

2008 No.

INCOME TAX

**The Registered Pension Schemes (Transfer of Sums and Assets)
(Amendment) Regulations 2008**

<i>Made</i> - - - -	***
<i>Laid before the House of Commons</i>	***
<i>Coming into force</i> - -	***

The Commissioners for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by paragraphs 3(2B), (2C) and (2CA) and 17(3), (4) and (4A) of Schedule 28 to the Finance Act 2004(a) and now exercisable by them(b).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) Regulations 2008 and shall come into force on [date].

(2) These Regulations have effect in relation to surrenders of and agreements to surrender rights to payments under lifetime annuities or dependants’ annuities made on or after 10th October 2007.

(3) Expressions used in paragraph (2) shall be construed in accordance with section 172A of the Finance Act 2004(c).

Amendment of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006

2.—(1) The Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006(d) are amended as follows.

(2) In regulation 6, before the first entry in table 2, insert—

“Section 172A (surrender)	To determine for the purposes of section 172A(1) and (2) whether a surrender of (or agreement to surrender) rights to payments under a lifetime annuity has occurred.”
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- (a) 2004 c. 12. Paragraphs 3(2B) and (2C) and 17(3) and (4) of Schedule 28 were inserted by paragraphs 13 and 15 of Schedule 10 to the Finance Act 2005 (c. 7). Paragraphs 3(2CA) and 17(4A) were inserted by paragraph [2] 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(1) of that Act provides that a reference to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.
 - (c) Section 172A was inserted by paragraph 38 of Schedule 10 to the Finance Act 2005, and amended by paragraph 469 of Schedule 1 to the Income Tax Act 2007 (c. 3), paragraph 6 of Schedule 20 to the Finance Act 2007 (c. 11), and paragraph [3] of Schedule [28] to the Finance Act 2008 [(c. XX)].
 - (d) S.I. 2006/499.

(3) For regulation 10 substitute—

“Dependants’ annuity - unauthorised payments

10.—(1) In any case within paragraph 17(3) of Schedule 28 (transfer of sums or assets on cessation of dependants’ annuity) where a new dependants’ annuity becomes payable, the new dependants’ annuity is to be treated as if it were the original dependants’ annuity for the purposes of Part 4 prescribed in table 2A to the extent that the amount of the sums and the value of the assets applied to purchase the new dependants’ annuity are equal to the amount of the sums and the value of the assets transferred.

(2) In any other case within paragraph 17(3) of Schedule 28, except where a new dependants’ annuity becomes payable, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the amount of the sums and the market value of the assets transferred.

Table 2A

<i>Provision</i>	<i>Purpose</i>
Section 172A (surrender)	To determine for the purposes of section 172A(1) and (2) whether a surrender of (or agreement to surrender) rights to payments under a dependants’ annuity has occurred.”

[Insert date] [Insert name]
[Insert name]
Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (“the Transfer Regulations”). These amendments follow recent changes to Part 4 of the Finance Act 2004 (“FA 2004”), which contains the main provisions relating to the taxation of pension schemes.

The Finance Act 2008 amended section 172A of FA 2004 so that specified surrenders of (or agreements to surrender) rights to payments under a lifetime annuity or dependants’ annuity are treated as unauthorised payments. Unauthorised payments to or in respect of members are subject to tax charges under section 208 (unauthorised payments charge), section 209 (unauthorised payments surcharge) and section 239 (scheme sanction charge) of FA 2004.

Where there is a transfer of the sums and assets relating to an annuity from one life insurance company to another, the Transfer Regulations prescribe the circumstances in which a surrender of rights is not treated as an unauthorised payment by section 172A (and consequently no tax charge arises). This is achieved by treating the new annuity as if it were the original one in prescribed circumstances.

As a result of the changes to section 172A of FA 2004 it is necessary to add a reference to surrenders of rights to payments under lifetime annuities or dependants’ annuities to the Transfer Regulations. This means that where sums or assets are transferred from the life insurance company that was providing the lifetime annuity or dependants’ annuity to another life insurance company, and are applied by the latter company towards the provision of another lifetime annuity or dependants’ annuity, this will not constitute an unauthorised payment. The new annuity will be treated as if it were the original annuity for the prescribed purposes and in the prescribed circumstances with the result that no surrender of the old annuity is treated as having occurred for the purposes of section 172A.

Regulation 1 provides for citation, commencement and effect. Authority for the retrospective effect of these Regulations is provided by the new paragraphs 3(2CA) and 17(4A) of Schedule 28 to FA 2004 as inserted by paragraph 2 of Schedule 29 to the Finance Act 2008.

Regulation 2(2) adds a reference to surrenders of (or agreements to surrender) rights to payments under a lifetime annuity under section 172A to the table in regulation 6 of the Transfer Regulations. Where a lifetime annuity ceases to be payable and a new lifetime annuity becomes payable, the new annuity is treated as if it were the original annuity and there will not be an unauthorised payment under section 172A of FA 2004, to the extent that the amount of the sums and the value of the assets are transferred from the original annuity to the new one.

Regulation 2(3) substitutes a new regulation 10 to add a reference to surrenders of (or agreements to surrender) rights to payments under dependants' annuities under section 172A. Similar provision for dependants' annuities as that for lifetime annuities is made accordingly.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.