

**2000 No. 1085**

**INCOME TAX**

**The Retirement Benefits Schemes (Sharing of Pensions on  
Divorce or Annulment) Regulations 2000**

<i>Made - - - -</i>	<i>14th April 2000</i>
<i>Laid before the House of Commons</i>	<i>19th April 2000</i>
<i>Coming into force</i>	<i>10th May 2000</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by paragraph 18(10) and (11) of Schedule 10 to the Finance Act 1999(a), hereby make the following Regulations:

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Retirement Benefits Schemes (Sharing of Pensions on Divorce or Annulment) Regulations 2000 and shall come into force on 10th May 2000.

(2) Regulations 3 to 8 have effect in relation to schemes which have been approved by the Board under section 591 of the Taxes Act 1988(b) before 10th May 2000.

**Interpretation**

2. In these Regulations—

“the Board” means the Commissioners of Inland Revenue;

“director” has the meaning given by section 612(1) of the Taxes Act 1988;

“ex-spouse” has the meaning given by section 659D(1)(c) of the Taxes Act 1988;

“moderate earner” has the meaning given by regulation 5(4) to (6);

“pension sharing order or provision” means any such order or provision as is mentioned in section 28(1) of the Welfare Reform and Pensions Act 1999(d) or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(e);

“the permitted maximum” has the meaning given by section 590C(f) of the Taxes Act 1988;

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(a) 1999 c. 16.

(b) 1988 c. 1. Section 591 was amended by paragraph 6 of Schedule 13 to the Finance Act 1988 (c. 39), section 107 of, and Part V(12) of Schedule 26 to, the Finance Act 1994 (c. 9), section 59(2) of the Finance Act 1995 (c. 4), and paragraph 3 of Schedule 10 to the Finance Act 1999.

(c) Section 659D was inserted by paragraph 17 of Schedule 10 to the Finance Act 1999.

(d) 1999 c. 30.

(e) S.I. 1999/3147 (N.I. 11).

(f) Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989 (c. 26) and was amended by section 107(4) and (5) of the Finance Act 1993 (c. 34).

“Schedule 10” means Schedule 10 to the Finance Act 1999;

“scheme” means a retirement benefits scheme;

“simplified defined contribution scheme” has the meaning given by regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(a);

“the Taxes Act 1988” means the Income and Corporation Taxes Act 1988.

### **Prescribed modifications of Schedule 10 in prescribed circumstances**

3. Regulations 4 to 8 prescribe circumstances in which Schedule 10 shall apply with the modifications prescribed by those regulations in the case of schemes approved by the Board before 10th May 2000.

### **Modifications of Schedule 10 in relation to simplified defined contribution schemes**

4.—(1) In the circumstances prescribed by paragraph (2), Schedule 10 shall apply to a scheme with the modification prescribed by paragraph (3).

(2) The circumstances prescribed by this paragraph are circumstances where a scheme is a simplified defined contribution scheme.

(3) The modification prescribed by this paragraph is that paragraph 18(5) of Schedule 10 shall be omitted.

### **Modifications of Schedule 10 as regards members of schemes who are moderate earners**

5.—(1) In the circumstances prescribed by paragraph (2), Schedule 10 shall apply to a scheme as regards an employee within that paragraph with the modification prescribed by paragraph (3).

(2) The circumstances prescribed by this paragraph are circumstances where the employee—

- (a) is a member of a scheme which is not a simplified defined contribution scheme;
- (b) is an ex-spouse whose rights under the scheme have been debited as a consequence of a pension sharing order or provision; and
- (c) is a moderate earner.

(3) The modification prescribed by this paragraph is that paragraph 18(5) of Schedule 10 shall be omitted.

(4) In this regulation, and in regulations 6 to 8, “moderate earner” means an employee—

- (a) who is not a controlling director of a company which is his employer, and
- (b) whose earnings at the date at which his marriage was dissolved or annulled were not more than 25 per cent. of the permitted maximum for the year of assessment in which the dissolution or annulment occurred.

(5) For the purposes of paragraph (4)(a), an employee is a controlling director of a company which is his employer if he is a director of the company to whom paragraph (b) of section 417(5)(b) of the Taxes Act 1988 applies either—

- (a) at the date on which the marriage was dissolved or annulled, or
- (b) at any time within the period of ten years before that date.

(6) For the purposes of paragraph (4)(b), an ex-spouse’s earnings shall be taken to be the total amounts of emoluments—

- (a) which were paid to the ex-spouse in consequence of pensionable service to which the scheme relates during the year of assessment before the year of assessment in which the marriage was dissolved or annulled, and
- (b) from which tax was deducted in accordance with the Income Tax (Employments) Regulations 1993(b).

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(a) S.I. 1993/3016.

(b) S.I. 1993/744, amended by S.I. 1993/2276, 1994/775 and 1212, 1995/216, 447, 853, 1223 and 1284, 1996/804, 980, 1312, 2381, 2554 and 2631, 1997/214, 1998/2484, and 1999/70, 824 and 2155.

**Modifications of Schedule 10 as regards members who are not moderate earners—schemes providing lump sum retirement benefits only**

6.—(1) In the circumstances prescribed by paragraph (2), Schedule 10 shall apply to a scheme as regards an employee within that paragraph with the modification prescribed by paragraph (3).

(2) The circumstances prescribed by this paragraph are circumstances where the employee—

(a) is a member of a scheme which—

(i) is not a simplified defined contribution scheme; and

(ii) provides him with lump sum retirement benefits only which do not exceed three eightieths of his final remuneration for each year of service up to a maximum of 40;

(b) is an ex-spouse whose rights under the scheme have been debited as a consequence of a pension sharing order or provision; and

(c) is not a moderate earner.

(3) The modification prescribed by this paragraph is that in paragraph 18(5) of Schedule 10 the words “and (da)” shall be omitted.

**Modifications of Schedule 10 as regards members who are not moderate earners—schemes providing lump sums otherwise than by the commutation of a part of a pension**

7.—(1) In the circumstances prescribed by paragraph (2), Schedule 10 shall apply to a scheme as regards an employee within that paragraph with the modifications prescribed by paragraph (3).

(2) The circumstances prescribed by this paragraph are circumstances where the employee—

(a) is a member of a scheme which—

(i) is not a simplified defined contribution scheme; and

(ii) provides him with a lump sum otherwise than by the commutation of a part of a pension;

(b) is an ex-spouse whose rights under the scheme have been debited as a consequence of a pension sharing order or provision;

(c) is not a moderate earner; and

(d) is not an employee within regulation 8(2)(b).

(3) The modifications prescribed by this paragraph are that—

(a) in paragraph 18(5) of Schedule 10—

(i) the words “and (da)” shall be omitted; and

(ii) at the end after the words “the Taxes Act 1988” there shall be added the words “and provision of the description set out in sub-paragraph (5A) below”; and

(b) after paragraph 18(5) of Schedule 10 there shall be inserted the following sub-paragraph—

“(5A) The description of provision referred to in sub-paragraph (5) above is provision providing that in a case in which—

(a) a lump sum may be obtained otherwise than by the commutation of a part of a pension provided for an employee, and

(b) the amount of that pension is affected by the making of a pension sharing order or provision,

the lump sum does not exceed the sum produced by multiplying by 3 the amount which (after effect has been given to the pension sharing order or provision) is the amount of the pension for the first year in which it is payable calculated in accordance with section 590(4E)(a) of the Taxes Act 1988.”

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(a) Section 590(4E) was inserted by paragraph 2(8) of Schedule 10 to the Finance Act 1999.

**Modifications of Schedule 10 as regards members of schemes who are not moderate earners and to whom paragraphs 2, 3, 4 and 6 of Schedule 23 to the Taxes Act 1988 do not apply**

8.—(1) In the circumstances prescribed by paragraph (2), Schedule 10 shall apply to a scheme as regards an employee within that paragraph with the modifications prescribed by paragraph (3).

(2) The circumstances prescribed by this paragraph are circumstances where—

(a) the employee is a member of a scheme which—

- (i) is not a simplified defined contribution scheme; and
- (ii) provides for a lump sum either by the commutation of a part of a pension or otherwise; and

(b) the employee—

- (i) in the case of a scheme approved by the Board before 23rd July 1987, was a member of the scheme before 17th March 1987; or
- (ii) is an employee as regards whom the provisions contained in paragraphs 2, 3, 4 and 6 of Schedule 23 to the Taxes Act 1988 are disapplied either by regulation 3 or 4ZA of the Occupational Pension Schemes (Transitional Provisions) Regulations 1988(a) or by virtue of a direction of the Board made under regulation 11 of those Regulations; or

(iii) is an employee who—

- (a) was a member of a scheme before 17th March 1987, and
- (b) on or after 17th March 1987 becomes a member of another scheme to which Schedule 23 to the Taxes Act 1988 does not apply,

and whom the Board, in exercising their discretion under section 591 of the Taxes Act 1988, allow to be treated as having been a member of that other scheme before 17th March 1987; and

(c) the employee—

- (i) is an ex-spouse whose rights under the scheme have been debited as a consequence of a pension sharing order or provision; and
- (ii) is not a moderate earner.

(3) The modifications prescribed by this paragraph are that—

(a) in paragraph 18(5) of Schedule 10—

- (i) the words “and (da)” shall be omitted; and
- (ii) at the end after the words “the Taxes Act 1988” there shall be added the words “and provision of the description set out in sub-paragraph (5AA) below”; and

(b) after paragraph 18(5) of Schedule 10 there shall be inserted the following sub-paragraphs—

“(5AA) The description of provision referred to in sub-paragraph (5) above is provision providing that in a case in which—

- (a) a lump sum may be obtained either by the commutation of a part of a pension provided for an employee or otherwise, and
- (b) the amount of the pension is affected by the making of a pension sharing order or provision,

the lump sum shall not exceed the greater of either A or B.

(5B) In sub-paragraph (5AA) above, A is the sum produced by multiplying by either—

- (a) 2.25, in the case of a scheme which provides for a lump sum by the commutation of a part of a pension, or
- (b) 3, in the case of a scheme which provides for a lump sum otherwise than by the commutation of a part of a pension,

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(a) S.I. 1988/1436. Regulation 3 was amended by S.I. 1993/3219, regulation 4, and regulation 4ZA was inserted by S.I. 1996/3115, regulation 4, and was amended by S.I. 1996/3234.

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the amount which (after effect has been given to the pension sharing order or provision) is the amount of the pension for the first year in which it is payable calculated in accordance with section 590(4E) of the Taxes Act 1988.

(5C) In sub-paragraph (5AA) above, B is the sum produced by the following formula—

$$C - D$$

Where:

C is the amount of the lump sum determined in accordance with the rules of the scheme as if no pension sharing order or provision had been made, and

D is the sum produced by multiplying by either—

(a) 2.25, in the case of a scheme which provides for a lump sum by the commutation of a part of a pension, or

(b) 3, in the case of a scheme which provides for a lump sum otherwise than by the commutation of a part of a pension,

the amount by which the employee's benefits or future benefits under the scheme are reduced under section 31 of the Welfare Reform and Pensions Act 1999 or Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.”

14th April 2000

*Nick Montagu*  
*Tim Flesher*

Two of the Commissioners of Inland Revenue

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the modification of provisions contained in Schedule 10 to the Finance Act 1999 (sharing of pensions etc. on divorce or annulment) (“Schedule 10”) in prescribed circumstances. The modifications relate to the application of the Schedule in the case of retirement benefits schemes approved by the Board of Inland Revenue under section 591 of the Income and Corporation Taxes Act 1988 (“the Taxes Act 1988”) before 10th May 2000.

The modifications are of paragraph 18(5) of Schedule 10 which provides that a scheme which has been approved before the day appointed by the Treasury as the first appointed day for the purposes of paragraph 18 of Schedule 10 shall have effect as long as it continues to be approved on or after the day to be appointed by the Treasury as the second appointed day for the purposes of that paragraph as if it contained provision satisfying the conditions set out in section 590(3)(bb) and (da) of the Taxes Act 1988 (conditions for automatic approval).

Regulation 1 provides for commencement, citation and effect, and regulation 2 for interpretation.

Regulation 3 introduces regulations 4 to 8 which prescribe both the circumstances in which Schedule 10 applies with modifications and the modifications themselves.

Regulation 4 disapplies paragraph 18(5) of Schedule 10 as regards simplified defined contribution schemes.

Regulations 5 to 8 prescribe modifications of Schedule 10 in relation to schemes which are not simplified defined contribution schemes. The circumstances prescribed by regulation 5 concern members of schemes who are not controlling directors of a company which is their employer and whose earnings at the date of their divorce are moderate (“moderate earners”). The circumstances prescribed by regulations 6 to 8 concern members of schemes who are not moderate earners.

Regulation 5 disapplies paragraph 18(5) of Schedule 10 where the member is a moderate earner.

Regulation 6 modifies paragraph 18(5) of Schedule 10 in circumstances where a scheme provides an employee who is not a moderate earner with lump sum retirement benefits only which do not exceed three eighths of his final remuneration for each year of service.

Regulation 7 modifies paragraph 18(5) of Schedule 10 in circumstances where a scheme provides an employee who is not a moderate earner with a lump sum otherwise than by the commutation of a part of a pension.

Regulation 8 modifies paragraph 18(5) of Schedule 10 as regards certain scheme members who are not moderate earners and who continue to accrue benefits on the basis that they would have done before 17th March 1987.

**£2.00**

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E 0939 05/00 ON (MFK)