STATUTORY INSTRUMENTS

2012 No. 1795

INCOME TAX

The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2012

Made - - - -	*10th July 2012*
Laid before the House of Commons	*11th July 2012*
Coming into force - -	*1st August 2012*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by paragraphs 7(1) and (2)(a) of Schedule 34 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 Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2012 and come into force on 1st August 2012.

(2) The amendments made by regulations 3 to 5 have effect for the tax year 2011-12 and subsequent tax years.

(3) The amendments made by paragraphs (2) to (4) and (8) of regulation 6 have effect in relation to any lump sum to which a person becomes entitled for the purposes of Part 4 of the Finance Act 2004 on or after 6th April 2011.

(4) The amendments made by paragraphs (5) to (7) of regulation 6 have effect in relation to any lump sums paid on or after 6th April 2011.

Amendment of the Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006

2. The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006(**c**) are amended as follows.

3. For regulation 6 (modification of pension rules) substitute—

"Modification of section 165

6. In section 165 (pension rules)—

(**a**) 2004 c. 12.
(**b**) Paragraph 7(1) of Schedule 34 to the Finance Act 2004 refers to the Board of Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) 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.
(**c**) S.I. 2006/207 as amended by S.I. 2009/2047. There are other amendments not relevant to these Regulations.

(a) in subsection (1), in pension rule 4 omit from “but a scheme pension” to the end, and

(b) in subsection (3A), for “scheme administrator” (in both places) substitute “scheme manager”.”.

4. For regulation 7 (modification of pension death benefit rules) substitute—

“Modification of section 167

7. In section 167 (pension death benefit rules)—

(a) in subsection (1), in pension death benefit rule 3 omit from “but a dependants’ scheme pension” to the end, and

(b) in subsection (2A), for “scheme administrator” (in both places) substitute “scheme manager”.”.

5.—(1) Regulation 14(3) (modification of Schedule 28) is amended as follows.

(2) For sub-paragraph (c) substitute—

“(c) paragraph 10 (in each place where the expression occurs);”.

(3) After sub-paragraph (c) insert—

“(ca) paragraph 10A (in each place where the expression occurs);

(cb) paragraph 10B (in each place where the expression occurs);”.

(4) After sub-paragraph (d) insert—

“(da) paragraph 14E(2);”.

(5) For sub-paragraph (f) substitute—

“(f) paragraph 24 (in each place where the expression occurs);”.

(6) After sub-paragraph (f) insert—

“(fa)paragraph 24A (in each place where the expression occurs);

(fb) paragraph 24B (in each place where the expression occurs);

(fc) paragraph 24G(2);”.

6.—(1) Regulation 15 (modification of Schedule 29) is amended as follows.

(2) In paragraph (2) (modification of paragraph 1)—

(a) in paragraph (b) of the sub-paragraph (4B) treated as inserted, at the end insert “and disregarding paragraph 2 of Schedule 32.”, and

(b) in paragraph (b) of the sub-paragraph (4C) treated as inserted, at the end insert “and disregarding paragraph 2 of Schedule 32.”.

(3) In paragraph (3) (modification of paragraph 2)—

(a) in sub-paragraph (a), in the definition of “AAC” treated as substituted—

(i) in paragraph (a) after “entitlement to a pension arises” insert “, as adjusted under sub-paragraph (7)”, and

(ii) for the definition of “RP” substitute—

“RP is the referable portion of the amount which would have crystallised, had the scheme paying it been a registered pension scheme and disregarding paragraphs 2 and 15A of Schedule 32, in respect of any previous pension commencement lump sum or pension to which the member became entitled since the relevant BCE occurred, as adjusted under sub-paragraph (7) (but excluding any amount included in paragraph (a)).
”,

(b) after sub-paragraph (a) insert—

"(aa) in sub-paragraph (7) for "the relevant amount" substitute "the amount which is, or would have, crystallised";",

(c) in sub-paragraph (b)—

(i) for "after sub-paragraph (6)" substitute "after sub-paragraph (7)",

(ii) renumber the sub-paragraph (6A) treated as inserted as sub-paragraph (7ZA), and

(iii) in sub-paragraph (7ZA) treated as inserted (as renumbered in accordance with this sub-paragraph) for "paragraph (6)" substitute "sub-paragraph (6)", and

(d) after sub-paragraph (b) insert—

"(c) after sub-paragraph (7A) insert—

"(7B) But sub-paragraph (7A)(b) does not apply to anything which, but for paragraph 2 or 15A of Schedule 32, would have constituted a relevant BCE."".

(4) After paragraph (3) insert—

"(3A) In paragraph 3, after sub-paragraph (7) insert—

"(7ZA) Where a relevant BCE has occurred in relation to the member, sub-paragraph (6) has effect as if for the definition of "AC" in sub-paragraph (7) there were substituted—

""AC" is —

(a) in a case where the member becomes entitled to the pension before reaching the age of 75, the referable portion of the amount that, had the scheme been a registered pension scheme, would have crystallised by reason of the member becoming entitled to the pension, disregarding paragraph 3 of Schedule 32, and

(b) in a case where the member becomes entitled to the pension after reaching that age, the referable portion of the amount that would have been so crystallised (disregarding that paragraph) but for paragraph 2 of that Schedule, had the scheme been a registered pension scheme. """".

(5) In paragraph (4)(b) (modification of paragraph 4)—

(a) renumber the sub-paragraphs treated as inserted as sub-paragraphs (4) to (7),

(b) in paragraph (b) of the sub-paragraph (5) treated as inserted (as renumbered in accordance with this paragraph), for "sub-paragraph (5) or (6)" substitute "sub-paragraph (6) or (7)",

(c) in paragraph (b) of the sub-paragraph (6) treated as inserted (as renumbered in accordance with this paragraph), at the end insert "and disregarding paragraph 2 of Schedule 32.", and

(d) in paragraph (b) of the sub-paragraph (7) treated as inserted (as renumbered in accordance with this paragraph), at the end insert "and disregarding paragraph 2 of Schedule 32.".

(6) In paragraph (6) (modification of paragraph 7)—

(a) in paragraph (b) of the sub-paragraph (7) treated as inserted, at the end insert "and disregarding paragraph 2 of Schedule 32.", and

(b) in paragraph (b) of the sub-paragraph (8) treated as inserted, at the end insert "and disregarding paragraph 2 of Schedule 32.".

(7) In paragraph (7) (modification of paragraph 10)—

(a) in paragraph (b) of the sub-paragraph (5) treated as inserted, at the end insert "and disregarding paragraph 2 of Schedule 32.", and

(b) in paragraph (b) of the sub-paragraph (6) treated as inserted, at the end insert "and disregarding paragraph 2 of Schedule 32.".

(8) After paragraph (9) insert—

"(9A) In paragraph 12 (interpretation of Part 1), after sub-paragraph (1A) insert—

"(1B) But sub-paragraph (1A)(b) does not apply to anything which, but for paragraph 2 of Schedule 32, would have constituted a relevant BCE."".

Stephen Banyard
Dave Hartnett
10th July 2012 Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential amendments to the Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (S.I. 2006/207) ("the RNUKS Regulations") following the amendments to the Finance Act 2004 (c. 12) ("FA 2004") made by the Finance Act 2011 (c. 11) ("FA 2011"). The RNUKS Regulations modify certain provisions of Part 4 of FA 2004 in their application to relevant non-UK pension schemes. From 6th April 2011, Schedule 16 to FA 2011 amends Part 4 of FA 2004 (pension schemes etc) to remove certain tax rules that require members of registered pension schemes to secure an income, usually by buying an annuity, by age 75. The amendments replace the concept of an "unsecured pension" and an "alternatively secured pension" with the concept of a "drawdown pension". A new facility is introduced removing the annual limit on payments from drawdown and dependants' drawdown pensions provided a minimum income requirement of £20,000 per annum is met.

Regulation 2 introduces the amendments which have retrospective effect from 6th April 2011 pursuant to the power contained in paragraph 7(2)(a) of Schedule 34 to FA 2004.

Regulations 3 and 4 make consequential amendments to regulations 6 and 7 of the RNUKS Regulations following the removal of certain pension and pension death benefit rules which imposed restrictions on the sorts of pensions that could be paid to members aged 75 and over.

Regulation 5 amends regulation 14(3) of the RNUKS Regulations so as to extend the modifications which replace "scheme administrator" with a reference to a "scheme manager" to the new provisions introduced by FA 2011.

Regulation 6 amends regulation 15 of the RNUKS Regulations. Regulation 15 modifies Schedule 29 to FA 2004 which sets out the types of lump sum which may be paid out by registered pension schemes without incurring an unauthorised payment charge. The amendments cover two situations: firstly where there has been a transfer to a qualifying recognised overseas pension scheme which constitutes benefit crystallisation event 8 and secondly where a member of a relieved non-UK pension scheme has chosen for his or her benefits under the scheme to be tested against the lifetime allowance (a paragraph 15 BCE). The amendments ensure that the scheme may pay out the same amount of lump sum once the member has reached the age of 75 as would have been permissible prior to the member reaching that age. This brings the position of relevant non-UK schemes and relieved non-UK pension schemes into line with registered pension schemes following the changes made by FA 2011.

A Tax Information and Impact Note covering this instrument was published on 9th December 2010 alongside draft legislation for the Finance (No.3) Bill 2011 concerning the removal of the effective requirement to annuitise by age 75 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.

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