
STATUTORY INSTRUMENTS

1990 No. 2101

INCOME TAX

The Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990

<i>Made</i>	- - - -	<i>22nd October 1990</i>
<i>Laid before the House of Commons</i>	- - - -	<i>24th October 1990</i>
<i>Coming into force</i>	- -	<i>14th November 1990</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by paragraph 19(2) and (3) of Schedule 6 to the Finance Act 1989(1), hereby make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990 and shall come into force on 14th November 1990 but shall take effect as from 14th March 1989.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires—

“approved scheme” means a retirement benefits scheme approved by the Board for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988(2);

“the Board” means the Commissioners of Inland Revenue;

“business” includes a business carried on in the course of a trade or profession and any activity carried on by a body of persons, whether corporate or unincorporate;

“relevant approved scheme” means an approved scheme which was approved by the Board before 27th July 1989;

“relevant employer” in relation to another employer means—

- (a) an employer who is associated with the other employer, or
- (b) an employer—
 - (i) who has acquired, or who has been acquired by, or

(1) 1989 c. 26.
(2) 1988 c. 1.

- (ii) who has taken over the whole or part of the business of, or the whole or part of whose business has been taken over by, the other employer;

“the Schedule” means Part II of Schedule 6 to the Finance Act 1989.

(2) For the purpose of this regulation an employer is associated with another employer if (directly or indirectly) one is controlled by the other or if both are controlled by a third person.

(3) In paragraph (2) above the reference to control—

- (a) in relation to an employer which is a body corporate and a close company within the meaning of section 414 of the Income and Corporation Taxes Act 1988⁽³⁾, shall be construed in accordance with section 416 of that Act⁽⁴⁾, and
- (b) in relation to any employer which is a body corporate other than one mentioned in subparagraph (a) above or a partnership, shall be construed in accordance with section 840 of that Act;

and the like definition to that in the said section 840 shall apply (with the necessary modifications) in relation to an employer which is an unincorporated association as that definition applies to a body corporate.

(4) In these Regulations references to a scheme which was established by an employer include references to a scheme to which that employer had contributed.

Disapplication of paragraphs 20 and 22 to 26 of the Schedule

3.—(1) Paragraphs 20 and 22 to 26 of the Schedule shall not apply as regards an employee in the circumstances prescribed in paragraph (2), (3), (4), (6) or (8) below.

(2) The circumstances prescribed in this paragraph are circumstances where—

- (a) the scheme came into existence before 14th March 1989, and
- (b) the employee became a member of the scheme on or after 1st June 1989 and within the period of three months following the commencement of the employment;

but before 1st June 1989 the employer was contractually bound to the employee to procure the provision of the benefits which the scheme provided.

(3) The circumstances prescribed in this paragraph are circumstances where—

- (a) the scheme came into existence on or after 14th March 1989, and
- (b) the employee became a member of the scheme within the period of three months following that date;

but before 14th March 1989 the employer was contractually bound to the employee to procure the provision of the benefits which the scheme provided.

(4) The circumstances prescribed in this paragraph are circumstances where—

- (a) the scheme came into existence before 14th March 1989 and the employee became a member of the scheme before 1st June 1989, or
- (b) the employer was contractually bound to the employee to procure the provision of the benefits which the scheme provided in the circumstances prescribed in paragraph (2) or (3) above,

and the employee’s membership of the scheme ceased and he again became a member of that scheme in the circumstances specified in paragraph (5) below.

(3) Section 414 was amended by the Finance Act 1989 (c. 26), section 104.

(4) Section 416 was amended by the Finance Act 1989, Schedule 17, Part V.

- (5) The circumstances specified in this paragraph are circumstances where—
- (a) benefits ceased to accrue to the employee under the scheme by virtue of his employment by reason of his secondment or posting to another employer and—
 - (i) on or after 1st June 1989 the period of his secondment or posting ended and he again became a member of the scheme, and
 - (ii) at the time of his secondment or posting he had a definite expectation that he would again become a member of the scheme when the period of his secondment or posting ended; or
 - (b) benefits ceased to accrue to the employee under the scheme by virtue of his employment by reason of his unpaid absence and, on or after 1st June 1989 and within one month of returning to work, he again became a member of the scheme; or
 - (c) benefits ceased to accrue to the employee under the scheme by virtue of her employment wholly or partly because of pregnancy or confinement and, on or after 1st June 1989 and within one month of returning to work in accordance with section 45(1) or (3) of the Employment Protection (Consolidation) Act 1978(5), she again became a member of the scheme; or
 - (d) benefits ceased to accrue to the employee under the scheme by virtue of his employment (where the circumstances were other than those specified in sub-paragraph (a), (b) or (c) above) and, on or after 1st June 1989 and within one month of benefits ceasing so to accrue, he again became a member of the scheme.
- (6) The circumstances prescribed in this paragraph are circumstances where—
- (a) the employee became a member of a retirement benefits scheme (in this paragraph and in paragraph (7) below referred to as “the original scheme”) before 1st June 1989 and at all times when the employee was a member of the original scheme it was either—
 - (i) a scheme which was before the Board in order for them to decide whether to give approval for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988, or
 - (ii) an approved scheme, or
 - (b) the employer was contractually bound to the employee to procure the provision of the benefits which the original scheme provided in the like circumstances to those prescribed in paragraph (2) or (3) above,

and the employee’s membership of the original scheme ceased and he became a member of the scheme in the circumstances specified in paragraph (7) below.

- (7) The circumstances specified in this paragraph are—
- (a) circumstances where on or after 1st June 1989 benefits ceased to accrue to the employee under the original scheme by virtue of his employment and he thereupon became a member of the scheme which was established by the employer who established the original scheme or by an employer who was a relevant employer in relation to that employer; or
 - (b) the like circumstances to those specified in paragraph (5)(a), (b), (c) or (d) above with the substitution—
 - (i) for references to benefits ceasing to accrue under the scheme of references to benefits ceasing to accrue under the original scheme;
 - (ii) for references to again becoming a member of the scheme of references to becoming a member of the scheme which was established by the employer who established

the original scheme or by an employer who was a relevant employer in relation to that employer;

- (iii) for the reference in sub-paragraph (d) of paragraph (5) to the circumstances specified in sub-paragraph (a), (b) or (c) of that paragraph of a reference to the like circumstances to those specified in those sub-paragraphs as modified by paragraphs (i) and (ii) of this sub-paragraph.

(8) The circumstances prescribed in this paragraph are circumstances where—

- (a) the scheme came into existence before 14th March 1989 and the employee became a member of the scheme before 1st June 1989, or
- (b) the employer was contractually bound to the employee to procure the provision of the benefits which the scheme provided in the circumstances prescribed in paragraph (2) or (3) above,

and, without benefits ceasing to accrue to the employee under the scheme by virtue of his employment, on or after 1st June 1989 he became a member of another relevant approved scheme which provides benefits which supplement those provided under the scheme.

(9) Where the scheme is a centralised scheme, this regulation shall have effect with the substitution for references to the coming into existence of the scheme of a reference to the commencement of the employer's participation in the scheme; and for the purposes of this paragraph "a centralised scheme" has the same meaning as it has for the purposes of paragraph 28 of the Schedule.

Disapplication of paragraphs 23 and 24 of the Schedule

4.—(1) Paragraphs 23 and 24 of the Schedule shall not apply as regards an employee in the circumstances prescribed in paragraph (2), (3) or (4) below.

(2) The circumstances prescribed in this paragraph are circumstances where the scheme of which the employee is a member is a simplified defined contribution scheme.

(3) The circumstances prescribed in this paragraph are circumstances where the amount of the employee's total pension does not exceed £104 per annum or such higher amount as may be prescribed from time to time for the purposes of paragraph 15(4) of Schedule 16 to the Social Security Act 1973⁽⁶⁾ or paragraph 15(4) of Schedule 3 to the Social Security Pensions (Northern Ireland) Order 1975⁽⁷⁾.

(4) The circumstances prescribed in this paragraph are circumstances where—

- (a) the rules of the scheme provide that the trustees or administrator of the scheme have power to commute, in whole or in part, the pension secured for an employee if he is in exceptional circumstances of serious ill health, and
- (b) the trustees or administrator have exercised that power in relation to the employee.

(5) In this regulation—

"simplified defined contribution scheme" means a relevant approved scheme which is approved by the Board by virtue of section 591 of the Income and Corporation Taxes Act 1988⁽⁸⁾ by reference to limitations on—

- (a) the aggregate amount of contributions which may be paid by the member and his employer,
- (b) the maximum lump sum which may be provided under the scheme, and

⁽⁶⁾ 1973 c. 38.

⁽⁷⁾ S.I.1975/1503 (N.I.15).

⁽⁸⁾ Section 591 was amended by the Finance Act 1988 (c. 39), section 146 and Schedule 13, paragraph 6.

- (c) the benefits payable on death which may be provided under the scheme;
- “total pension” means in relation to an employee the aggregate of all benefits to him (including the value in terms of an annual pension of any lump sum or sums received or receivable by him)–
- (a) from approved schemes established by his employer, and
 - (b) from approved schemes to which his employer has not contributed and which, by virtue of contributions made by the employee while he was employed by that employer, provide benefits in addition to those provided by schemes to which his employer has contributed.

Modification of paragraph 20 of the Schedule

- 5.—(1) In the circumstances prescribed in paragraph
- (2) below, paragraph 20 of the Schedule shall be modified so as to contain a provision that the rules of the scheme are to have effect (notwithstanding anything in them to the contrary and notwithstanding the effect of anything in Schedule 23 to the Income and Corporation Taxes Act 1988) as if, for the purpose of calculating benefits under the scheme–
 - (a) the fraction of the employee’s relevant annual remuneration derived from added years of service was to be applied separately from the fraction derived from actual years of service, and
 - (b) only in the latter case was any excess of what would be his relevant annual remuneration (apart from the said paragraph 20) over the permitted maximum for the year to be disregarded in arriving at that relevant annual remuneration.
 - (2) The circumstances prescribed in this paragraph are circumstances where–
 - (a) under the rules of the scheme a transfer payment accepted by the scheme has been treated as entitling the employee to be considered as having years of service in addition to his actual years of service; and
 - (b) paragraph 20 of the Schedule did not apply as regards the employee when he was a member of the scheme from which the transfer was accepted;

and in this regulation such additional years are referred to as “added years of service”.

Modification of paragraph 21 of the Schedule

- 6.—(1) In the circumstances prescribed in paragraph (2) below, paragraph 21(1) of the Schedule shall be modified so that the reference to the amount of contributions payable under the scheme does not include a reference to any of the payments referred to in paragraph (2) below.
- (2) The circumstances prescribed in this paragraph are circumstances where the employee–
 - (a) is required by the rules of the scheme as they have effect, and as they had effect on 13th March 1989, to make good a shortfall in contributions by a payment consisting of a single lump sum, or
 - (b) was a member of the scheme on 27th July 1989 and on retirement makes a payment consisting of a lump sum, either directly or by authorising the scheme administrator to deduct it from any lump sum benefit due to him, for the purpose of buying, or completing the purchase of, rights to benefits under the scheme up to the maximum provided under the rules.

Modification of paragraph 23 of the Schedule

- 7.—(1) In the circumstances prescribed in paragraph (2) below, paragraph 23(2)(b) of the Schedule shall be modified so as to include in the reference to the pension payable under the scheme

to the employee for the first year in which it is payable a reference to any pension payable to the employee for that year by virtue of voluntary contributions which he had made to an approved scheme while he was employed by his employer.

- (2) The circumstances prescribed in this paragraph are circumstances where—
- (a) the approved scheme referred to in paragraph (1) above is a scheme other than the one which provides the benefits which the voluntary contributions are intended to supplement;
 - (b) the employee is a member of both schemes by virtue of the same employment;
 - (c) the modification of paragraph 23(2)(b) of the Schedule made by paragraph (1) above has not already been made in relation to the rules of a relevant approved scheme of which the employee is a member.

Authorisation of the Board to direct

8. This regulation authorises—
- (a) the Board to direct that the Schedule or any provision of it shall not apply in any particular case where in the opinion of the Board the facts are such that its application would not be appropriate, and
 - (b) any direction given under this regulation to take effect as from 14th March 1989 or any later date.

22nd October 1990

A J G Isaac
L J H Beighton
Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which have effect as from 14th March 1989—

- (a) prescribe the circumstances in which provisions contained in Part II of Schedule 6 to the Finance Act 1989 (“the Schedule”) (which modify the rules of retirement benefits schemes approved by the Commissioners of Inland Revenue (“the Board”) before 27th July 1989, in relation to employees who, in the case of such schemes which came into existence before 14th March 1989, became members on or after 1st June 1989 or, in the case of other such schemes, became members at any time) are disapplied or are applied with prescribed modifications in relation to certain of those employees;
- (b) authorise the Board to direct as from 14th March 1989 or any later date that the Schedule, or any provision of it, shall not apply in any particular case where in the opinion of the Board the facts are such that its application would not be appropriate.

Regulation 1 provides for the citation, commencement and effect of the Regulations and regulation 2 contains definitions.

Regulation 3 disapplies the modifications of the rules of approved schemes in paragraphs 20 and 22 to 26 of the Schedule in circumstances where the scheme came into existence on or after 14th March 1989 or an employee becomes a member of the scheme on or after 1st June 1989 but the scheme is treated as if it had been in existence as regards an employee, or an employee is considered to have continuity of membership, from before the relevant date.

Regulation 4 disapplies paragraphs 23 and 24 of the Schedule so that in certain circumstances pension benefits can be wholly commuted for a lump sum.

Regulation 5 modifies paragraph 20 of the Schedule so that it does not apply where added years of pensionable service are given following acceptance of a transfer payment, if that paragraph did not apply to service under the scheme making the payment.

Regulation 6 modifies paragraph 21 of the Schedule so as to enable contributions in excess of 15 per cent. of remuneration to be paid to a scheme in the circumstances prescribed.

Regulation 7 modifies paragraph 23 of the Schedule so as to secure that benefits arising under an additional voluntary contribution scheme in respect of an employment may be included in the calculation of the initial pension from that employment for the purposes of that paragraph.

Regulation 8 authorises the Board to make directions.

Authority for the retrospective effect of these Regulations (and of any direction given under regulation 8) is given by paragraph 19(3)(b) of the Schedule.