

2011 No. 732

INCOME TAX

**The Taxation of Pension Schemes (Transitional Provisions)
(Amendment) Order 2011**

<i>Made</i>	- - - -	<i>14th March 2011</i>
<i>Laid before the House of Commons</i>		<i>15th March 2011</i>
<i>Coming into force</i>	- -	<i>6th April 2011</i>

The Treasury make the following Order in exercise of the powers conferred upon them by sections 282(A1) and 283(2) of the Finance Act 2004(a).

Citation, commencement and effect

1.—(1) This Order may be cited as the Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2011 and shall come into force on 6th April 2011.

(2) Article 3 shall have effect in relation to any time on or after 6th April 2006.

(3) Article 4 shall have effect in relation to any time on or after 6th April 2011.

(4) Article 5 shall have effect in relation to any time on or after 6th April 2010.

Amendment of the Taxation of Pension Schemes (Transitional Provisions) Order 2006

2. The Taxation of Pension Schemes (Transitional Provisions) Order 2006(b) is amended as follows.

3. After article 23 (modification of paragraph 34 of Schedule 36) insert—

“Pension commencement lump sums where no pension is paid before death

23ZA.—(1) Subject to articles 23ZD and 23ZE, in a case where an individual has received a pension commencement lump sum, or part of a pension commencement lump sum, but dies before becoming entitled to the pension in connection with the lump sum, Schedule 36(c) is modified as follows.

(2) For paragraph 31(3) (entitlement to lump sums exceeding 25% of uncrystallised rights – the pension condition) substitute—

“(3) The pension condition is that, the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions payable to the individual under arrangements under the pension scheme (to which

(a) 2004 c. 12; section 282(A1) was inserted by section 75 of the Finance Act 2009 (c. 10).

(b) S.I. 2006/572; amended by S.I. 2009/1172; there are other amending instruments but none is relevant.

(c) Article 1(2) of S.I. 2006/572 provides that a reference to a numbered section or Schedule (without more) is a reference to the section or Schedule bearing that number in Part 4 of the Finance Act 2004.

the individual did not have an actual entitlement on or before 5th April 2006) on the same date.”.

(3) In paragraph 34(2) (entitlement to lump sums exceeding 25% of uncrystallised rights – modifications to Schedule 29)—

(a) in the substituted sub-paragraph (7A)(a) for the definition of AC substitute—

“AC is the value of the individual’s uncrystallised rights on the date of death under arrangements under the pension scheme in connection with which the lump sum is paid calculated in accordance with section 212(b) (but this is subject to sub-paragraphs (7B) and (7BA)) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date”.

(b) omit substituted sub-paragraph (7AA); and

(c) after the substituted sub-paragraph (7B) insert—

“(7BA) In determining AC, section 212 shall apply as if “the value assumptions” means the basis upon which the scheme administrator determined the amount of the lump sum to be paid.”.

Pension commencement lump sums and multiple pensions

23ZB.—(1) Article 23ZC applies where—

- (a) there is a single pension commencement lump sum;
- (b) the lump sum is paid in connection with at least two of the three types of pension listed in paragraph (4) from the same registered pension scheme; and
- (c) an individual becomes entitled to all of the pensions in connection with which the pension commencement lump sum is paid within the specified period.

(2) Article 23ZD applies where—

- (a) there is a single pension commencement lump sum;
- (b) the scheme administrator anticipated that the lump sum would be paid in connection with at least two of the three types of pension listed in paragraph (4) from the same registered pension scheme;
- (c) an individual received the lump sum, or part of the lump sum, but died before becoming entitled to any of the pensions; and
- (d) the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions in connection with the lump sum within the specified period.

(3) Article 23ZE applies where—

- (a) there is a single pension commencement lump sum;
- (b) the scheme administrator anticipated that the lump sum would be paid in connection with at least two of the three types of pension listed in paragraph (4) from the same registered pension scheme;
- (c) an individual received the lump sum, or part of the lump sum, but died before the end of the specified period after becoming entitled to at least one but not all of the pensions; and
- (d) the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions in connection with the lump sum within the specified period.

(a) The substituted sub-paragraphs (7A) and (7B) were amended, and sub-paragraph (7AA) was inserted, by paragraph 25 of Schedule 23 to the Finance Act 2006 (c. 25). Section 161 of that Act deems these amendments to have come into force on 6th April 2006.

(b) Section 212 was amended by paragraph 18 of Schedule 23 to the Finance Act 2006. Section 161 of that Act deems this amendment to have come into force on 6th April 2006.

- (4) The three types of pension are—
- (a) a scheme pension under a defined benefits arrangement;
 - (b) a scheme pension under a money purchase arrangement;
 - (c) a lifetime annuity.

(5) The “specified period” is the period of six months beginning with the earliest date on which the individual becomes entitled to any of the pensions or on which the scheme administrator considers, had the individual not died, that the individual would have become so entitled.

Individual becomes entitled to the pensions

23ZC.—(1) In a case to which this article applies, Part 4 is modified as follows.

(2) For section 166(2)(a) (lump sum rule) substitute—

“(a) in the case of a pension commencement lump sum, immediately before the person becomes entitled to the last of the pensions in connection with which it is paid, and”.

(3) In paragraph 31(3) of Schedule 36 for “on the same date” substitute “within a period of six months beginning with the earliest date on which the individual becomes entitled to any of the pensions”.

Individual dies before becoming entitled to any of the pensions

23ZD.—(1) In a case to which this article applies, Schedule 36 is modified as follows.

(2) For paragraph 31(3) substitute—

“(3) The pension condition is that, the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) within a period of six months beginning with the earliest date on which the scheme administrator considers that the individual would have become entitled to any of the pensions.”.

(3) In paragraph 34(2)—

(a) in the substituted sub-paragraph (7A) for the definition of AC substitute—

“AC is the value of the individual’s uncrystallised rights on the date of death under arrangements under the pension scheme in connection with which the lump sum is paid calculated in accordance with section 212 (but this is subject to sub-paragraphs (7B) and (7BA)) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.”;

(b) omit sub-paragraph (7AA); and

(c) after the substituted sub-paragraph (7B) insert—

“(7BA) In determining AC, section 212 shall apply as if “the value assumptions” means the basis upon which the scheme administrator determined the amount of the lump sum to be paid.”.

Individual dies after becoming entitled to at least one but not all of the pensions

23ZE.—(1) In a case to which this article applies, Part 4 is modified as follows.

(2) For section 166(2)(a) substitute—

“(a) in the case of a pension commencement lump sum, immediately before the latest time when the person becomes entitled to any of the pensions in connection with which it was anticipated that it would be paid, and”.

(3) For paragraph 31(3) of Schedule 36 substitute—

“(3) The pension condition is that, the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) within a period of six months beginning with the earliest date on which the individual became entitled to any of the pensions.”.

(4) In paragraph 34(2) of Schedule 36—

(a) in the substituted sub-paragraph (7A) of paragraph 2 of Schedule 29, for the definition of AC substitute—

“AC is $CB + UCB$ where—

CB is the amount crystallised, prior to death, on the individual becoming entitled to pensions in connection with which the lump sum is paid (see section 216(a)) (but this is subject to sub-paragraphs (7AA) and (7B)), and

UCB is the value of the individual’s uncrystallised rights on the date of death under arrangements under the pension scheme in connection with which the lump sum is paid calculated in accordance with section 212 (but this is subject to sub-paragraphs (7B) and (7BA)) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.”, and

(b) after the substituted sub-paragraph (7B) of paragraph 2 of Schedule 29, insert—

“(7BA) In determining AC, section 212 shall apply as if “the value assumptions” means the basis upon which the scheme administrator determined the amount of the lump sum to be paid.”.

4. After article 41 (lump sum death benefits – death of a dependant) insert—

“Protected pension age and multiple pensions

42.—(1) In the case of a member who has a protected pension age in connection with at least two of the three types of pension listed in paragraph (2) from the same registered pension scheme, Schedule 36 is modified in accordance with paragraph (3).

(2) The three types of pension are—

- (a) a scheme pension under a defined benefits arrangement;
- (b) a scheme pension under a money purchase arrangement;
- (c) a lifetime annuity.

(3) In paragraphs 22(7)(a) and 23(7) for “on the same date” substitute “within a period of six months beginning with the earliest date on which the individual becomes entitled to any of the benefits.”.

Protected pension age and multiple pensions - member dies before receiving all pensions

43.—(1) Schedule 36 is modified in accordance with paragraphs (3) and (4) where—

- (a) a member has a protected pension age in connection with at least two of the three types of pension listed in regulation 42(2) from the same registered pension scheme;

(a) Section 216 was amended by paragraphs 31 and 42 of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 30 of Schedule 23 to the Finance Act 2006 and paragraph 5 of Schedule 29 to the Finance Act 2008 (c. 9). These amendments are treated as having come into force on 6th April 2006. Section 216 was also amended by paragraph 1(3) of Schedule 29 to the Finance Act 2008.

- (b) the member dies before the end of the specified period after becoming entitled to at least one but not all of the benefits in respect of the pensions; and
- (c) the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the benefits in respect of the pensions within the specified period.

(2) The “specified period” is the period of six months beginning with the earliest date on which the individual became entitled to any of the benefits in respect of the pensions.

(3) For paragraph 22(7)(a) substitute—

“(a) the scheme administrator considers that, had the individual not died, the member would have become entitled to all the benefits payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) within a period of six months beginning with the earliest date on which the individual became entitled to any of the benefits, and”.

(4) For paragraph 23(7) substitute—

“(7) The retirement condition is met in relation to the member and the pension scheme if the scheme administrator considers that, had the individual not died, the member would have become entitled to all the benefits payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) within a period of six months beginning with the earliest date on which the individual became entitled to any of the benefits.”

5. After article 43 (protected pension age and multiple pensions – member dies before receiving all pensions) inserted by article 4 of this Order insert—

“Normal minimum pension age – modification of section 165 (payment of pension rules)

44.—(1) This article applies in the case of a member of a registered pension scheme where the primary condition in paragraph (2) and one of conditions in paragraph (3) are met.

(2) The primary condition is—

- (a) on 5th April 2010, the member was aged between 50 and 54 (inclusive); and
- (b) on or before that date, benefit crystallisation event 1 (“BCE1”), 2 (“BCE2”) or 4 (“BCE4”) had occurred in relation to that member.

(3) The conditions are—

Condition A

On or after 6th April 2010 some or all of the sums and assets held for the purposes of the arrangement in respect of which BCE1 had occurred are applied towards—

- (a) the purchase of a short-term annuity or a lifetime annuity (“the new annuity”); or
- (b) the provision of a scheme pension under the arrangement.

Condition B

On or after 6th April 2010 the first payment of pension by way of income withdrawal (“withdrawal pension”) is made from some or all of the sums or assets held for the purposes of the arrangement in respect of which BCE1 had occurred.

Condition C

On or before 5th April 2010 some or all of the assets held for the purposes of the arrangement in respect of which BCE1 had occurred were applied towards the purchase of a short-term annuity (“the new annuity”), and the first payment of the new annuity is made on or after 6th April 2010.

Condition D

Where BCE2 or BCE4 had occurred in relation to the member on or before 5th April 2010, the first payment of scheme pension or lifetime annuity (“the new annuity”) in respect of which BCE2 or BCE4 occurred, is made on or after 6th April 2010.

(4) For the purposes of determining whether pension rule 1 in section 165 (payment of pension rules) has been met in relation to a payment of the new annuity, scheme pension or withdrawal pension, the member is deemed to have reached the age of 55 immediately before the date on which the first payment of the new annuity, scheme pension or withdrawal pension is made. This paragraph is subject to paragraph (5).

(5) Where a member was chargeable to income tax at the additional rate for the tax year 2010-11, paragraph (4) shall only have effect in respect of 80% of the amount of any payment of the new annuity, scheme pension or withdrawal pension made in that tax year.

(6) For the purposes of this article “sums or assets held for the purposes of the arrangement” means sums or assets that—

- (a) on or before 5th April 2010, have been designated under the arrangement as available for the payment of unsecured pension; or
- (b) arise, or (directly or indirectly) derive from sums or assets which have been so designated or which so arise or derive.

Normal minimum pension age – modification of paragraph 1 of Schedule 29 (lump sum rule)

45.—(1) This article applies in the case of a member of a registered pension scheme where the conditions in paragraph (2) are met.

(2) The conditions are that on 5th April 2010—

- (a) the member was aged between 50 and 54 (inclusive);
- (b) the member had become entitled to a lump sum (“the relevant lump sum”) which would have been a pension commencement lump sum had it been paid on or before that date; and
- (c) no payment of the relevant lump sum had been made.

(3) For the purposes of determining whether the condition in paragraph 1(1)(d) of Schedule 29 (pension commencement lump sum) has been met in relation to a payment of the relevant lump sum made on or after 6th April 2010, the member is deemed to have reached the age of 55 immediately before the date on which the payment of the relevant lump sum is made.”.

*Angela Watkinson
Michael Fabricant*

14th March 2011

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (“the principal Order”) in order to make further transitional provision in relation to the taxation of pensions.

Article 3 has retrospective effect, from 6th April 2006. Article 5 has retrospective effect, from 6th April 2010. Section 282(A1) of the Finance Act 2004 (“the Act”) provides that an order made under Part 4 of that Act may include provision having effect in relation to times before the order is made if that provision does not increase any person’s liability to tax.

Article 3 amends the principal Order by inserting articles 23ZA to 23ZE which relate to pension commencement lump sums.

The inserted article 23ZA provides for cases when an individual has received a pension commencement lump sum but dies before becoming entitled to the pension or pensions in connection with which it is paid. The article modifies paragraphs 31 and 34 of Schedule 36 to the Act which provide for tax free lump sums exceeding 25% of uncrystallised benefits in certain circumstances.

The inserted articles 23ZB to 23ZE provide for cases where there is a single pension commencement lump sum, payable in connection with at least two of the three types of pension (described below) from the same registered pension scheme and an individual becomes or, where the scheme administrator considers, had the individual not died, the individual would have become, entitled to all of the pensions in connection with the pension commencement lump sum within a period of six months. The three types of pension are: a scheme pension under a defined benefits arrangement, a scheme pension under a money purchase arrangement and a lifetime annuity.

Article 23ZC applies where the individual becomes entitled to all of the pensions in connection with which the lump sum is paid. Article 23ZD goes on to make provision for cases where an individual dies before becoming entitled to any of the pensions in connection with which the lump sum, or part of it, is paid. Lastly, article 23ZE provides for when an individual dies after becoming entitled to at least one but not all of the pensions in connection with which the lump sum, or part of it, is paid. These articles modify section 166(2)(a) (entitlement to a lump sum) of, and paragraphs 31 and 34 of Schedule 36 to, the Act.

Article 4 amends the principal Order by inserting articles 42 and 43 which relate to the protected pension age. These articles provide for cases where there is a protected pension age in connection with at least two of the three types of pensions (described above) from the same registered pension scheme. Article 42 allows the transitional protection to apply where the entitlement to all benefits arises within a period of six months. Article 43 allows the transitional protection to apply if, the scheme administrator considers that, had the individual not died, the individual would have been entitled to all of the benefits with a period of six months. These provisions amend paragraphs 22 and 23 of Schedule 36 to the Act which provide for the right to take benefit before the normal minimum pension age (“NMPA”).

Article 5 amends the principal Order by inserting article 44 and 45 which relate to the NMPA. They make transitional provision resulting from the increase in the NMPA, from age 50 to 55 with effect from 6th April 2010, as provided for in section 279 of the Act.

Inserted article 44 modifies the application of pension rule 1 in section 165 of the Act (payment of pension rules). The modification caters for the situation where a benefit crystallisation event (“BCE”) 1, 2, or 4 (as set out in section 216 of the Act) has occurred in respect of a member of a registered pension scheme on or before 5th April 2010 and where that member had reached the then NMPA of 50 on or before that date. The first and any subsequent payments of income withdrawal, a new annuity or scheme pension (“pension payments”) made on or after 6th April 2010 in relation to the sums or assets held for the arrangement in respect of which the BCE occurred will not incur an unauthorised payment charge under section 208 of the Act as the member is deemed to have reached NMPA immediately prior to the date on which that payment is made. For the tax year 2010-2011, the application of this modification is restricted, in respect of additional rate (50%) taxpayers, to 80% of the pension payments only, so as to fall within the power to make retrospective provision which precludes making any provision which may increase a person’s liability to tax.

Inserted article 45 modifies paragraph 1(1)(d) of Schedule 29 to the Act (pension commencement lump sum). The modification deals with the situation where a member, who was aged between 50 and 54 and became entitled to a lump sum on or before 5th April 2010, receives a payment of that lump sum on or after 6th April 2010. The member is deemed to have reached the NMPA immediately prior to payment of the lump sum.

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.

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