STATUTORY INSTRUMENTS

2006 No. 365

INCOME TAX

The Registered Pension Schemes (Unauthorised Payments by 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 section 241(2)(e) of the Finance Act 2004(**a**) and now exercisable by them(**b**).

Citation, commencement and interpretation

1. These Regulations may be cited as the Registered Pension Schemes (Unauthorised Payments by Existing Schemes) Regulations 2006 and shall come into force on 6th April 2006.

Unauthorised member payments not to be scheme chargeable

2.—(1) An unauthorised member payment which—

(a) is made in exercise of the discretion conferred by regulation 3(1) of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(**c**), or

(b) would be so made if that regulation applied to the scheme, or

(c) would be so made if—

(i) those regulation applied to the scheme, and

(ii) the payment were made during the transitional period in relation to the scheme,

is a payment of a description prescribed for the purposes of section 241(2) (certain payments not to be scheme chargeable payments), but only to the extent that it is referable to subsisting rights which have accrued under defined benefits arrangements before the commencement day, or to contributions which have been paid to a scheme under money purchase arrangements before that day.

This is subject to the following qualification.

(2) In the case of an unauthorised member payment which comprises or includes a refund of additional voluntary contributions, so much of the refund payment as could have been used to

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(**a**) 2004 c. 12.

(**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**) S.I. 2006/364

provide pension benefits for the member and his dependants without prejudicing approval of the scheme, before the commencement day, by the Inland Revenue or Her Majesty's Revenue and Customs is not a payment of a description prescribed for the purposes of section 241(2).

(3) In this regulation—

"the commencement day" means 6th April 2006;

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

"subsisting rights" shall be construed—

(a) in Great Britain, in accordance with section 67A(6) of the Pensions Act 1995(**a**); and

(b) in Northern Ireland, in accordance with Article 67A(6) of the Pensions (Northern Ireland) Order 1995(**b**); and

"the transitional period" means the period beginning with the commencement day and ending with the date on which, by virtue of paragraph 3(2) of Schedule 36(**c**), the modifications in Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(**d**) cease to have effect; and

a reference (without more) to a numbered provision is a reference to the provision of the Finance Act 2004 bearing that number.

(4) For the purposes of this regulation, 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 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 as that publication stood immediately before the coming into force of these Regulations.

David Varney
D. Hartnett

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

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(**a**) Section 67A is substituted, together with section 67 and sections 67B to 67I, for section 67 as originally enacted by section 262 of the Pensions Act 2004 (c. 35).

(**b**) S.I. 1995/3213 (N.I. 22). Article 67A is substituted, together with Article 67 and Articles 67B to 67I for Article 67 as originally enacted by Article 239 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)).

(**c**) I.e. the date provided by paragraph 3(2)(a) or (b) of Schedule 36.

(**d**) S.I. 2006/ .

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that a payment, made by an existing pension scheme falling within paragraph 1(1) of Schedule 36 to the Finance Act, on or after 6th April 2006, is a payment of a description prescribed for the purposes of section 241(2) of that Act. But it is only a payment of such a description to the extent that it is referable to subsisting rights which have accrued under defined benefits arrangements before that day, or to contributions which have been paid to a scheme under money purchase arrangements on or before that day.

The effect of the Regulations is to exempt the payment from being a scheme chargeable payment. But the exemption is limited in the case of a payment which is a refund of additional voluntary contributions.

Regulation 1 provides for the citation and commencement of these Regulations.

Regulation 2 describes a payment which is exempted from being a scheme chargeable payment.

These Regulations do not impose new costs on business.

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