special provision, the payments to which these Regulations apply would be chargeable to income tax in the hands of the with-profits policyholders on the basis that they constituted unauthorised payments. Such payments were not

chargeable to income tax before 6 April 2006. These Regulations ensure that such a state of affairs continues.

5. Territorial Extent and Application

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

7.1 A new, simpler regime providing generous tax reliefs for pension savings came into effect on 6 April 2006. A key principle underlying this regime is that tax relieved funds held in a pension scheme should be used to provide for an income in retirement.

7.2 Therefore certain payments made out of tax subsidised pension savings which inappropriately reduce the amount of savings available to provide a pension in retirement are subject to tax charges designed to re-coup the tax reliefs related to them – the unauthorised payments charges.

7.3 Payments that do not actually result in any diminution in the value of the fund available to provide for a pension in retirement could fall into the category of unauthorised payments.

7.4 One such example is where payments made to those holding with-profits policies as part of an arrangement to facilitate the reattribution of inherited estates. Reattribution is the process in which a company transfers the inherited estates from its with-profits fund to its non-profits fund. The estate remains available as the working capital of the with-profits fund. The reattribution is subject to agreement of the policyholders who give up entitlement to any possible future distribution from the inherited estates and to facilitate this shareholder may make incentive payments to the policyholders.

7.5 Where such a payment does not diminish the value of the fund held within the pension scheme, and is made to protect policyholders' interests, and then these payments should not be subject to the unauthorised payment tax charge.

8. Impact

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. On 4 April 2004 HM Revenue & Customs published a regulatory impact assessment in respect of the Simplification of the taxation of pensions. The assessment is available on HM Revenue & Customs website at <http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf> or (for hard copies) by writing to the Ministerial Correspondence Unit, 2nd Floor, Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

9. Contact

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anne.stubbs@hmrc.gsi.gov.uk can answer any queries regarding the instrument.