

2012 No.

INCOME TAX

**The Overseas Pension Schemes (Miscellaneous Amendments)
Regulations 2012**

Made - - - - - ***
Laid before the House of Commons ***
Coming into force - - - - - 6th April 2012

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 132 and 133(2) of the Finance Act 1999(a) and sections 150(7) and (8), 169(4) and 251(1) and (4) of, and paragraph 5(2) of Schedule 33 and paragraph 51(4) of Schedule 36 to, the Finance Act 2004(b) and now exercisable by them (c), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012 and shall come into force on 6th April 2012.

(2) The amendments made by—

- (a) regulation 8(2) to (4) have effect in relation to information that is required in respect of payments that are made, or are treated as made, on or after 6th April 2012; and
- (b) regulation 12 have effect in relation to recognised transfers which are requested by the member on or after 6th April 2012.

Amendments to the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006

2. The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006(d) are amended as follows.

3.—(1) Regulation 2 (requirements of an overseas pension scheme) is amended as follows.

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- (a) 1999 c. 16; section 132 was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 156.
 - (b) 2004 c. 12; section 251(4) was amended by the Finance Act 2005 (c. 7), section 101 and Schedule 10, paragraphs 1 and 47.
 - (c) 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(1) 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.
 - (d) S.I. 2006/206; amended by S.I. 2007/1600.

(2) In paragraph (3)—

- (a) for “primary conditions and also meets one of Conditions A and B” substitute “following conditions”;
- (b) for the italic cross headings “*Primary condition 1*”, “*Primary condition 2*” and “*Condition A*” substitute respectively the italic cross headings “*Condition 1*”, “*Condition 2*” and “*Condition 3*”;
- (c) in condition 2 (as amended by sub-paragraph (b)) in sub-paragraph (ab) for “the Schedule” substitute “Schedule 1”; and
- (d) for condition B substitute—

“Condition 4

Where an exemption from tax in respect of benefits paid from the scheme is available to a member of the scheme who is not resident in the country or territory in which the scheme is established, the exemption must—

- (a) also be available to members of the scheme who are resident in the country or territory; and
- (b) apply regardless of whether the member was resident in the country or territory—
 - (i) when the member joined the scheme; or
 - (ii) for any period of time when they were a member of the scheme.

For the purposes of this condition “exemption” means any exemption available under the system of taxation of personal income in the country or territory in which the scheme is established other than an exemption which applies by virtue of double taxation arrangements.”.

(3) In paragraph (5) before the definition of “international organisation” insert—

““double taxation arrangements” means arrangements made between the country or territory in which the scheme is established and another country or territory with a view to affording relief from double taxation;”.

4. In regulation 3 (recognised overseas pension schemes: prescribed countries or territories and prescribed conditions)—

- (a) in paragraph (1)(b) after “paragraph 4” insert “or 5”;
- (b) in paragraph (2)(c) after “any country or territory” insert “, other than New Zealand,”;
- (c) in paragraph (4) after “The requirement” insert “in this paragraph”; and
- (d) after paragraph (4) insert—

“(5) The requirement in this paragraph is that at the time of a transfer of sums or assets which would, subject to these Regulations, constitute a recognised transfer the scheme is of a kind specified in Schedule 2 to these Regulations.”.

5. In the Schedule (specified schemes), for the heading “Schedule” substitute the heading “Schedule 1”.

6. After Schedule 1 (as amended by regulation 5) insert—

“SCHEDULE 2
SPECIFIED SCHEMES – RECOGNISED OVERSEAS PENSION
SCHEMES

Regulation 3(5)

A pension scheme which is a KiwiSaver scheme as defined in section 4(1) (interpretation) of the KiwiSaver Act 2006 of New Zealand.”.

Amendments to the Pension Schemes (Information Requirements - Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006

7. The Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006(a) are amended as follows.

8.—(1) Regulation 3 (information – qualifying recognised overseas pension schemes) is amended as follows.

(2) In paragraph (2)(a) after “name and” insert “principal residential”.

(3) In paragraph (3) for “the relevant member” to the end substitute—

“the following conditions are met—

(a) at the date of the payment more than ten years has elapsed beginning with the date on which the relevant transfer fund in respect of the relevant member came into existence; and

(b) the relevant member to whom the payment is made or treated as made is a person to whom the member payment provisions do not apply (see paragraph 2 of Schedule 34).”.

(4) In paragraph (5) for “provided by 31st January” to the end substitute—

“provided—

(a) within 60 days beginning with the day on which the payment is made or is treated as made; or

(b) by such other time as may be agreed between an officer of Revenue and Customs and the scheme manager.”.

(5) After paragraph (5) insert—

“(5A) Where the scheme manager is a company, a qualifying recognised overseas pension scheme must provide the names and addresses of the directors of the company to an officer of Revenue and Customs if required to do so in writing, and within such time as may be specified, by the officer.”.

(6) In paragraph (6) in the definition of “relevant member” omit “within the meaning” to the end.

(7) After paragraph (6) insert—

“(7) For the purposes of this regulation and regulation 3B “relevant transfer fund” has the meaning given by paragraph 4(2) of Schedule 34.”.

9. After regulation 3 insert—

“Information - transfer of sums or assets to a qualifying recognised overseas pension scheme

(a) S.I. 2006/208; amended by S.I. 2006/1961.

3A.—(1) For the purposes of section 169(4), where paragraph (2) applies a qualifying recognised overseas pension scheme must provide to an officer of Revenue and Customs such of the information specified in paragraph (3) as may be required in writing by the officer.

(2) This paragraph applies where there is a transfer to a qualifying recognised overseas pension scheme (“the QROPS”) of sums or assets which have been held for the purposes of, or representing accrued rights under, a registered pension scheme from—

- (a) a registered pension scheme; or
- (b) another qualifying recognised overseas pension scheme.

(3) The information is—

- (a) the date of the transfer to the QROPS;
- (b) the name and address of any bank and details of any bank account which the QROPS has used in relation to the transfer;
- (c) details of the sums or assets and how they have been applied;
- (d) where the transfer is from a registered pension scheme, the name and address of that scheme;
- (e) the name, principal residential address, date of birth and the national insurance number, if any, of the member who is connected with the sums or assets;
- (f) where the member is a person to whom the member payment provisions do not apply by virtue of paragraph 2 of Schedule 34, the date that the member ceased to be resident in the United Kingdom;
- (g) the name and address of the body that regulates the QROPS and the reference number, if any, issued to the QROPS by that regulator;
- (h) the name and address of the tax authority which administers the taxation of the QROPS and the reference number, if any, issued to the QROPS by that tax authority;
- (i) evidence to show that the QROPS met at the time of the transfer or continues to meet the requirements specified in regulations 2 and 3 of the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006; and
- (j) any other evidence relating to the transfer.

(4) Information required in accordance with paragraph (1) must be provided—

- (a) within 60 days beginning with the day on which the requirement is notified by the officer of Revenue and Customs; or
- (b) by such other time as may be agreed between the officer and the QROPS.

Information – cessation of qualifying recognised overseas pension scheme

3B. For the purposes of section 169(4), a scheme which ceases to be a qualifying recognised overseas pension scheme must within 30 days beginning with the day on which the cessation takes place (“the cessation date”) provide to an officer of Revenue and Customs—

- (a) the value at the cessation date of the relevant transferred sums or assets pertaining to each relevant transfer fund under the scheme; and
- (b) the name, principal residential address, date of birth and, if any, the national insurance number of each member in respect of whom there is a relevant transfer fund under the scheme at the cessation date.

Information - changes, completion or correction

3C. For the purposes of section 169(4), if at any time after the scheme has provided an officer with information in accordance with regulation 3, 3A or 3B it becomes apparent to the scheme that—

- (a) there is a material change affecting that information; or
- (b) the information is incomplete or contains a material inaccuracy,

the scheme must provide to an officer of Revenue and Customs details of the change, the complete information or correction of the inaccuracy without undue delay.”.

10. In regulation 4 (notice in cases of serious prejudice to proper assessment or collection of tax)—

- (a) in paragraph 1(a) for “these Regulations” substitute “regulation 2”; and
- (b) in paragraph (2) for “regulations 2 and 3” substitute “regulation 2”.

Amendments to the Registered Pension Schemes (Provision of Information) Regulations 2006

11. The Registered Pension Schemes (Provision of Information) Regulations 2006(a) are amended as follows.

12. In regulation 3 (provision of information by scheme administrator to the Commissioners)—

- (a) in paragraph (1), in entry 9 in the table (transfers to qualifying recognised overseas pension schemes)—

- (i) in the first column after “qualifying recognised overseas pension scheme” insert “(“QROPS”);

- (ii) in the second column for entries (a) to (d) substitute—

- “(a) the member’s principal residential address and, where that address is not in the United Kingdom, the member’s last principal residential address in the United Kingdom;

- (b) the member’s date of birth;

- (c) the member’s telephone number, if any, which the member has provided to the scheme administrator for use by the Commissioners in relation to the scheme;

- (d) the acknowledgement mentioned in regulation 11BA(2)(b);

- (e) the date of the recognised transfer;

- (f) the amount of the sums transferred, if any;

- (g) a description and valuation of each type of asset transferred, if any, including the value of any unquoted shares, quoted shares and real property;

- (h) the name and address of the QROPS to which the sums or assets have been transferred;

- (i) the country or territory under the law of which the QROPS is established and regulated; and

- (j) the name, address, business telephone number and, where available, the electronic mail address of the manager of the QROPS.”.

- (b) in paragraph (6)(b) after “qualification in” insert “paragraph (7) and”; and

- (c) after paragraph (6) insert—

- “(7) An event report in respect of reportable event 9 must be delivered within 30 days beginning with the day of the transfer to which it relates.”.

(a) S.I. 2006/567; amended by S.I. 2011/301 and S.I. 2011/1797.

13. After regulation 11B (information provided by members to scheme administrators: pension commencement lump sums) insert—

“Information provided by members to scheme administrators: recognised transfers

11BA.—(1) Paragraph (2) applies where a member of a registered pension scheme makes a request to the scheme administrator to make a recognised transfer (“transfer request”) in respect of a qualifying recognised overseas pension scheme.

(2) The member must provide to the scheme administrator—

- (a) the member’s—
 - (i) name;
 - (ii) date of birth;
 - (iii) principal residential address and, where that address is not in the United Kingdom, the member’s last principal residential address in the United Kingdom;
 - (iv) national insurance number or, where applicable, confirmation in writing that the member does not qualify for a national insurance number;
 - (v) telephone number, if any, which the member provides for use by the scheme administrator or the Commissioners in relation to the scheme;
 - (vi) the name and address of the qualifying recognised overseas pension scheme;
 - (vii) the country or territory under the law of which the qualifying recognised overseas pension scheme is established and regulated; and
- (b) the member’s acknowledgement in writing that the member is aware that a transfer other than a recognised transfer to a qualifying recognised overseas pension scheme of sums or assets held for the purposes of, or representing accrued rights under, an arrangement under a registered pension scheme—
 - (i) gives rise to a liability under section 208 (unauthorised payments charge); and
 - (ii) may give rise to a liability under section 209 (unauthorised payments surcharge).

(3) The information specified in paragraph (2) must be provided within two months beginning with the day of the transfer request.

(4) The scheme administrator must send the member notification of the requirements specified in this regulation within 30 days beginning with the day of the transfer request.”.

14. In regulation 11C(1) (information provided by individuals to scheme administrator: national insurance number) after “event report” insert “, other than an event report in respect of reportable event 9,”.

Amendments to the Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) Regulations 2006

15.—(1) The Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) Regulations 2006(a) are amended as follows.

(2) In Schedule 1 (information which must be supplied to Revenue and Customs by an approved method of electronic communications) after “An event report under” insert “entries 1 to 8A and 10 to 21 in the table in paragraph (1) of”.

Name
Name

Two of the Commissioners for Her Majesty’s Revenue and Customs

(a) S.I. 2006/570 to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations make amendments relating to overseas pension schemes. Regulations 3 and 4 amend the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 (“pension schemes regulations”). Those Regulations specify the requirements that an overseas pension scheme must satisfy.

Regulation 3 of these Regulations replaces condition B in regulation 2(3) of the pension schemes regulations with new condition 4. Condition 4 is mandatory and provides that an exemption in respect of pension benefits available to a non-resident must also be available to a resident. It must apply regardless of whether the non-resident was resident at the time of joining the scheme or during any later period of membership of the scheme. Regulations 4 to 6 have the effect that, unless a New Zealand based scheme is mentioned in new Schedule 2, in order to become a recognised overseas pension scheme, it must comply with requirements relating to the scheme’s rules in regulation 3(4) of the pension schemes regulations.

Regulations 8 and 9 amend the Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 (“information regulations”). Those Regulations set out the information that the scheme manager of a qualifying recognised overseas pension scheme (“QROPS”) must provide to HMRC. Regulation 8 requires the scheme manager to provide additional information including the names and addresses of any directors of the scheme manager and the address of the QROPS (regulation 8(2) and (5)). The obligation to provide information about payments made in respect of “a relevant transfer fund” will apply for a minimum period of ten years (regulation 8(3)). The QROPS must provide information about such payments within 60 days of the payment or such other time as may be agreed (regulation 8(4)).

Regulation 9 inserts new regulations 3A to 3C into the information regulations. New regulation 3A sets out the information that may be required by an officer of HMRC when there is a transfer of funds in a registered pension scheme to a QROPS. New regulation 3B provides that when a scheme ceases to be a QROPS it must provide information about the relevant transfer funds that it holds. Where any information provided by the QROPS is incorrect, incomplete or affected by a material change new regulation 3C provides that the QROPS must provide further information without undue delay.

Regulation 12 makes amendments to the Registered Pension Schemes (Provision of Information) Regulations 2006 (“RPS information regulations”). Those Regulations concern the provision of information by persons who include members and scheme administrators of registered pension schemes. Regulation 12 of these Regulations makes provision for the scheme administrator to provide the Commissioners with additional information where there is a “recognised transfer” of a pension fund to a QROPS. This includes the member’s details, the amount of any sums and the types of assets transferred, their value and details relating to the QROPS. Regulation 13 inserts new regulation 11BA into the RPS information regulations. This specifies the information that a member of a registered pension scheme must provide to the scheme administrator when the member makes a request for a recognised transfer.

Regulation 15 makes an amendment to the Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) Regulations 2006. Those Regulations specify information that must be provided by approved electronic means. Regulation 15 removes from that category information in an event report about a recognised transfer (including the information mentioned in regulation 12).

A Tax Information and Impact Note covering this instrument was published on [**] alongside draft legislation and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

DRAFT
EXPLANATORY MEMORANDUM TO
THE OVERSEAS PENSION SCHEMES (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2012

2012 No. [0000]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

This instrument strengthens the tax provisions relating to the tax-free transfer of pension savings that have received UK tax relief to overseas pension schemes. This is so that the savings are used to provide an income in retirement as intended when the regime was introduced in 2006.

3. Matters of special interest to the Select Committee on Statutory Instruments

None

4. Legislative Context

4.1 These Regulations amend the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 (S.I. 2006/206), the Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 (S.I. 2006/208), the Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567) and the Registered Pension Schemes and Overseas Pensions Schemes (Electronic Communication of Returns and Information) Regulations 2006 (S.I. 2006/570).

4.2 Transfers of UK pension savings that have received tax relief can be transferred free of UK tax to pension schemes established outside the UK that meet the conditions to be a qualifying recognised overseas pension scheme (QROPS). Changes are being made to the legislation to ensure that the system is being used to support pension saving.

4.3 S.I. 2006/206 sets out the conditions that a pension scheme must meet to be an 'overseas pension scheme', which is the first step in a pension scheme meeting the conditions to be a QROPS. This instrument amends those conditions so that pension schemes that are not recognised for tax purposes in their country of establishment will no longer be able to meet the conditions. Nor will pension

schemes where non-residents have a relief that is not available to residents of the country in which the scheme is established. Following the changes some pension schemes that currently meet the conditions to be a QROPS will no longer do so. In addition a different condition will apply to certain pension schemes established in New Zealand.

- 4.4 S.I. 2006/208 sets out the information that a scheme manager of a QROPS is required to undertake to provide to meet the scheme's obligations as a QROPS. This instrument amends those requirements. It sets out categories of information that a scheme manager is required to provide and removes the need, in the majority of cases, for the scheme manager, when reporting information, to consider whether the individual is (or has been in the last five full tax years) UK resident. Instead the scheme manager has to report all payments out of funds transferred from a UK scheme for a period of 10 years from the transfer of those funds to the QROPS. It also changes the timing of the reporting of information so that a scheme manager of a QROPS has to report a payment within 60 days of the payment being made.
- 4.5 S.I. 2006/567 sets out the information that must be provided by the registered pension scheme to Her Majesty's Revenue and Customs. This instrument introduces a requirement for an individual making a transfer of pension savings from a registered pension scheme to a QROPS to supply information to the registered pension scheme. There is also a new requirement for registered pension schemes to send that information about the individual member, and some extra information, to HMRC.
- 4.6 S.I. 2006/570 sets out the information that a registered pension scheme provides under S.I. 2006/567 that has to be provided by electronic communication. Following these changes the report by a registered pension scheme of transfers to QROPS will not have to be provided by electronic communication. Instead the transfer will be reported on a new form.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

- 7.1 In April 2006 a new system of tax registration was introduced for UK pension schemes that receive tax relief. Pension tax reliefs are aimed at supporting saving to provide an income in retirement for the pension scheme member and/or their dependants. The pension tax rules set out what payments a registered pension scheme should make to or in respect of a member. These are known as authorised payments. Transfers of pension savings from one registered pension scheme to another are authorised payments and can be made free of UK tax.
- 7.2 Pensions savings under a registered pension scheme can also be transferred free of UK tax to a qualifying recognised overseas pension scheme (QROPS). QROPS is the name given to a pension scheme established overseas that satisfies certain conditions and is broadly similar to a UK registered pension scheme. The conditions that must be met for a scheme to be a QROPS are set out in SI 2006/206. The scheme manager of a QROPS also has to undertake to provide information to HMRC about the funds that have been transferred from a registered pension scheme (or another QROPS).
- 7.3 QROPS were designed to allow those who are leaving the UK to take their pension savings with them to their new country of residence and provide an income in retirement there. It was intended to be a way of continuing pension saving rather than a method of converting existing pension saving into a lump sum or of escaping taxation on pension savings.
- 7.4 HMRC has kept this system of overseas transfers of pension savings under review and it has found increasing evidence that the system is being undermined. QROPS are widely marketed as a means of turning pension savings into a tax-free lump sum which is contrary to the principles behind allowing the tax-free transfer of pension savings.
- 7.5 This instrument amends a number of regulations related to the operation of QROPS. It seeks to tackle attempts to manipulate the rules, while maintaining a workable system of transfers for those who are using the system as intended. The new provisions will apply from 6 April 2012.
- 7.6 Regulation [3] amends the tax conditions in S.I. 2006/206 to remove the distortion that makes a scheme more attractive for non-residents than residents from a tax perspective as it has been used to promote transfers primarily for tax rather than pension saving purposes. It also removes the condition that allows a pension scheme that is not recognised for tax purposes in its country of establishment to meet the conditions as the conditions has not been used to satisfy the tax requirement since the regime was introduced in 2006.
- 7.7 Similarly pension schemes established in New Zealand have been used to allow individuals to take their pension savings as a lump sum. Regulations 4 to 6 amend the conditions so that 70% of the funds transferred to certain pension schemes in New Zealand have to be used to provide an income in retirement.

- 7.8 Regulations 8 to 10 amend the information that a QROPS is required to provide under S.I. 2006/208 and the timing of the provision of that information. The regulations make clear that any payment out of transferred funds made within 10 years of the transfer will have to be reported which will mean that in the vast majority of cases a QROPS will not have to decide whether a member is UK resident or has been UK resident at any time in the previous five full tax years. The regulations also set out the categories of information that HMRC may request from a QROPS. The information will have to be provided within 60 days of the payment, rather than after the end of the tax year which is intended to help the QROPS scheme manager who can deal with all related issues at the same time. There is also a new requirement to report changes (other than minor changes) and errors as soon as possible.
- 7.9 Regulations 12 and 13 introduce a new requirement in S.I. 2006/567 for a member requesting a transfer to a QROPS to provide personal information to the registered pension scheme and for the scheme to check that information and send it to HMRC with the other information that is required within 30 days of the transfer taking place. This new requirement will ensure that individuals are aware of the potential tax consequences of the transfer they are requesting before the transfer is made.
- 7.10 Regulation 14 removes the requirement for a registered pension scheme to report a transfer to a QROPS by electronic communication as required by S.I. 2006/570. A new form will be used for the reporting of these transfers which will make it easier to meet the requirement to report transfers within 30 days.
- Consolidation
- 7.11 Once finalised the Regulations will amend S.I. 2006/206, S.I. 2006/208, S.I. 2006/567 and S.I. 2006/570. None of the regulations will be consolidated.

8. Consultation outcome

The draft Regulations have been published for comment today. The consultation will finish on 30 January 2012.

9. Guidance

Guidance on the final version of this instrument will be included in the next available update of the HMRC Registered Pension Schemes Manual after 6 April 2012.

10. Impact

10.1 The legislation will have limited impact on business and no special exemption is required. No impact on charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is limited to the HMRC.

10.3 A draft Tax Information and Impact Note has been prepared for this draft instrument.

11. Regulating small business

The legislation will have limited impact on small business and no special exemption is required.

12. Monitoring & review

The impact of the changes will be monitored through information collected from notifications, information reported, receipts and other statistics.

13. Contact

Beverley Davies at HM Revenue & Customs Tel: 020 7147 2869 or email: pensions.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.