STATUTORY INSTRUMENTS

2009 No. 1171

INCOME TAX

The Registered Pension Schemes (Authorised Payments) Regulations 2009

Made - - - -	*6th May 2009*
Laid before the House of Commons	*8th May 2009*
Coming into force in accordance with regulation 1	

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 164(1)(f) and (2) of the Finance Act 2004(**a**), and now exercisable by them(**b**):

PART 1

INTRODUCTION

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Registered Pension Schemes (Authorised Payments) Regulations 2009 and shall come into force on 1st June 2009.

(2) These Regulations shall have effect—

(a) for payments of a description within Part 2, in relation to payments made on or after 1st December 2009; and

(b) for payments of a description within Part 3 or Part 4, in relation to payments made on or after 6th April 2006(**c**).

Interpretation

2.—(1) Any reference in these Regulations to a numbered section or a paragraph of a Schedule, without more, is a reference to the section or paragraph of the Finance Act 2004 bearing that number.

(2) Any reference in these Regulations to a person's being entitled to a payment—

(**a**) 2004 c. 12; section 164 was renumbered as subsection (1) of section 164, and subsection (2) was inserted, by paragraph 1 of Schedule 29 to the Finance Act 2008 (c. 9). The section had previously been amended by paragraph 6 of Schedule 23 to the Finance Act 2006 (c. 25).

(**b**) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that in so far as it is appropriate in consequence of section 5 a reference, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**c**) Section 164(2)(d) provides that regulations made under subsection (1)(f) may include provision having effect in relation to times before they are made if it does not increase any person's liability to tax.

(a) if it is a payment of pension (or intended to be such a payment), shall be construed in accordance with section 165(3) (pension rules)(**a**), and related expressions shall be construed accordingly;

(b) if it is a payment of a lump sum (or intended to be such a payment), shall be construed in accordance with section 166(2) (lump sum rule)(**b**), and related expressions shall be construed accordingly.

(3) For the purpose of these Regulations, whether a person is connected with another person is determined in accordance with section 993 of the ITA 2007 (meaning of "connected" persons)(**c**).

(4) For the purpose of these Regulations,

(a) a pension scheme is related to another pension scheme if each of them is—

(i) a registered pension scheme(**d**) that is an occupational pension scheme(**e**) or a public service pension scheme(**f**), and

(ii) a pension scheme relating to the same employment; but

(b) if the context is whether a person is or is not a controlling director of a sponsoring employer(**g**) of a pension scheme, only registered pension schemes that are occupational pension schemes are related to other such pension schemes.

(5) In these Regulations—

"controlling director" has the meaning given by section 273(9) (members liable as scheme administrator);

"excluded transfer" means—

(a) a recognised transfer(**h**); or

(b) any other transfer to the pension scheme of any sums or assets held for the purposes of, or representing accrued rights under, another pension scheme.

Prescribed payments and taxation

3. A payment by a registered pension scheme to or in respect of a member that is described in Part 2 of these Regulations—

(a) is a payment of a prescribed description for the purposes of section 164(1)(f) (authorised member payments);

(b) if paid to the member, shall be treated as a trivial commutation lump sum paid to the member for the purposes of Part 9 of ITEPA 2003 (pension income)(**i**); and

(c) if not paid to the member, shall be treated as a trivial commutation lump sum death benefit paid to the recipient for the purposes of Part 9 of ITEPA 2003(**j**).

4. A payment by a registered pension scheme that is described in Part 3 of these Regulations, to the extent specified in the regulation concerned—

(a) is a payment of a prescribed description for the purposes of section 164(1)(f) of the Finance Act 2004;

(**a**) There are amendments to section 165, but none is relevant.
(**b**) Section 166 was amended by paragraph 9 of Schedule 20 to the Finance Act 2007 (c. 11).
(**c**) Section 280(1) of the Finance Act 2004 defines "ITA 2007" as meaning the Income Tax Act 2007 (c. 3); that definition was inserted by paragraph 481 of Schedule 1 to ITA 2007.
(**d**) Section 150(2) of the Finance Act 2004 defines "registered pension scheme".
(**e**) Section 150(5) of the Finance Act 2004 defines "occupational pension scheme".
(**f**) Section 150(3) of the Finance Act 2004 defines "public service pension scheme".
(**g**) Section 150(6) of the Finance Act 2004 defines "sponsoring employer" in the context of occupational pension schemes.
(**h**) Section 169 of the Finance Act 2004 defines "recognised transfer".
(**i**) Section 280(1) of the Finance Act 2004 defines "ITEPA 2003" as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1). Section 636B of ITEPA 2003, which makes provision about the taxation as pension income of trivial commutation lump sums, was inserted by paragraph 11 of Schedule 31 to the Finance Act 2004, and was amended by paragraph 59 of Schedule 10 to the Finance Act 2005 (c. 7).
(**j**) Section 636C of ITEPA 2003, which makes provision about the taxation as pension income of trivial commutation lump sum death benefits, was inserted by paragraph 11 of Schedule 31 to the Finance Act 2004.

(b) shall be treated as pension paid to the recipient under a registered pension scheme for the purposes of Part 9 of ITEPA 2003; and

(c) shall be treated for those purposes as pension accruing in the tax year in which it is paid.

5. A payment by a registered pension scheme that is described in Part 4 of these Regulations—

(a) is a payment of a prescribed description for the purposes of section 164(1)(f) of the Finance Act 2004; and

(b) shall be treated as a pension commencement lump sum paid under a registered pension scheme for the purposes of Part 9 of ITEPA 2003(**a**).

PART 2

COMMUTATION PAYMENTS

Payment after relevant accretion

6.—(1) A payment made after there has been a relevant accretion in respect of the member if—

(a) the payment extinguishes the member's entitlement to benefits under the pension scheme;

(b) it does not exceed £2,000;

(c) it does not exceed the value of the accretion; and

(d) it is made no later than the relevant date.

(2) Regulation 7 defines "relevant accretion".

(3) In a case where the accretion is a relevant accretion by virtue of having occurred after the event described in regulation 7(2)(b), the scheme pension or annuity concerned shall be ignored in determining whether the member's entitlement to benefits under the scheme has been extinguished.

(4) For the purposes of paragraph (1)(d) the relevant date is—

(a) if the accretion has occurred before 1st December 2009, 1st June 2010, otherwise

(b) six months after the date the accretion occurs.

Meaning of "relevant accretion"

7.—(1) The following are relevant accretions for the purposes of regulation 6 if they occur after either of the events mentioned in paragraph (2)—

(a) a payment ("the payment in") is received by the scheme in respect of the member, other than a contribution into the pension scheme or an excluded transfer into the pension scheme;

(b) there is an allocation to the arrangement(**b**) in the amount by which the value of the sums and assets held for the purposes of the arrangement exceeds the value the scheme administrator(**c**) had believed they had; and

(c) the scheme administrator becomes aware that the member is entitled to a benefit under the pension scheme, provided—

(i) the scheme administrator had not been aware of the entitlement before the event in paragraph (2), and

(ii) the scheme administator could not reasonably have been expected to be aware of it before that event.

(**a**) Section 636A(1)(a) of ITEPA 2003, which was inserted by paragraph 11 of Schedule 31 to the Finance Act 2004, provides that there is no liability for income tax in respect of a pension commencement lump sum.

(**b**) Section 152(1) of the Finance Act 2004 defines "arrangement".

(**c**) Section 270 of the Finance Act 2004 defines "scheme administrator".

(2) The events are—

(a) there is a recognised transfer to another registered pension scheme or to a qualifying recognised overseas pension scheme(**a**) in respect of the member; and

(b) a scheme pension(**b**) or annuity is purchased for the member by the pension scheme from an insurance company(**c**).

(3) In order for the purchase of a scheme pension or annuity on or after 6th April 2006 to be an event within paragraph (2)(b), all or a part of the member's lifetime allowance(**d**) must be available at the time of the purchase.

(4) The value of a relevant accretion is—

(a) in the case of a payment in within paragraph (1)(a), the amount of the payment; or

(b) in the case of an allocation within paragraph (1)(b), the amount by which the value of the sums and assets exceeds the value they had been believed to have;

(c) in the case described in paragraph (1)(c), the value of the benefit to which the member is entitled.

(5) In paragraph (1)(a), "contribution" does not include any amount mentioned in section 188(3)(c) (rebates and minimum contributions paid by the Board of Inland Revenue(**e**)).

Payments under the Financial Services Compensation Scheme

8.—(1) A payment made by way of compensation under the Financial Services Compensation Scheme if—

(a) the payment does not exceed £2,000; and

(b) it extinguishes the member's entitlement to benefits under the pension scheme.

(2) The reference in paragraph (1) to the Financial Services Compensation Scheme is to the scheme established by Part 15 of the Financial Services and Markets Act 2000(**f**).

Payments to or in respect of members who were untraceable

9.—(1) A payment made to or in respect of a member who has reached the age of 75 if—

(a) at the time the member reached the age of 75 the scheme administrator had been unable to ascertain the member's whereabouts despite having taken reasonable steps to do so;

(b) the scheme administrator had received no communication from the member for at least 5 years before the date on which the scheme administrator had discovered the member's whereabouts or, if the member had died, had learned of the death;

(c) either of the conditions in paragraph (2) is satisfied;

(d) the payment is made no later than the relevant date;

(e) the payment does not exceed £2,000; and

(f) the payment—

(i) extinguishes the member's entitlement to benefits under the pension scheme, or

(ii) if made after the member's death, represents the total value of all sums and assets held for the purposes of the scheme in respect of the member.

(2) The conditions mentioned in paragraph (1)(c) are—

(**a**) Section 169 of the Finance Act 2004 defines "qualifying recognised overseas pension scheme".
(**b**) Paragraph 2 of Schedule 28 to the Finance Act 2004 defines "scheme pension".
(**c**) Section 275 of the Finance Act 2004 defines "insurance company".
(**d**) Section 218 of the Finance Act 2004 specifies the amount of the lifetime allowance.
(**e**) The functions of the Board of Inland Revenue mentioned in section 188(3)(c) of the Finance Act 2004 (and other functions) were transferred to officers of Revenue and Customs by section 7 of the Commissioners for Revenue and Customs Act 2005 (c. 11).
(**f**) 2000 c. 8. There are amendments, but none is relevant.

(a) paragraph 8(2) of Schedule 28 (member's unsecured pension fund) applies in relation to the member and the arrangement and none of the sums or assets held for the purposes of the arrangement are member-designated funds(**a**) immediately before it applies;

(b) the arrangement is a defined benefits arrangement(**b**) and no scheme pension is being paid to the member by the scheme making the payment or any related scheme.

(3) For the purposes of paragraph (1)(d) the relevant date is the later of—

(a) 1st June 2010; and

(b) 12 months after the date on which the scheme administrator had discovered the member's whereabouts or, if the member had died, had learned of the death.

Payments to members receiving annuities

10.—(1) A payment to a member which would be a trivial commutation lump sum(**c**) but for the continuance after the payment of an annuity if—

(a) the condition in paragraph (2) is satisfied; or

(b) if the member is not a member of any other registered pension scheme, the conditions in paragraph (3) are satisfied.

(2) The condition mentioned in paragraph (1)(a) is that the payment is made before the end of the commutation period, as determined in accordance with paragraph 7(2) of Schedule 29.

(3) The conditions mentioned in paragraph (1)(b) are that—

(a) the member had not previously received either a trivial commutation lump sum or a payment that was an authorised payment by virtue of this regulation; and

(b) the value of the member's pension rights immediately before the payment, calculated in accordance with paragraph 7(5) of Schedule 29, does not exceed 1% of the standard lifetime allowance(**d**).

De minimis rule for pension schemes

11.—(1) A payment by a public service pension scheme or an occupational pension scheme if—

(a) the member has reached the age of 60, but has not reached the age of 75;

(b) the member—

(i) is not a controlling director of a sponsoring employer of this or of any related scheme, and

(ii) is not a person connected to such a person;

(c) the payment does not exceed £2,000;

(d) the commutation value of the benefits to which the member is entitled under this and any related scheme does not exceed £2,000 in total;

(e) the payment extinguishes the member's entitlement to benefits under this scheme; and

(f) no recognised transfer was made out of this or any related scheme in respect of the member during the 3 years preceding the date of the payment.

(2) For the purposes of paragraph (1)(d), the commutation value is equal to the amount of the lump sum that, if paid, would extinguish the member's entitlement to benefits under the scheme concerned.

(**a**) Paragraph 8(1A) of Schedule 28 to the Finance Act 2004, which was inserted by paragraph 18 of Schedule 10 to the Finance Act 2005, specifies what sums or assets are member-designated funds.
(**b**) Section 152(6) of the Finance Act 2004 defines "defined benefits arrangement".
(**c**) Paragraph 7 of Schedule 29 to the Finance Act 2004 specifies what sums are trivial commutation lump sums.
(**d**) Section 218 of the Finance Act 2004, in conjunction with S.I. 2007/494, sets the standard lifetime allowance.

Payments by larger pension schemes

12.—(1) A payment by a public service pension scheme or an occupational pension scheme if—

(a) there are at least 50 members;

(b) any of conditions A, B or C is satisfied;

(c) the member has reached the age of 60, but has not reached the age of 75;

(d) the member—

(i) is not a controlling director of a sponsoring employer of this or any related scheme, and

(ii) is not a person connected to such a person;

(e) the payment does not exceed £2,000;

(f) the payment extinguishes the member's entitlement to benefits under this scheme;

(g) ignoring any transfer within paragraph (5), no excluded transfer was made into this scheme in relation to the member during the 5 years preceding the date of the payment; and

(h) no recognised transfer was made out of this scheme in respect of the member during the 3 years preceding the date of the payment.

(2) Condition A is that the scheme was in existence on 1st July 2008.

(3) Condition B is that—

(a) the payment is in respect of a defined benefits arrangement; and

(b) the aggregate amount of the sums and assets held for the purposes of defined benefits arrangements is more than half of the aggregate amount of all the sums and assets held for the purposes of this scheme.

(4) Condition C is that in respect of at least 20 members the aggregate amount of the sums and assets held for the purpose of the arrangement exceed £2,000.

(5) A transfer is within this paragraph if it is a transfer of sums and assets described in paragraph 12(8)(b), (c) or (d) of Schedule 36(**a**) (enhanced protection – permitted transfers).

(6) In paragraphs (3) and (4), the "aggregate amount" is an amount equal to the aggregate of the amount of the sums and the market value(**b**) of the assets concerned.

PART 3

PENSION ERRORS

Pensions paid in error

13.—(1) A payment made in error which is intended to represent a payment permitted by the pension rules or the pension death benefit rules(**c**) to or in respect of a member, if the scheme administrator or insurance company making the payment (in either case, "the payer") believed that—

(a) the recipient was entitled to the payment, and

(b) the recipient was entitled to it in that amount.

(2) A payment is not within paragraph (1) if the error is that the recipient is no longer alive (as to which see regulation 15).

(3) Regulation 4 applies to—

(**a**) Paragraphs (c) and (d) of paragraph 12(8) were inserted by paragraph 17 of Schedule 20 to the Finance Act 2007 (c. 11).
(**b**) Section 278 of the Finance Act 2004 defines "market value".
(**c**) Sections 165 and 167 of the Finance Act 2004 set out the pension rules and pension death benefit rules respectively.

(a) the whole of the payment; or

(b) if the recipient was entitled to an authorised payment apart from under this regulation, the amount by which the payment exceeds the amount of the authorised payment.

Pensions paid after discovery of error

14.—(1) A payment made after the discovery of an error if either—

(a) it is made after there is a payment within regulation 13 to the same person and (apart from the discovery of the error) is of a similar nature to that payment; or

(b) if the error had not been discovered until after the payment, it would have been a payment within regulation 13.

(2) A payment is not within paragraph (1) unless it falls within paragraph (3), (4) or (5).

(3) A payment is within this paragraph if it is made even though the payer took reasonable steps to prevent its being made or its being made in that amount.

(4) A payment is within this paragraph if it is made while the scheme administrator is considering whether the rules of the scheme should be amended so that such payments or payments in such amounts will be permitted by the pension rules or the pension death benefit rules (as the case may be), provided the scheme administrator has not taken an unreasonable amount of time to decide.

(5) A payment is within this paragraph if it is made while the scheme administrator is in the process of amending the rules of the scheme so that such payments or payments in such amounts will be permitted by the pension rules or the pension death benefit rules (as the case may be), provided the scheme administrator has not taken an unreasonable amount of time to amend the rules.

(6) Regulation 4 applies to—

(a) the whole of the payment; or

(b) if the recipient was entitled to an authorised payment apart from under this regulation, the amount by which the payment exceeds the amount of the authorised payment.

Pensions continuing to be paid after death

15.—(1) A payment which is intended to represent the payment of a pension permitted by the pension rules or the pension death benefit rules to or in respect of a member if—

(a) the member or dependant concerned (“the person”) has died;

(b) the payment is made no later than six months after the date of the person’s death;

(c) the payment would not have been an unauthorised payment if it had been made on the day before the person died; and

(d) either of the conditions in paragraph (2) is satisfied.

(2) The conditions mentioned in paragraph (1)(d) are—

(a) the scheme administrator or insurance company making the payment (in either case, “the payer”) did not know, and could not reasonably have been expected to know, that the person had died before the payment was made;

(b) where the payer knew of the person’s death before the payment was made, the payer took reasonable steps to prevent the payment’s being made or its being made in that amount.

(3) Regulation 4 applies to the whole of the payment.

Payments of arrears of pension after death

16.—(1) A payment of pension under the pension scheme to or in respect of a member who has died if—

(a) the payment is in respect of a defined benefits arrangement;

(b) the member had not reached the age of 75;

(c) the member—

(i) was not a controlling director of a sponsoring employer of this or any related scheme, and

(ii) was not a person connected to such a person; and

(d) either—

(i) the conditions in paragraph (2) are satisfied, or

(ii) where the member died on or after 6th April 2006, the conditions in paragraph (3) are satisfied.

(2) The conditions where the member died before 6th April 2006 are that—

(a) the payment represents accrued arrears of pension;

(b) the payment was allowed or required by the rules of this scheme as they stood immediately before the member died; and

(c) the existence of the rule or rules concerned would not have prejudiced approval of the scheme by the Inland Revenue or Her Majesty's Revenue and Customs.

(3) The conditions where the member died on or after 6th April 2006 are that—

(a) the payment represents accrued arrears of scheme pension the member's entitlement to which the scheme administrator had not established until after the member's death;

(b) the payment would not have been an unauthorised payment if the payment had been made immediately before the member's death and the member had been entitled to it; and

(c) the scheme administrator could not reasonably have been expected to make the payment before the member's death.

(4) Regulation 4 applies to so much of the payment as does not exceed the amount accrued during the period—

(a) beginning with the earliest date from which the member could have required the scheme administrator to make the payment if the member had been entitled to it; and

(b) ending with the member's death.

(5) If the member died on or after 6th April 2006, the making of the payment shall be treated as a benefit crystallisation event for the purposes of the lifetime allowance charge(**a**), namely benefit crystallisation event 9(**b**).

(6) The amount crystallised for the purposes of benefit crystallisation event 9 is the amount of the payment to which regulation 4 applies.

(7) For the purpose of paragraph (2)(c), whether something would have prejudiced the approval of a scheme by the Inland Revenue or by Her Majesty's Revenue and Customs is to be determined in accordance with the publication IR 12(2001) (known as the Occupational Pension Schemes Practice Notes) published by the former Inland Revenue Pension Schemes Office on 23rd March 2001, as that publication stood—

(a) if the member died before 23rd March 2001, on that date,

(b) otherwise, on the date of the member's death.

(**a**) Section 214 of the Finance Act 2004 establishes the lifetime allowance charge.

(**b**) Benefit crystallisation event 9 was inserted in the table in section 216(1) of the Finance Act 2004 by paragraph 1 of Schedule 29 to the Finance Act 2008.

PART 4

LUMP SUM ERRORS

Commencement lump sums based on pension errors

17.—(1) A payment of a lump sum the whole of which is intended to represent a pension commencement lump sum(**a**), but which exceeds the permitted maximum(**b**), if—

(a) the lump sum exceeds the permitted maximum only because it has been calculated by reference to the amount of a relevant pension(**c**); and

(b) either—

(i) the payment of the pension is a payment within regulation 13 or 14 (1)(b), or

(ii) paragraph (3) applies.

(2) The discovery that the lump sum exceeds the permitted maximum before the payment is made does not prevent the payment's being within paragraph (1) if the payer took reasonable steps to prevent its being made or its being made in that amount.

(3) This paragraph applies where—

(a) the lump sum is paid before the pension by reference to which its amount was calculated;

(b) the pension is not in the event paid, or paid in the amount originally intended, because an error is discovered; and

(c) if the error had not been discovered and the pension had been paid as intended, its payment would have been a payment within regulation 13.

(4) The member's becoming entitled to the pension commencement lump sum that forms part of the payment within paragraph (1) shall be treated as a benefit crystallisation event for the purposes of the lifetime allowance charge, namely benefit crystallisation event 9 (and this does not prevent the member's becoming so entitled from also having effect for the purposes of benefit crystallisation event 6).

(5) The amount crystallised for the purposes of benefit crystallisation event 9 is the amount by which the lump sum exceeds the permitted maximum.

Commencement lump sums paid in error – money purchase arrangements

18.—(1) A payment of a lump sum the whole of which is intended to represent a pension commencement lump sum, but which exceeds the permitted maximum, if—

(a) the lump sum exceeds the permitted maximum only because it has been calculated by reference to the annuity purchase price(**d**) or the scheme pension purchase price(**e**);

(b) an error in that calculation means that the amount concerned is greater than it would have been; and

(c) paragraph (3) applies.

(2) The discovery that the lump sum exceeds the permitted maximum before the payment is made does not prevent the payment's being within paragraph (1) if the payer took reasonable steps to prevent its being made or its being made in that amount.

(3) This paragraph applies where—

(a) the lump sum is paid before the lifetime annuity or scheme pension is purchased; and

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(**a**) Paragraph 1 of Schedule 29 to the Finance Act 2004 describes the lump sums that are pension commencement lump sums.
(**b**) Paragraph 2 of Schedule 29 to the Finance Act 2004 defines the permitted maximum.
(**c**) Paragraph 1(3) of Schedule 29 specifies the pensions that are relevant pensions.
(**d**) Paragraph 3(4) of Schedule 29 to the Finance Act 2004 defines "the annuity purchase price".
(**e**) Paragraph 3(7B) of Schedule 29 to the Finance Act 2004, which was inserted by paragraph 22 of Schedule 23 to the Finance Act 2006 (c. 25), defines "the scheme pension purchase price".

(b) the lifetime annuity or scheme pension is not in the event purchased, or purchased for the amount originally intended, because the error is discovered.

(4) The member's becoming entitled to the pension commencement lump sum that forms part of the payment within paragraph (1) shall be treated as a benefit crystallisation event for the purposes of the lifetime allowance charge, namely benefit crystallisation event 9 (and this does not prevent the member's becoming so entitled from also having effect for the purposes of benefit crystallisation event 6).

(5) The amount crystallised for the purposes of benefit crystallisation event 9 is the amount by which the lump sum exceeds the permitted maximum.

Commencement lump sums paid after death

19.—(1) A payment of a lump sum under the pension scheme to or in respect of a member who has died if—

(a) the payment is in respect of a defined benefits arrangement;

(b) the scheme administrator had not established the member's entitlement to the payment until after the member's death;

(c) the scheme administrator could not reasonably have been expected to make the payment before the member died;

(d) the payment would have been a pension commencement lump sum if it had been made immediately before the member's death and the member had been entitled to it;

(e) it is made no later than the end of the period of one year beginning with the earlier of—

(i) the day on which the scheme administrator first knew of the member's death, and

(ii) the day on which the scheme administrator could first reasonably be expected to have known of it; and

(f) the member was neither—

(i) a controlling director of a sponsoring employer of this or any related scheme, nor

(ii) a person connected to such a person.

(2) The making of the payment shall be treated as a benefit crystallisation event for the purposes of the lifetime allowance charge, namely benefit crystallisation event 9.

(3) The amount crystallised for the purposes of benefit crystallisation event 9 is the amount of the payment.

Dave Hartnett
Bernadette Kenny
6th May 2009 Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that a variety of payments will be authorised payments when made by pension schemes to or in respect of their members. The payments will accordingly not attract the tax charges that apply when a registered pension scheme makes an unauthorised payment. The payments concerned fall into two broad categories: commutation payments that are not otherwise permitted by the rules in the Finance Act 2004 ("FA 2004") and pensions or lump sums paid or overpaid in error.

Regulation 1 is about citation, commencement and effect.

Regulation 2 contains interpretation provisions.

Regulations 3, 4 and 5 provide that the payments described in Parts 2, 3 and 4 of these Regulations are payments of a prescribed description for the purposes of section 164(1)(f) of FA 2004 (so they become authorised payments). Regulations 3, 4 and 5 also make provision about the income tax treatment of the payments for the purposes of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003"), so that they are taxed as pension income. The overall effect is that the payments are taxed in the same way as payments of lump sums that are allowed by the rules in FA 2004 or pensions paid in the correct amount, as appropriate.

Part 2 is about commutations (pensions out paid as lump sums). Regulations 6 to 12 allow amounts to be paid to members to extinguish their entitlements under the pension scheme. This prevents schemes having to pay pensions that would be uneconomic for them to administer and of little real value to the member. Not all of the conditions relating to the payment of trivial commutation lump sums permitted by FA 2004 will be satisfied in the cases described here.

Regulation 6 is about pension entitlements that arise because there has been a belated contribution received by the scheme or the value of the member's rights is discovered to be greater than was thought. Regulation 7 defines "relevant accretion" for the purposes of regulation 6. Regulation 8 is about about compensation paid by the Financial Services Compensation Scheme. Regulation 9 relates to members whom the scheme has been unable to contact. Regulation 10 concerns members who will continue to receive lifetime annuities (the rules in FA 2004 would normally prevent such commutations because of this). Regulations 11 and 12 are de minimis rules, the latter being for larger pension schemes and so containing special rules.

The Regulations have retrospective effect in relation to payments within Part 3 or 4. Section 164(2)(d) of FA 2004 provides that regulations made under subsection (1)(f) may include provision having effect in relation to times before they are made if this does not increase any person's liability to tax.

Part 3 (regulation 13 to 16) is about pensions overpaid in error (or, where no pension at all was due, payments made in error). Schemes are only authorised to pay pensions in the amounts provided by their rules and higher amounts will otherwise attract tax charges under FA 2004. The excess is treated as pension income and so taxed under ITEPA 2003 as if it too were pension.

Regulation 13 are about simple overpayments made in error. Regulation 14 allows certain payments made even after the error has been discovered. Regulation 15 is about pensions paid after the member has died (when entitlement to that pension ceases). Regulation 16 is about arrears of pension settled after the member's death.

Part 4 is about lump sums paid in error. Regulations 17 to 19 provide that these payments trigger benefit crystallisation events for the purpose of the member's lifetime allowance which, if exceeded, would attract tax charges. This places these payments on a par with lump sums permitted by the rules in FA 2004.

Regulation 17 concerns lump sums that are based on pensions that have been miscalculated, where there is an overpayment of pension within regulation 13 or the error has been discovered in time. Regulation 18 is about lump sums based on calculation errors in relation to pensions or annuities purchased by the scheme for the member. Regulation 19 covers the case where the member has died before the scheme pays the pension commencement lump sum to which the member would have been entitled had the member lived.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

An Impact Assessment was produced to accompany the Budget announcement, made on 12th March 2008, of the Government's intention to make these changes. This is available on the HMRC website at http://www.hmrc.gov.uk/budget2008/widen-scope-authpyt.pdf.

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£5.50

E4255 5/2009 194255T 19585