
STATUTORY INSTRUMENTS

2005 No. 3452

INCOME TAX

**The Registered Pension Schemes (Discharge
of Liabilities under Sections 267 and 268
of the Finance Act 2004) Regulations 2005**

Made - - - - *14th December 2005*
Laid before the House of
Commons - - - - *15th December 2005*
Coming into force - - *6th April 2006*

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 267(10) and 268(10) of the Finance Act 2004(1) make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Registered Pension Schemes (Discharge of Liabilities under Sections 267 and 268 of the Finance Act 2004) Regulations 2005 and shall come into force on 6th April 2006.

Interpretation

2. In these Regulations—

“a section 267 application” means an application under subsection (2) or (5) of section 267 of the Finance Act 2004 (which concern the scheme administrator's liability to lifetime allowance charges);

“a section 268 application” means an application under subsection (2) or (5) of section 268 of the Finance Act 2004 (which concern liability to unauthorised payments surcharges and scheme sanctions charges);

“applicant” means a person making a section 267 application or a section 268 application; and

“company” and “year of assessment” have the meanings given to them in section 832 of the Income and Corporation Taxes Act 1988(2).

(1) 2004 c. 12. The functions of the Commissioners of Inland Revenue, including those under which this instrument is made, were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11).

(2) 1988 c. 1.

Time limits for, and content of section 267 and 268 applications

- 3.—(1) Any section 267 application or section 268 application must be made in writing—
- (a) in the case of a company, not later than six years after the end of the accounting period to which it relates; or
 - (b) in the case of any other applicant, no later than five years after the 31st January next following the year of assessment to which it relates.

This is subject to the following qualification.

(2) If an assessment is made under section 36 of the Taxes Management Act 1970 (assessments for the purpose of making good any loss to the Crown from a loss of income tax, etc.) (3), the section 267 application or section 268 application (as the case may be) must be made within two years of the date on which the assessment is issued as stated in the notice of that assessment.

(3) A section 267 application or section 268 application shall set out particulars of the ground relied on under the relevant section.

Applications on behalf of persons who are incapacitated

4. A section 267 application or 268 application may be made on behalf of an incapacitated person by his trustee, guardian or receiver.

Here “incapacitated person” has the meaning given by section 118 of the Taxes Management Act 1970(4).

Supplementary applications

5. Where a section 267 application or section 268 application has been made and the applicant subsequently discovers that an error or mistake has been made in it, the applicant may make a supplementary application in the same manner, and within the same time, as is allowed for making the original application.

D. A. Hartnett

M. J. Eland

Two of the Commissioners for Her Majesty's
Revenue and Customs

14th December 2005

(3) 1970 c. 9. Section 36 was substituted by section 149(1) and (7) of the Finance Act 1989 (c. 26). Subsection (1) was amended, and subsection (2) substituted, by paragraph 11 of Schedule 19 to the Finance Act 1994 (c. 9). Subsection (1) was further amended by paragraph 18 of Schedule 19 to the Finance Act 1998 (c. 36). Subsection (3A) was inserted by paragraph 9 of Schedule 5 to the Finance (No. 2) Act 1992 (c. 48) and partly repealed by Schedule 6 to the Tax Credits Act 2002 (c. 21). Subsection (4) was added by paragraph 4(1) and (5) of Schedule 11 to the Finance Act 1990 (c. 29).

(4) There are amendments to section 118 which are not relevant for present purposes.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision supplementing sections 267 and 268 of the Finance Act 2004 in connection with the making of applications by scheme administrators of registered pension schemes and other persons for relief from the lifetime allowance charges under section 267 and the unauthorised payments surcharge, and the scheme sanction charge under section 268.

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

Regulation 3 provides for the form and content of a section 267 application or section 268 application.

Regulation 4 provides for section 267 applications and section 268 applications to be made on behalf of persons who are incapacitated, within the meaning of section 118 of the Taxes Management Act 1970, by those managing their affairs.

Regulation 5 provides for the making of supplementary applications where the applicant discovers that the original application contained a mistake or error.

A regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it was published by the Board of Inland Revenue on 8 April 2004, and is available on the Inland Revenue website at www.inlandrevenue.gov.uk/ria/simplifying-pensions.pdf or (for hard copies) by writing to the Ministerial Correspondence Unit, Capital and Savings 1st Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.