STATUTORY INSTRUMENTS

2006 No. 364

INCOME TAX

The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006

Made - - - -	*16th February 2006*
Laid before the House of Commons	*17th February 2006*
Coming into force - -	*6th April 2006*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by paragraph 3 of Schedule 36 to the Finance Act 2004(**a**) and now exercisable by them(**b**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 and shall come into force on 6th April 2006.

(2) In these Regulations—

"the Act" means the Finance Act 2004 and a reference (without more) to a numbered provision is a reference to the provision of the Act bearing that number;

"the commencement day" means 6th April 2006;

"existing scheme" means a pension scheme to which paragraph 1(1) of Schedule 36 applies;

"the permitted maximum"—

(a) in relation to times before the commencement day, has the meaning which it has by virtue of section 590C of the Income and Corporation Taxes Act 1988(**c**); and

(b) in relation to times during the transitional period has the meaning which it would have had if—

(i) section 590C of the Income and Corporation Taxes Act 1988 (permitted maximum) had continued in force, and

(ii) the Treasury had made the orders required by that section, as it had effect immediately before its repeal, in respect of each tax year during that period;

"rules", in relation to an existing scheme, means the rules (whether contained in the governing instruments or otherwise) of an existing scheme;

(**a**) 2004 c. 12. Paragraph 3 has been amended by paragraph 51 of Schedule 10 to the Finance Act 2005 (c. 7).

(**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 590C was inserted by paragraph 4 of the Schedule 6 to the Finance Act 1989 (c. 26), amended by section 107(4) and (5) of the Finance Act 1993 (c. 34) and is repealed by Part 3 of Schedule 42.Section 590C also applies for the purposes of paragraphs 20 and 22 of Schedule 6 to the Finance Act 1989.

"the transitional period", in relation to an existing scheme, means the period beginning with the commencement day and ending with the date on which, by virtue of paragraph 3(2) of Schedule 36(**a**), the modifications in these Regulations cease to have effect.

(3) In the application of these Regulations to an annuity contract falling within paragraph 1(1)(d) of Schedule 36, references to the trustees or managers of a scheme are to be read as references to the insurance company with whom that contract is made.

(4) For the purposes of these Regulations whether something would have prejudiced the approval of an existing scheme by the Inland Revenue or by Her Majesty's Revenue and Customs is to be determined—

(a) in the case of an occupational pension scheme, in accordance with the publication IR 12(2001) (known as the Occupational Pension Scheme Practice Notes) published by the former Inland Revenue Pension Scheme Office on 23rd March 2001 (**b**), and

(b) in the case of a personal pension scheme, in accordance with the publication IR 76(2000) published by the former Inland Revenue Pension Scheme Office on 20th November 2000 (**c**),

as each of those publications stood immediately before the making of these Regulations.

Existing schemes to which these Regulations apply

2. Each of the following provisions of these Regulations apply to existing schemes, unless—

(a) before the commencement day amendments have been adopted, to have effect on and after that day, which have a corresponding effect to the modification contained in that provision; or

(b) the rules of the scheme are framed in a way which means that no such amendment is necessary.

Schemes rules not to require the making of unauthorised payments

3.—(1) Any provision (however framed) in the rules of an existing scheme as they stood immediately before the commencement day, which would require the trustees or managers of the scheme—

(a) to make a payment which, by virtue of section 160 would be an unauthorised payment, or

(b) to make such a payment if the consent of the sponsoring employer or any other person was given for their doing so,

shall be construed, in respect of the transitional period, as conferring a discretion upon the trustees or managers to make that payment.

This is subject to the following qualification.

(2) If, immediately before the commencement day, the consent of a sponsoring employer, or any other person, was required before the trustees or managers of a pension scheme could make any other discretionary payment under the scheme, then the discretion conferred by paragraph (1) may only be exercised with the consent of that person.

References to the permitted maximum

4.—(1) If the rules of an existing scheme, as they stood immediately before the commencement day, imposed a limit on a person's entitlement to any benefit, or liability to make any contribution, by reference to the permitted maximum (whether expressly or by necessary implication), paragraph (2) applies.

(**a**) I.e. the date provided by paragraph 3(2)(a) or (b) of Schedule 36.
(**b**) The current text of this guidance is available at http://www.hmrc.gov. uk/pensionschemes/ir12.pdf.
(**c**) The current text of this guidance is available at http://www.hmrc.gov.uk/pensionschemes/ir76.pdf.

(2) If this paragraph applies, the permitted maximum shall continue to apply in respect of the transitional period.

Limits on amounts of remuneration to be taken into account

5.—(1) This paragraph applies in the case of the rules of an existing scheme which becomes a registered pension scheme by virtue of paragraph 1(1)(a), (c) or (d) of Schedule 36—

(a) where the existing scheme came into existence before 14th March 1989, as regards an employee who became a member of that scheme on or after 1st June 1989;

(b) where the existing scheme came into existence on or after 14th March 1989, as regards any employee who is a member of that scheme (whenever he became a member).

This paragraph is subject to the following qualifications.

(2) Paragraph (1) does not apply to the rules of an existing scheme in their application to an employee to whom paragraph 20 of Schedule 6 to the Finance Act 1989 did not apply, immediately before its repeal, by virtue of regulation 3(2), (3), (4), (6) or (8) or 3A(2) of the Continuation of Rights Regulations.

(3) If, and to the extent that, paragraph (1) applies, paragraphs (4) to (7) have effect—

(a) in respect of the transitional period and

(b) regardless of anything contained in the rules of the existing scheme to the contrary.

(4) In arriving at the employee's relevant annual remuneration for the purposes of calculating benefits, any excess of what would be the employee's relevant annual remuneration (apart from this paragraph) over the permitted maximum for the year of assessment in which his participation in the scheme ceases shall be disregarded.

(5) In arriving at the employee's remuneration for the year 2006-07 or any subsequent year of assessment for the purposes of any restriction on the aggregate amount of contributions payable under the scheme by the employee and the employer, there shall be disregarded any excess of what would be his remuneration for the year (apart from this paragraph) over the permitted maximum for the year.

(6) If—

(a) a transfer payment having been accepted by the existing scheme under its rules, the payment has been treated as entitling the employee to be regarded as having additional years of service ("inserted years"), and

(b) by virtue of the modification of paragraph 20 of Schedule 6 to the Finance Act 1989 contained in regulation 5 of the Continuation of Rights Regulations that paragraph did not apply to the inserted years, but did apply to the member's actual years of service,

paragraph (5) applies only to the computation of pension benefits so far as they are referable to the member's actual years of service.

(7) The amount of contributions payable under the scheme by an employee in the year 2006-07 or any subsequent year of assessment shall be limited to 15 per cent of the employee's remuneration for the year in respect of the employment.

(8) In this regulation "the Continuation of Rights Regulations" means the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990(**a**).

Payments not prejudicing HM Revenue and Customs approval

6.—(1) If the rules of an existing scheme—

(a) provide for an absolute entitlement to the making of a transfer or the payment of a specified sum or rate of pension; and

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(**a**) S.I. 1990/2101. Regulation 3 was amended by regulation 3 of S.I. 1993/3220 and regulations 4 and 5 of S.I. 1996/3114. Regulation 3A was inserted by regulation 6 of S.I. 1996/3114 and amended by regulation 2 of S.I. 1996/3233.

(b) refer (in whatever terms) to the possibility of making a transfer or a payment in any greater amount which would not prejudice approval of the scheme by—

(i) the Inland Revenue, or

(ii) Her Majesty's Revenue and Customs,

the following provisions of this regulation apply.

(2) The scheme's rules shall be construed, in respect of the transitional period, as—

(a) authorising the trustees or managers of the scheme to make transfers or payments falling within paragraph (1)(b) only to the extent that the payments would have been authorised by the rules immediately before the coming into force of these Regulations; and

(b) to prohibit the making of transfers or payments which would not have been so authorised.

This is subject to the following qualification.

(3) If, immediately before the commencement day, the consent of a sponsoring employer, or any other person except Her Majesty's Revenue and Customs, was required before the trustees or managers of a pension scheme could make a payment of the kind referred to in paragraph (1)(b), then the power conferred by paragraph (2)(a) may only be exercised with the consent of that person.

Limits on payments in amounts "which would not prejudice Revenue approval"

7.—(1) If the rules of an existing scheme provide for an absolute entitlement to—

(a) the making of a transfer, or

(b) the payment of a specified sum or rate of pension,

in an amount which would not prejudice approval of the scheme by the Inland Revenue or Her Majesty's Revenue and Customs, paragraph (2) applies.

(2) If this paragraph applies the rules of the existing scheme shall be construed, in respect of the transitional period, as prohibiting the trustees or managers of the scheme from making payments to the extent that they would not have been authorised by the rules immediately before the commencement day.

Recovery of tax in respect of lifetime allowance charge

8.—(1) The rules of an existing scheme shall be modified, during the transitional period, so as to provide for the recovery, from present or future benefits or entitlement under the scheme in respect of a member, of an amount reflecting any liability of the scheme administrator in respect of the lifetime allowance charge under section 215 in respect of that member.

But this does not authorise the reduction of entitlement to a benefit which has not crystallised, except that in relation to which the lifetime allowance charge arises.

(2) The methods of recovery authorised by virtue of paragraph (1) include reduction of benefits or entitlement determined in accordance with normal actuarial practice.

This paragraph does not limit the generality of paragraph (1).

David Varney
D. Hartnett

16th February 2006 Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision modifying the rules of existing pension schemes during the period beginning with the 6th April 2006 and ending in accordance with paragraph 3(2) of Schedule 36 to the Finance Act 2004 ("the transitional period"). That paragraph provides that the modifications shall have effect until the earlier of—

(a) the first date after 5th April 2006 on which amendments of the rules of the pension scheme which state the modifications no longer apply in relation to it takes effect, or

(b) the end of the tax year 2010-11 or such later time as the Board of Inland Revenue may prescribe.

The functions of the Board of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c.11).

Regulation 1 provides for the citation and commencement of these Regulations and defines certain terms contained in them.

Regulation 2 limits the application of the later provisions of these Regulations. Each of the later provisions applies unless—

the scheme has, prior to the 6th April 2006, amended its rules in a way which corresponds to the provision in question; or

the rules are framed in such a way that amendment to reflect the provision in question is unnecessary.

Regulation 3 provides that if an existing scheme's rules would otherwise require the trustees or managers of an existing scheme to make what, by virtue of the regime introduced by Part 4 of the Finance Act 2004 would be an unauthorised payment, the rules shall instead be construed as conferring on them a discretion to choose whether to make such a payment.

Regulations 4 and 5 preserve the effect of section 590C of the Income and Corporation Taxes Act 1988 (indexation of the permitted maximum) during the transitional period.

Regulations 6 and 7 make provision in the case of existing scheme rules where benefits are restricted by reference to the scheme's approval by the Inland Revenue or Her Majesty's Revenue and Customs.

Regulation 8 provides that the rules of an existing scheme are to be read as authorising reduction of a member's benefits in respect of the administrator's liability for the lifetime allowance charge.

These Regulations do not impose any new costs on business.

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