
STATUTORY INSTRUMENTS

1996 No. 3114

INCOME TAX

**The Retirement Benefits Schemes (Continuation
of Rights of Members of Approved
Schemes) (Amendment) Regulations 1996**

<i>Made</i>	- - - -	<i>9th December 1996</i>
<i>Laid before the House of Commons</i>	- - - -	<i>11th December 1996</i>
<i>Coming into force</i>	- -	<i>1st January 1997</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 and commencement

1. These Regulations may be cited as the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) (Amendment) Regulations 1996 and shall come into force on 1st January 1997.

Interpretation

2. In these Regulations “the principal Regulations” means the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990(2) and, except where the context otherwise requires, “regulation” means a regulation of the principal Regulations.

Amendments to the principal Regulations

3. In regulation 2(1)—

(a) after the definition of “approved scheme” there shall be inserted the following definition—

““bad investment advice” means investment advice in respect of which an action against the person who gave it has been, or may be, brought—

- (a) in or for negligence;
- (b) for breach of contract;
- (c) by reason of a breach of a fiduciary obligation; or

(1) 1989 c. 26.

(2) S.I. 1990/2101, amended by S.I. 1993/3220.

- (d) by reason of a contravention which is actionable under section 62 of the Financial Services Act 1986(3);”;
- (b) after the definition of “business” there shall be inserted the following definitions—
- ““investment advice” means advice such as is mentioned in paragraph 15 of Schedule 1 to the Financial Services Act 1986;
- “personal pension scheme” has the meaning given by section 630 (1)(4) of the Taxes Act;”
- (c) after the definition of “the Schedule” there shall be inserted the following definition—
- ““the Taxes Act” means the Income and Corporation Taxes Act 1988(5).”
4. For the words “Income and Corporation Taxes Act 1988”, in each place where they occur in the principal Regulations other than in the definition of “the Taxes Act” in regulation 2(1) (inserted by regulation 3(c) of these Regulations), there shall be substituted the words “Taxes Act”.
5. In regulation 3—
- (a) in paragraph (2) for sub-paragraph (b) there shall be substituted the following sub-paragraph—
- “(b) the employee—
- (i) 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, or
- (ii) acting in reliance on bad investment advice given on or after that date and within that period, did not become a member of the scheme but became a member of a personal pension scheme on or after that date and within that period;”;
- (b) in paragraph (3) for sub-paragraph (b) there shall be substituted the following sub-paragraph—
- “(b) the employee—
- (i) became a member of the scheme within the period of three months following that date, or
- (ii) acting in reliance on bad investment advice given within that period, did not become a member of the scheme but became a member of a personal pension scheme on or after that date and within that period;”.
6. After regulation 3 there shall be inserted the following regulations—

“Disapplication of paragraphs 20 and 22 to 26 of the Schedule - further provision

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

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

(a) the employee either—

(3) 1986 c. 60.

(4) Section 630 was renumbered as subsection (1) of that section by paragraph 2(2) of Schedule 11 to the Finance Act 1995 (c. 4) which also amended the definition of “personal pension scheme” in that section.

(5) 1988 c. 1.

(6) Paragraphs 20 and 22 of Schedule 6 to the Finance Act 1989 were amended by section 107(7) of the Finance Act 1993 (c. 34) with effect for the year 1994-95 and subsequent years of assessment.

- (i) was eligible, or reasonably likely to become eligible, to be a member of a scheme before 1st June 1989 but, in the circumstances specified in paragraph (3) below, did not become a member, or
 - (ii) became a member of a scheme before that date but, in the circumstances specified in paragraph (4) below, ceased to be a member; and
- (b) by way of compensation for loss suffered, or reasonably likely to be suffered, by the employee as a result of the circumstances specified in paragraph (3) or (4) below—
- (i) the employee becomes or, as the case may be, is reinstated as, a member of that scheme, or becomes a member of another scheme established by the employer or by an employer who was a relevant employer in relation to that employer, and
 - (ii) a capital sum is paid on or after 1996 (whether or not to the trustees of the scheme) in respect of the employee.

(3) The circumstances specified in this paragraph are circumstances where, acting in reliance on bad investment advice at least some of which was given during the period beginning with 29th April 1988 and ending with 31st May 1989, the employee became a member of a personal pension scheme or entered into a retirement annuity contract.

(4) The circumstances specified in this paragraph are circumstances where, acting in reliance on bad investment advice at least some of which was given during the period beginning with 29th April 1988 and ending with 30th June 1994, the employee—

- (a) ceased to be a member of, or to pay contributions to, the scheme and instead became a member of a personal pension scheme or entered into a retirement annuity contract;
 - (b) ceased to be a member of the scheme as a result of the transfer of accrued rights of his under the scheme to a personal pension scheme; or
 - (c) ceased to be a member of the scheme and instead (by virtue of such a provision as is mentioned in section 591 (2) (g) of the Taxes Act⁽⁷⁾) entered into arrangements for securing relevant benefits by means of an annuity contract.
- (5) In this regulation—

“relevant benefits” has the meaning given by section 612(1) of the Taxes Act;

“retirement annuity contract” means a contract made before 1st July 1988 and approved by the Board under or by virtue of any provision of Chapter III of Part XIV of the Taxes Act.

Disapplication of paragraph 21 of the Schedule

3B.—(1) Paragraph 21 of the Schedule shall not apply as regards an employee in the circumstances prescribed in paragraph (2) below and as respects the year or years of assessment specified in paragraph (3) below.

- (2) The circumstances prescribed in this paragraph are circumstances where—
- (a) an employee is admitted to membership of the scheme,
 - (b) benefits are to be provided under the scheme in respect of years of service of the employee ending prior to the year of assessment in which he is admitted to membership of the scheme,

(7) Section 591(2)(g) was amended by section 107(2) of, and Part V (12) of Schedule 26 to, the Finance Act 1994 (c. 9).

- (c) under the rules of the scheme the employee is required to contribute towards the cost of those benefits, and
 - (d) the annual rate, expressed as a monetary sum or as a percentage of his remuneration, that the employee is required to contribute under the rules of the scheme towards the cost of those benefits either—
 - (i) is the same as the annual rate that he would have been required to contribute under those rules towards the cost of those benefits if he had been a member of the scheme in the years of service in respect of which those benefits are to be provided, or
 - (ii) is the same as the annual rate that he is required to contribute under those rules towards the cost of benefits accruing in respect of his current year of service.
- (3) The year or years of assessment specified is the year or years of assessment in which the employee makes the contributions referred to in paragraph (2)(c) above.”

9th December 1996

S C T Matheson
G H Bush
Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990 (S.I.1990/2101) (“the principal Regulations”).

Part II of Schedule 6 to the Finance Act 1989 (“the Schedule”) modifies the rules of retirement benefits schemes approved by the Commissioners of Inland Revenue before 27th July 1989. The principal Regulations prescribe circumstances in which certain provisions of the Schedule are disapplied or modified in particular cases.

These Regulations, in addition to making an amendment of a drafting nature, insert in the principal Regulations further circumstances in which provisions contained in the Schedule are disapplied.

Regulation 1 provides for citation and commencement, and regulation 2 for interpretation.

Regulation 3 inserts additional definitions in regulation 2(1) of the principal Regulations.

Regulation 4, by way of a drafting amendment, ensures that the expression “the Taxes Act”, defined by regulation 3, is used throughout the principal Regulations to describe the Income and Corporation Taxes Act 1988.

Regulation 5 amends regulation 3(2) and (3) of the principal Regulations (disapplication of paragraphs 20 and 22 to 26 of the Schedule) so as to cater for circumstances where, as a result of bad investment advice, an employee fails to become a member of a retirement benefits scheme but becomes a member of a personal pension scheme within a specified time period.

Regulation 6 inserts new regulations 3A and 3B in the principal Regulations.

Regulation 3A disapplies paragraphs 20 and 22 to 26 of the Schedule in circumstances where, as a result of bad investment advice, an employee fails to become, or ceases to be, a member of a retirement benefits scheme and instead becomes a member of a personal pension scheme or enters into a retirement annuity contract, and subsequently as part of compensation for loss suffered becomes, or is reinstated as, a member of a retirement benefits scheme.

Regulation 3B disapplies paragraph 21 of the Schedule (limit on total contributions payable under the scheme by an employee) in circumstances where the employee becomes a member of the scheme and is entitled to receive benefits under the scheme for years of service ending prior to the tax year in which he becomes a member.