STATUTORY INSTRUMENTS

2006 No. 573

INCOME TAX

The Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) Order 2006

Made - - - -	*9th March 2006*
Laid before the House of Commons	*10th March 2006*
Coming into force - -	*6th April 2006*

The Treasury, in exercise of the powers conferred by section 283(2) of the Finance Act 2004(**a**), make the following Order:

General

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) Order 2006, and shall come into force on 6th April 2006.

(2) In this Order, references to provisions of Schedule 36 are references to provisions of Schedule 36 to the Finance Act 2004.

(3) In this Order—

"normal minimum pension age" has the meaning given in section 279(1) of the Finance Act 2004, and

"the TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 1981(**b**).

The original pension scheme condition

2.—(1) For the purposes of this Order the original pension scheme condition is met if conditions A and B are met.

(2) Condition A is that on 10th December 2003 a pension scheme ("the original pension scheme") was either an approved scheme for the purposes of Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988(**c**) (see section 612(1) of that Act) or was a relevant statutory scheme for the purposes of that Chapter (see section 611A of that Act(**d**)).

(**a**) 2004 c. 12.
(**b**) S.I. 1981/1794, to which there are amendments not relevant to this Order.
(**c**) 1988 c. 1. The provisions of Chapter 1 of Part 14 have been repealed with effect from 6th April 2006 by Part 3 of Schedule 42 to the Finance Act 2004.
(**d**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26), and amended by paragraph 5 of Schedule 5 to the Finance Act 1999 (c. 16). Section 611A has been repealed with effect from 6th April 2006 by Part 3 of Schedule 42 to the Finance Act 2004.

(3) Condition B is that the original pension scheme was a scheme whose rules included provision conferring a right to retire before the normal minimum pension age on some or all of the persons who were then members of the scheme.

The employee condition

3.—(1) For the purposes of this Order the employee condition is met if either condition A or condition B is met.

(2) Condition A is that, on 10th December 2003, a person ("the employee") was a person who had the right, under the original pension scheme, to retire before the normal minimum pension age.

(3) Condition B is that the employee would have been a person who, on 10th December 2003, had the right, under the original pension scheme, to retire before the normal minimum pension age had the employee been a member of the scheme on that date.

Transfers during period beginning with 10th December 2003 and ending with 5th April 2006

Conditions for application of article 8

4. Article 8 applies if the following conditions are met—

(a) the original pension scheme condition (see article 2);

(b) the employee condition (see article 3);

(c) the transfer condition, either as it applies in the case of one transfer (see article 5), or as it applies in the case of two or more transfers (see article 6); and

(d) the new pension scheme condition (see article 7).

The transfer condition as it applies in the case of one transfer

5.—(1) The transfer condition, as it applies in the case of one transfer, is met if conditions A to G are met.

(2) Condition A is that, during the period beginning with 10th December 2003 and ending with 5th April 2006, there was one transfer of an undertaking, or part of an undertaking.

(3) Condition B is that the TUPE Regulations applied to the transfer.

(4) Condition C is that by virtue of the transfer, the employee ceased to be employed by the transferor and became employed by the transferee.

(5) Condition D is that the transferor was the employer in relation to the original pension scheme.

(6) Condition E is that at the time immediately before the employee became employed by the transferee, the employee was a member of the original pension scheme.

(7) Condition F is that from the time when the employee became employed by the transferee, the employee—

(a) was a member of a pension scheme in relation to which the transferee was the employer, or

(b) was a member of one other pension scheme ("the new pension scheme") in relation to which the transferee was the employer.

(8) Condition G is that, as a result of the transfer, all the sums held for the purposes of, or representing the employee's accrued rights under, the original pension scheme have become held for the purposes of, or represented rights under, the new pension scheme.

(9) In paragraph (2) the reference to an undertaking or part of an undertaking has the same meaning as in the TUPE Regulations.

The transfer condition as it applies in the case of two or more transfers

6.—(1) The transfer condition, as it applies in the case of two or more transfers, is met if conditions A to H are met.

(2) Condition A is that, during the period beginning with 10th December 2003 and ending with 5th April 2006, there were two or more transfers of an undertaking, or part of an undertaking.

(3) Condition B is that the TUPE Regulations applied to each transfer.

(4) Condition C is that by virtue of each transfer, the employee ceased to be employed by the transferor and became employed by the transferee.

(5) Condition D is that the transferor—

(a) in the case of the first transfer, was the employer in relation to the original pension scheme, and

(b) in the case of each subsequent transfer, was the employer in relation to the pension scheme of which the employee was a member immediately before the transfer.

(6) Condition E is that the employee—

(a) in the case of the first transfer, was a member of the original pension scheme at the time immediately before the employee became employed by the transferee, and

(b) in the case of each subsequent transfer, was a member of a pension scheme in relation to which the transferor was the employer at the time immediately before the employee became employed by the transferee.

(7) Condition F is that in the case of a transfer other than the final transfer, and from the time when he became employed by the transferee, the employee was a member of a pension scheme in relation to which the transferee was the employer.

(8) Condition G is that in the case of the final transfer, and from the time when he became employed by the transferee, the employee—

(a) was a member of a pension scheme in relation to which the transferee was the employer, or

(b) was a member of one other pension scheme ("the new pension scheme") in relation to which the transferee was the employer.

(9) Condition H is that, as a result of the transfers, all the sums held for the purposes of, or representing the employee's accrued rights under, the original pension scheme have become held for the purposes of, or represented rights under, the new pension scheme.

(10) In paragraph (2) the reference to an undertaking or part of an undertaking has the same meaning as in the TUPE Regulations.

The new pension scheme condition

7.—(1) The new pension scheme condition is met if conditions A and B are met.

(2) Condition A is that the new pension scheme was a scheme whose rules, at the time of the transfer (where article 5 applies), or at the time of the final transfer (where article 6 applies), included provision conferring a right on some or all of the persons who were then members of that scheme to retire before the normal minimum pension age.

(3) Condition B is that, on 6th April 2006, the new pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1) of Schedule 36 (deemed registration of existing schemes) (and, accordingly, is treated as having become a registered pension scheme).

Rights to take benefit before normal minimum pension age

8.—(1) For the purposes of paragraph 22 of Schedule 36(**a**) (rights to take benefit before normal minimum pension age), and in relation to the employee, the new pension scheme is a protected pension scheme.

(2) The employee has the right to retire at the age specified in paragraph (3) or (4), whichever is the greater.

(3) The age specified in this paragraph is the age at which—

(a) immediately before the transfer, the employee had the right to retire under the original pension scheme (in a case where article 5 applies), or

(b) immediately before the final transfer, the employee had the right to retire under the original pension scheme (in a case where article 6 applies).

(4) The age specified in this paragraph is the age at which, on 6th April 2006, the employee has the right to retire under the new pension scheme.

Reorganisations during period beginning with 10th December 2003 and ending with 5th April 2006

Conditions for application of article 12

9. Article 12 applies if the following conditions are met—

(a) the original pension scheme condition (see article 2);

(b) the employee condition (see article 3);

(c) the reorganisation condition (see article 10); and

(d) the new pension scheme condition (see article 11).

The reorganisation condition

10.—(1) The reorganisation condition is met if conditions A to C are met.

(2) Condition A is that, during the period beginning with 10th December 2003 and ending with 5th April 2006, there was a transfer in a single transaction of all the sums and assets held for the purposes of, or representing the employee's accrued rights under, the original pension scheme to another pension scheme ("the new pension scheme").

(3) Condition B is that, immediately before the transfer mentioned in paragraph (2), the employee was an active member or a deferred member of the original pension scheme.

(4) Condition C is that, immediately before and after the transfer mentioned in paragraph (2), the employee was—

(a) employed by a sponsoring employer of the new pension scheme, or

(b) a former employee of a sponsoring employer of the new pension scheme.

(5) In this article—

"active member" has the meaning given by section 151(2) of the Finance Act 2004,

"deferred member" has the meaning given by section 151(4) of that Act, and

"sponsoring employer" has the meaning given by section 150(6) of that Act.

The new pension scheme condition

11.—(1) The new pension scheme condition is met if conditions A and B are met.

(**a**) Paragraph 22 of Schedule 36 was amended by sub-paragraphs (4) to (7) of paragraph 54 and sub-paragraphs (2) to (4) of paragraph 55 of Schedule 10 to the Finance Act 2005 (c. 7) with effect from 6th April 2006.

(2) Condition A is that the new pension scheme was a scheme whose rules, at the time of the transfer, included provision conferring a right on some or all of the persons who were then members of that scheme to retire before the normal minimum pension age.

(3) Condition B is that, on 6th April 2006, the new pension scheme was within either of paragraphs (a) or (c) of paragraph 1(1) of Schedule 36 (deemed registration of existing schemes) (and, accordingly, is treated as having become a registered pension scheme).

Rights to take benefit before normal minimum pension age

12. The employee has the right to retire—

(a) at the age at which, immediately before the transfer mentioned in article 10(2), the employee had the right to retire under the original pension scheme, or

(b) at the age at which, on 6th April 2006, the employee has the right to retire under the new pension scheme,

whichever is the greater.

Winding up of original pension scheme

Conditions for application of article 16

13. Article 16 applies if the following conditions are met—

(a) the winding up condition (see article 14); and

(b) the annuity purchase condition (see article 15).

The winding up condition

14.—(1) The winding up condition is met if—

(a) a pension scheme ("the original pension scheme") is being wound up,

(b) the original pension scheme is within any of paragraphs (a) to (d) of paragraph 1(1) of Schedule 36 (deemed registration of existing schemes), and

(c) condition A, B or C is met.

(2) Condition A is that—

(a) the winding up commences before 6th April 2006, and

(b) immediately before the commencement of the winding up, an individual member of the original pension scheme would have had rights which were protected under paragraph 22 or 31 of Schedule 36 (or under both those paragraphs) if the winding up had commenced on or after 6th April 2006.

(3) Condition B is that—

(a) the winding up commences before 6th April 2006,

(b) an individual becomes a member of the original pension scheme after the commencement of the winding up but before 6th April 2006, and

(c) on becoming a member of the original pension scheme, the individual would have had rights which were protected under paragraph 22 or 31 of Schedule 36 (or under both those paragraphs) if the winding up had commenced on or after 6th April 2006.

(4) Condition C is that—

(a) the winding up commences on or after 6th April 2006, and

(b) immediately before the commencement of the winding up, an individual member of the original pension scheme has rights which are protected under paragraph 22 or 31(**a**) of Schedule 36 (or under both those paragraphs).

The annuity purchase condition

15.—(1) The annuity purchase condition is met if conditions A to C are met.

(2) Condition A is that all the rights of the member have been discharged by purchasing one annuity which meets the conditions specified in section 74(3)(c) of the Pensions Act 1995(**b**).

(3) Condition B is that the contract under which the annuity was purchased ("the annuity contract") does not authorise the making of any payment which would be an unauthorised payment within the meaning of Part 4 of the Finance Act 2004.

(4) Condition C is that the annuity contract does not provide for the immediate payment of benefits (so that, accordingly, the annuity contract is treated under section 153(8) of the Finance Act 2004(**c**) (annuity contract treated as having become a registered pension scheme), as having become a registered pension scheme ("the new pension scheme") on the date on which the contract was made).

Membership of the new pension scheme

16.—(1) For the purposes of Part 3 of Schedule 36 (pension schemes: transitional provisions and savings: pre-commencement benefit rights) the member is to be treated as having become a member of the new pension scheme as the result of a block transfer to it.

(2) In paragraph (1) "block transfer" has the meaning given by paragraph 22(6) of Schedule 36(**d**).

Tom Watson
Vernon Coaker

9th March 2006 — Two of the Lords Commissioners of Her Majesty's Treasury

---

(**a**) Paragraph 31 of Schedule 36 was amended by paragraph 55(6) of Schedule 10 to the Finance Act 2005 with effect from 6th April 2006.
(**b**) 1995 c. 26.
(**c**) Section 153(8) was amended by paragraph 2 of Schedule 10 to the Finance Act 2005.
(**d**) Paragraph 22(6) of Schedule 36 was amended by paragraph 55(4) of Schedule 10 to the Finance Act 2005 with effect from 6th April 2006.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 4 of the Finance Act 2004 (c. 12) makes new provision for pension schemes on and after 6th April 2006. Schedule 36 to that Act, which falls within Part 4, contains transitional provisions and savings, designed to protect rights which existed before 6th April 2006. The general principles are that rights are protected in the scheme under which they were held on 5th April 2006, and that protection is lost if the individual's rights are transferred out of the scheme on or after 6th April 2006; but some protection may be retained if, on or after 6th April 2006, an individual's rights are transferred out of the original pension scheme as part of a block transfer.

This Order exercises the power to make further transitional provision. Article 1 deals with citation, commencement and interpretation; and articles 2 and 3 deal, respectively, with the original pension scheme condition and the employee condition: expressions used in more than one context in later provisions.

This Order then deals with three matters of a transitional nature.

The first matter, dealt with in articles 4 to 8, relates to the transfer (or transfers) of an undertaking during the period beginning with 10th December 2003 and ending with 5th April 2006. Under Part 4 of the Finance Act 2004 such a transfer would have the effect that the right to retire before the normal minimum pension age would be lost. These articles ensure that, where rights are transferred in the period beginning with 10th December 2003 and ending with 5th April 2006, and where the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply to the transfers of the undertaking, the right to retire before the normal minimum pension age is preserved. The conditions that must be met before article 8 applies are indicated in article 4. There must be a pension scheme ("the original pension scheme") whose rules conferred a right to retire before the normal minimum pension age (article 2), and the employee must have been entitled to take advantage of that right as it existed in relation to the original pension scheme (article 3). There must then be either one transfer of the relevant undertaking (article 5) or two or more such transfers (article 6), which have the overall result that an employee's pension rights are transferred from the original pension scheme to a different pension scheme ("the new pension scheme"). The new pension scheme must also have rules which confer a right to retire before the normal minimum pension age (article 7). The effect of article 8 is to preserve the employee's right to retire before the normal minimum pension age in these circumstances.

The second matter, dealt with in articles 9 to 12, relates to reorganisations during the period beginning with 10th December 2003 and ending with 5th April 2006. The conditions that must be met before article 12 applies are indicated in article 9. There must be a pension scheme ("the original pension scheme") whose rules conferred a right to retire before the normal minimum pension age (article 2), and the employee must have been entitled to take advantage of that right as it existed in relation to the original pension scheme (article 3). There must then be a reorganisation (article 10), which has the overall result that the pension rights of an employee (or former employee) are transferred from the original pension scheme to a different pension scheme ("the new pension scheme"). The new pension scheme must also have rules which confer a right to retire before the normal minimum pension age (article 11). Article 12 preserves the employee's right to retire before the normal minimum pension age in these circumstances.

The third matter, dealt with in articles 13 to 16, relates to the case where a pension scheme is being wound up. The conditions that must be met before article 16 applies are indicated in article 13. The conditions relate to the rights of members of the pension scheme that is being wound up (article 14), and to the nature of the annuities purchased for a member (article 15). In these circumstances, article 16 operates to secure the individual's accrued pension rights by providing that the member is to be treated as having become a member of a new pension scheme as the result of a block transfer to it.

The Board of Inland Revenue published a regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it, on 8 April 2004.

The assessment is available on the website for Her Majesty's Revenue and Customs at www.hmrc.gov.uk/ria/simplifying-pensions.pdf or (for hard copies) by writing to the Ministerial Correspondence Unit, 1st Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

£3.00

© Crown copyright 2006

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.

E0334 3/2006 160334T 19585