

**EXPLANATORY MEMORANDUM TO
THE SPECIAL ANNUAL ALLOWANCE CHARGE (PROTECTED PENSION INPUT
AMOUNTS) ORDER 2010**

2010 No. 429

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. **Purpose of the instrument**

This Order ensures that the rules applying to the special annual allowance charge in the Finance Act 2009 provide continuing protection where a person leaves a pension scheme and joins a new scheme on exactly the same terms and provides further protection for those who had set up arrangements on or before 22 April 2009.

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

None

4. **Legislative Context**

4.1 Schedule 35 of the Finance Act 2009 introduced an income tax charge called the special annual allowance charge at 20 per cent for certain individuals applied to certain pension contributions and benefits accrued. The charge is applied to contributions and benefits accrued in excess of the special annual allowance of £20,000, or up to £30,000 in certain circumstances, for individuals whose relevant income is £150,000 or more.

4.2 The charge does not apply in respect of an individual's normal pattern of regular pension contributions or the normal way in which their pension benefits accrued before 22 April 2009. These provisions are contained within Paragraphs 7 - 14 of Schedule 35.

4.3 This Order has effect from 22 April 2009 and is therefore retrospective. Schedule 35 includes a power at paragraph 19(3) to amend paragraphs 2 to 18 of the Schedule by order and paragraph 19(4) provides that such an order may have retrospective effect if it does not increase liability to tax.

5. **Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

The Exchequer Secretary, Sarah McCarthy-Fry, has made the following statement regarding Human Rights:

In my view the provisions of the Special Annual Allowance Charge (Protected Pension Input Amounts) Order 2010 are compatible with the Convention rights

7. Policy background

- *What is being done and why*

7.1 The Government announced in the Budget 2009 that tax relief on pension contributions would be restricted for those with incomes of £150,000 or over from April 2011. Relief will be tapered away so that for those with incomes of £180,000 and over relief will be worth 20 per cent, the same as to a basic rate taxpayer.

7.2 To prevent individuals making substantial additional pension contributions in order to take advantage of pensions tax relief while relief is still available to them at rates higher than the basic rate, legislation was included in Schedule 35 to the Finance Act 2009 to prevent forestalling prior to the restriction taking effect. This introduces a new personal tax charge on pension savers known as the special annual allowance charge.

7.3 The legislation aims to protect from the special annual allowance charge those regular contributions that were ongoing at Budget Day, 22 April 2009. This Order amends the legislation to provide protection for certain contributions that an individual or an individual's employer was contractually committed to at 22 April 2009 but which had not actually commenced on that date. It also amends the legislation to provide protection for certain lump sum contributions made on 22 April 2009.

7.4 This Order further amends Schedule 35 to ensure that contributions made by an individual who changes pension provider due to one of the reasons provided for and carries forward exactly the same pension arrangements, continue to be protected from the charge.

7.5 Because the Order will extend the existing protection from the special annual allowance charge, there has been significant interest from the pensions industry in their contents.

- *Consolidation*

7.6 There are no current plans to consolidate the Treasury order that is being amended.

8. Consultation outcome

A draft of this Order has been consulted on informally with representative bodies for the pensions sector and others.

9. Guidance

Guidance on the Order will be published in HMRC's Registered Pension Scheme Manual. This manual is publicly available on the HMRC website at www.hmrc.gov.uk/manuals/rpsmmanual/index.htm.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen

10.2 No impact on the public sector is foreseen

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The impact of the changes will be assessed as part of HMRC's more general plans for monitoring and evaluation the impact of the pension simplification reforms.

13. Contact

Anne Smith at HM Revenue and Customs Tel: 0207 147 3076 or email:
anne.h.smith@hmrc.gsi.gov.uk can answer any queries regarding the instrument.