

**2008 No. 0000**

**INCOME TAX**

**The Registered Pension Schemes (Authorised Payments)  
Regulations 2008**

*Made* - - - - - \*\*\*

*Laid before the House of Commons* \*\*\*

*Coming into force in accordance with regulation 1*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 164(1)(f) to the Finance Act 2004(a), and now exercisable by them(b):

**PART 1**

**INTRODUCTION**

**Citation, commencement and effect**

**1.**—(1) These Regulations may be cited as the Registered Pension Schemes (Authorised Payments) Regulations 2008, shall come into force on xx xxxx 2008.

(2) These Regulations shall have effect—

- (a) for payments of a description within Part 2, in relation to payments made [on or after xx xxxx 2008]; and
- (b) for payments of a description within Part 3 or Part 4, in relation to payments made [on or after 6th April 2006(c)].

**Interpretation**

**2.**—(1) Any reference in these Regulations to a numbered section or a paragraph of a Schedule, without more, is a reference to the section or paragraph of the Finance Act 2004 bearing that number.

(2) Any reference in these Regulations to a person's being entitled to a payment—

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(a) 2004 c.12; section 164 was renumbered as subsection (1) of section 164, and subsection (2) was inserted, by [paragraph 1 of Schedule 29 to] the Finance Act 2008 (c. xx).

(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 164(2)(d) provides that regulations made under subsection (1)(f) may include provision having effect in relation to times before they are made if it does not increase any person's liability to tax.

- (a) if it is a payment of pension (or intended to be such a payment), shall be construed in accordance with in section 165(3) (pension rules)(a), and related expressions shall be construed accordingly;
- (b) if it is a payment of a lump sum (or intended to be such a payment), shall be construed in accordance with in section 166(2) (lump sum rule), and related expressions shall be construed accordingly.

(3) For the purpose of these Regulations, whether a person is connected with another person is determined in accordance with section 993 of the ITA 2007 (meaning of “connected” persons)(b).

(4) For the purpose of these Regulations, a scheme is related to another scheme if both schemes relate to the same employment.

(5) In these Regulations—

“controlling director” has the meaning given by section 273(9) (members liable as scheme administrator); and

“sponsoring employer” has the meaning given by section 150(6) (meaning of “pension scheme”).

### **Prescribed payments and taxation**

**3.** A payment by a registered pension scheme to or in respect of a member that is described in Part 2 of these Regulations—

- (a) if paid to the member, shall be treated as a trivial commutation lump sum paid to the member for the purposes of Part 9 of ITEPA 2003 (pension income)(c);
- (b) if not paid to the member, shall be treated as a trivial commutation lump sum death benefit paid to the recipient for the purposes of Part 9 of ITEPA 2003(d); and
- (c) in either case, is a payment of a prescribed description for the purposes of section 164(1)(f) (authorised member payments).

**4.** A payment by a registered pension scheme that is described in Part 3 of these Regulations, to the extent specified in the regulation concerned—

- (a) is a payment of a prescribed description for the purposes of section 164(1)(f) of the Finance Act 2004;
- (b) shall be treated as pension paid to the recipient under a registered pension scheme for the purposes of Part 9 of ITEPA 2003(e); and
- (c) shall be treated for those purposes as pension accruing in the tax year in which it is paid.

**5.** A payment by a registered pension scheme that is described in Part 4 of these Regulations—

- (a) is a payment of a prescribed description for the purposes of section 164(1)(f) of the Finance Act 2004; and
- (b) shall be treated as a pension commencement lump sum paid under a registered pension scheme for the purposes of Part 9 of ITEPA 2003(f).

- (a) There are amendments to section 165, but none is relevant.
- (b) Section 280(1) of the Finance Act 2004 defines “ITA 2007” as meaning the Income Tax Act 2007 (c. 3); that definition was inserted by paragraph 481 of Schedule 1 to ITA 2007.
- (c) Section 280(1) of the Finance Act 2004 defines “ITEPA 2003” as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1). Section 636B of ITEPA 2003, which makes provision about the taxation as pension income of trivial commutation lump sums, was inserted by paragraph 15 of Schedule 31 to the Finance Act 2004, and was amended by paragraph 59 of Schedule 10 to the Finance Act 2005 (c. 7) and S.I. 2006/572.
- (d) Section 280(1) of the Finance Act 2004 defines “ITEPA 2003” as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1). Section 636B of ITEPA 2003, which makes provision about the taxation as pension income of trivial commutation lump sums, was inserted by paragraph 15 of Schedule 31 to the Finance Act 2004, and was amended by paragraph 59 of Schedule 10 to the Finance Act 2005 (c. 7) and S.I. 2006/572.
- (e) Section 280(1) of the Finance Act 2004 defines “ITEPA 2003” as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1). There are amendments to that Act, but none is relevant.
- (f) Section 636A(1)(a) of ITEPA 2003, which was inserted by paragraph 11 of Schedule 31 to the Finance Act 2004, provides that there is no liability for income tax in respect of a pension commencement lump sum.

## PART 2

### COMMUTATION PAYMENTS

#### **Payment by old scheme after recognised transfer**

**6.**—(1) A payment made after there has been a recognised transfer(**a**) to another registered pension scheme or to a qualifying recognised overseas pension scheme(**b**) in respect of the member if—

- (a) immediately after that transfer there were no longer any sums or assets held for the purposes of the scheme in respect of the member or any entitlement to benefits under the scheme in relation to the member;
- (b) the scheme subsequently received a payment in respect of the member which satisfies the conditions in paragraph (2);
- (c) the payment made by the scheme extinguishes the member's entitlement to benefits under the scheme at that time;
- (d) its value does not exceed the value of the payment received by the scheme; and
- (e) it is made no later than three months after the scheme received the payment.

(2) The conditions are that—

- (a) the value of the payment received by the scheme did not exceed £500;
- (b) the scheme administrator could not reasonably have expected that it would be received;
- (c) it was not a contribution into the scheme;
- (d) it was not a relevant transfer into the scheme.

(3) In paragraph (2)(d), “relevant transfer” means—

- (a) a recognised transfer; or
- (b) any other transfer to the scheme of any sums or assets held for the purposes of, or representing accrued rights under, another pension scheme.

#### **Payment after purchase of scheme pension or lifetime annuity**

**7.**—(1) A payment made after a scheme pension(**c**) or lifetime annuity(**d**) is purchased for the member by the pension scheme from an insurance company if—

- (a) after that purchase the scheme received a payment in respect of the member;
- (b) the payment received by the scheme satisfies the conditions in paragraph (2);
- (c) the payment made by the scheme extinguishes the member's entitlement to benefits under the scheme at that time;
- (d) its value does not exceed the value of the payment received by the scheme;
- (e) it is made no later than three months after the scheme received the payment; and
- (f) all or a part of the member's lifetime allowance(**e**) is available at the time it is made.

(2) The conditions are that—

- (a) the value of the payment received by the scheme did not exceed £2,000;
- (b) the scheme administrator could not reasonably have expected that it would be received;
- (c) it was not a contribution into the scheme; and
- (d) it was not a relevant transfer into the scheme.

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(a) Section 169 of the Finance Act 2004 defines “recognised transfer”.  
(b) Section 169 of the Finance Act 2004 defines “qualifying recognised overseas pension scheme”.  
(c) Paragraph 2 of Schedule 28 to the Finance Act 2004 defines “scheme pension”.  
(d) Paragraph 3 of Schedule 28 to the Finance Act 2004 defines “lifetime annuity”.  
(e) Section 218 of the Finance Act 2004 specifies the amount of the lifetime allowance.

(3) In paragraph (2)(d), “relevant transfer” has the meaning given in regulation 6(3).

### **Payments under the Financial Services Compensation Scheme**

**8.**—(1) A payment made by way of compensation under the Financial Services Compensation Scheme if—

- (a) the payment does not exceed £2,000; and
- (b) it extinguishes the member’s entitlement to benefits under the scheme.

(2) The reference in paragraph (1) to the Financial Services Compensation Scheme is to the scheme established by Part 15 of the Financial Services and Markets Act 2000(a).

### **Payments to or in respect of members who were untraceable**

**9.** A payment made to or in respect of a member who has reached the age of 75 if—

- (a) at the time the member reached the age of 75 the scheme administrator had been unable to ascertain the member’s whereabouts after having taken all reasonable steps to do so;
- (b) the scheme administrator had received no communication from the member for at least 5 years before the date on which the scheme administrator discovered the member’s whereabouts or, if the member had died, learned of the death;
- (c) paragraph 8(2) of Schedule 28 (member’s unsecured pension fund) applies in relation to the member and the arrangement and none of the sums or assets held for the purposes of the arrangement are member-designated funds immediately before it applies;
- (d) the payment is made no later than 12 months after the date on which the scheme administrator discovered the member’s whereabouts or, if the member had died, learned of the death;
- (e) the value of the payment does not exceed £2,000; and
- (f) the payment—
  - (i) extinguishes the member’s entitlement to benefits under the scheme, or
  - (ii) if made after the member’s death, represents the total value of all sums and assets held for the purposes of the scheme in respect of the member.

### **Payments to members receiving lifetime annuities**

**10.**—(1) A payment to a member which would be a trivial commutation lump sum(b) but for the continuance after the payment of a lifetime annuity if—

- (a) the condition in paragraph (2) is satisfied; or
- (b) if the member is not a member of any other registered pension scheme, the conditions in paragraph (3) are satisfied.

(2) The condition mentioned in paragraph (1)(a) is that the payment is made before the end of the commutation period, as determined in accordance with paragraph 7(2) of Schedule 29.

(3) The conditions mentioned in paragraph (1)(b) are that—

- (a) the member had not previously received either a trivial commutation lump sum or a payment that was an authorised payment by virtue of this regulation; and
- (b) the value of the member’s pension rights immediately before the payment, calculated in accordance with paragraph 7(5) of Schedule 29 (trivial commutation lump sum), does not exceed 1% of the standard lifetime allowance(c).

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(a) 2000 c. 8. There are amendments, but none is relevant.

(b) Paragraph 7 of Schedule 29 to the Finance Act 2004 specifies what sums are trivial commutation lump sums.

(c) Section 218 of the Finance Act 2004, in conjunction with S.I. 2007/494, sets the standard lifetime allowance.

### **De minimis rule for occupational pension schemes**

- 11.**—(1) A payment by an occupational pension scheme **(a)** if—
- (a) the member has reached the age of 60, but has not reached the age of 75;
  - (b) the member is neither—
    - (i) a controlling director of a sponsoring employer of that or any related scheme, nor
    - (ii) a person connected to such a person;
  - (c) every other related scheme (if any) makes a payment to the member;
  - (d) the total value of the payments made by all related schemes does not exceed £2,000;
  - (e) all the payments are made within a period that does not exceed one month;
  - (f) the payments extinguish the member’s entitlement to benefits under all the related schemes;
  - (g) no recognised transfer has been made out of any of the related schemes in respect of the member during the period of 3 years ending with the date of the payment by the scheme concerned.
- (2) The condition in paragraph (1)(c), (d) or (f) is deemed to be satisfied in relation to a scheme if—
- (a) before the payment is made the member provides the scheme administrator with a declaration, made in writing and signed by him, confirming that the condition concerned will be satisfied if the payment is made by a specified date; and
  - (b) at the time the payment is made there are no reasonable grounds for the scheme administrator to disbelieve the declaration.
- (3) A declaration may be provided in respect of more than one condition.

## **PART 3**

### **UNPLANNED PAYMENTS**

#### **Pensions paid in error**

- 12.**—(1) A payment made in error which is intended to represent the payment of a pension permitted by the pension rules or the pension death benefit rules **(b)** to or in respect of a member if it was reasonable for the scheme administrator to have believed that—
- (a) the recipient was entitled to the payment,
  - (b) the recipient was entitled to it in that amount, and
  - (c) it was a pension permitted by the pension rules or the pension death benefit rules.
- (2) If a payment has been made that is within paragraph (1), a payment made after the error is discovered shall be deemed also to be within that paragraph, provided the scheme administrator has not delayed unreasonably in failing to prevent the later payment’s being made or its being made in that amount.
- (3) Regulation 4 applies to “the overpayment”, being—
- (a) the payment; or
  - (b) if the recipient was entitled to an authorised payment, the amount by which the payment exceeds the amount of the authorised payment.

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**(a)** Section 150(5) of the Finance Act 2004 defines “occupational pension scheme”.

**(b)** Sections 165 and 167 of the Finance Act 2004 set out the pension rules and pension death benefit rules respectively.

## Payments of arrears of pension after death

- 13.—(1) A payment of pension under the scheme to or in respect of a member who has died if—
- (a) the payment is in respect of a defined benefits arrangement<sup>(a)</sup>;
  - (b) the member had not reached the age of 75;
  - (c) the member was neither—
    - (i) a controlling director of a sponsoring employer of that or any related scheme, nor
    - (ii) a person connected to such a person; and
  - (d) either the conditions in paragraph (2) are satisfied or, where the member died on or after 6th April 2006, the conditions in paragraph (3) are satisfied.
- (2) The conditions where the member died before 6th April 2006 are that—
- (a) the payment represents accrued arrears of pension;
  - (b) the payment was allowed or required by the rules of the pension scheme as they stood immediately before the member died;
  - (c) the existence of the rule or rules concerned would not have prejudiced approval of the scheme by the Inland Revenue or Her Majesty's Revenue and Customs.
- (3) The conditions where the member died on or after 6th April 2006 are that—
- (a) the payment represents accrued arrears of scheme pension to which the member had not become entitled by the date of the member's death;
  - (b) the payment would not have been an unauthorised payment if the payment had been made immediately before the member's death and the member had been entitled to it;
  - (c) the scheme administrator had not established the member's entitlement to the payment until after the member's death; and
  - (d) the scheme administrator could not reasonably have been expected to make the payment before the member's death.
- (4) Regulation 4 applies to so much of the payment as does not exceed the amount accrued during the period—
- (a) beginning with the earliest date from which the member could have required the scheme administrator to make the payment if the member had been entitled to it; and
  - (b) ending with the member's death.
- (5) If the member died on or after 6th April 2006, the making of the payment shall be treated as a benefit crystallisation event for the purposes of the lifetime allowance charge<sup>(b)</sup>, namely benefit crystallisation event 9<sup>(c)</sup>.
- (6) The amount crystallised for the purposes of benefit crystallisation event 9 is the amount of the payment to which regulation 4 applies.
- (7) For the purpose of paragraph (2)(c), whether something would have prejudiced the approval of a scheme by the Inland Revenue or by Her Majesty's Revenue and Customs is to be determined in accordance with the publication IR 12(2001) (known as the Occupational Pension Scheme Practice Notes) published by the former Inland Revenue Pension Schemes Office on 23rd March 2001, as that publication stood—
- (a) if the member died before 23rd March 2001, on that date,
  - (b) otherwise, on the date of the member's death.

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(a) Section 152 of the Finance Act 2004 defines "defined benefits arrangement".

(b) Section 214 of the Finance Act 2004 establishes the lifetime allowance charge.

(c) Benefit crystallisation event 9 was inserted in the table in section 216(1) of the Finance Act 2004 by [paragraph 1 of Schedule 29 to] the Finance Act 2008.

### **Pensions continuing to be paid after death**

**14.**—(1) A payment which is intended to represent the payment of a pension permitted by the pension rules or the pension death benefit rules to or in respect of a member if—

- (a) the member or dependant concerned (“the person”) has died;
- (b) the payment is made no later than 3 months after the date of the person’s death;
- (c) the payment would not have been an unauthorised payment if it had been made on the day before the person died;
- (d) the scheme administrator did not know, and could not reasonably have been expected to know, that the person had died before the payment was made.

(2) Regulation 4 applies to the whole of the payment.

## **PART 4**

### **OTHER PAYMENTS**

### **Commencement lump sums paid after death**

**15.**—(1) A payment of a lump sum under the scheme to or in respect of a member who has died if—

- (a) the payment is in respect of a defined benefits arrangement(**a**);
- (b) the scheme administrator had not established the member’s entitlement to the payment until after the member’s death;
- (c) the scheme administrator could not reasonably have been expected to make the payment before the member died;
- (d) the payment would have been a pension commencement lump sum(**b**) if it had been made immediately before the member’s death and the member had been entitled to it;
- (e) it is made no later than one year after the member’s death;
- (f) the member was neither—
  - (i) a controlling director of a sponsoring employer of that or any related scheme, nor
  - (ii) a person connected to such a person.

(2) The making of the payment shall be treated as a benefit crystallisation event for the purposes of the lifetime allowance charge(**c**), namely benefit crystallisation event 9(**d**).

(3) The amount crystallised for the purposes of benefit crystallisation event 9 is the amount of the payment.

*A. Commissioner*  
*A. N. Other*

xx xxxx 2008

Two Commissioners for Her Majesty’s Revenue and Customs

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

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(a) Section 152 of the Finance Act 2004 defines “defined benefits arrangement”.  
(b) Paragraph 1 of Schedule 29 to the Finance Act 2004 describes the lump sums that are pension commencement lump sums.  
(c) Section 214 of the Finance Act 2004 establishes the lifetime allowance charge.  
(d) Benefit crystallisation event 9 was inserted in the table in section 216(1) of the Finance Act 2004 by [paragraph 1 of Schedule 29 to] the Finance Act 2008.