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STATUTORY INSTRUMENTS

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**2006 No. 211**

**INCOME TAX**

**The Registered Pension Schemes (Surrender  
of Relevant Excess) Regulations 2006**

<i>Made</i>	- - - -	<i>1st February 2006</i>
<i>Laid before the House of Commons</i>	- - - -	<i>2nd February 2006</i>
<i>Coming into force</i>	- -	<i>6th April 2006</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 172A(5)(f) of, and paragraphs 3(1) and 12(5) of Schedule 36 to, the Finance Act 2004(1), and now exercisable by them(2), make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Registered Pension Schemes (Surrender of Relevant Excess) Regulations 2006, and shall come into force on 6th April 2006.

(2) In these Regulations, references to provisions are references to provisions of the Finance Act 2004.

(3) In these Regulations, “the relevant excess” has the meaning given by paragraph 12(6) of Schedule 36(3).

**Rights representing the relevant excess**

2. The rights that are to be treated as representing the relevant excess are rights that—

- (a) meet the qualification condition (see regulation 3), and
- (b) are valued in accordance with the computation condition (see regulation 4).

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(1) 2004 c. 12. Section 172A was inserted by paragraphs 38 and 64(1) of Schedule 10 to the Finance Act 2005 (c. 7) with effect from 6th April 2006, and paragraph 12(5) of Schedule 36 was amended by paragraphs 53(5) and 64(1) of Schedule 10 to the Finance Act 2005 with effect from 6th April 2006.

(2) 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 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.

(3) Paragraph 12(6) of Schedule 36 was amended by paragraphs 53(5) and 64(1) of Schedule 10 to the Finance Act 2005 with effect from 6th April 2006.

### **The qualification condition**

3.—(1) The rights that meet the qualification condition are all the individual's uncrystallised rights with the exception of excluded rights.

(2) Rights are excluded rights if—

- (a) they are rights surrendered or transferred in any of the circumstances specified in paragraphs (a), (b), (c) and (e) of section 172A(5) (surrenders of benefits and rights), or
- (b) they are rights to which the individual has a prospective entitlement as a dependant of another individual.

### **The computation condition**

4.—(1) Rights are valued in accordance with the computation condition if the value of the rights surrendered—

- (a) is determined in accordance with section 212 (valuation of uncrystallised rights) on the date of the surrender, and
- (b) as so determined, is equal to the relevant excess.

(2) If rights are surrendered on more than one occasion, the value of the rights surrendered—

- (a) is to be determined separately for each surrender, and
- (b) is the aggregate of the values as so determined.

### **Surrenders and unauthorised payments**

5. Subsections (2) and (4) of section 172A (surrenders of benefits and rights) do not apply to a surrender of rights that are to be treated as representing the relevant excess to the extent that the value of the rights surrendered, determined in accordance with regulation 4, does not exceed the relevant excess.

### **Modification of conditions of pension schemes**

6. The rules of any pension scheme to which paragraph 1(1) of Schedule 36 (deemed registration of existing schemes) applies shall be modified so as to provide that a member may surrender rights that are to be treated as representing the relevant excess to the extent that the value of the rights surrendered, determined in accordance with regulation 4, does not exceed the relevant excess.

*David Varney*

*Steve Lamey*

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

1st February 2006

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Part 4 of the Finance Act 2004 (c. 12) makes provision for the taxation of pension schemes; and Schedule 36 to that Act, which falls within that Part, contains transitional provisions. Under paragraph 12 of Schedule 36 there is no liability to the lifetime allowance charge to income tax if an individual has one or more relevant existing arrangements (as defined by sub-paragraph (4) of paragraph 12). Sub-paragraph (5) of paragraph 12 then provides that notice of intention to rely on that paragraph may not be given in a case where the value (or the aggregate value) of the uncrystallised rights of the individual on 5th April 2006 is arrived at in accordance with paragraph 9 of Schedule 36 unless such rights as, in accordance with regulations, are to be treated as representing the relevant excess have been surrendered. Sub-paragraph (6) of paragraph 12 then defines the expression “the relevant excess”.

These Regulations specify the rights that are to be treated as representing the relevant excess. Regulation 1 provides for citation, commencement and interpretation. Regulation 2 then provides that the rights that are to be treated as representing the relevant excess are those that meet the qualification condition (as set out in regulation 3) and are valued in accordance with the computation condition (as set out in regulation 4). Regulations 3 and 4 then deal in more detail with the qualification condition and the computation condition. Regulation 5 provides that a surrender of rights that are to be treated as representing the relevant excess is not to be treated as an unauthorised payment under section 172A of the 2004 Act (and, accordingly, as a payment chargeable to income tax), except to the extent that the value of the rights surrendered is greater than the relevant excess; and regulation 6 provides that the rules of any existing pension scheme to which paragraph 1(1) of Schedule 36 (deemed registration of existing pension schemes) applies shall be modified so as to provide that a member may surrender rights that are to be treated as representing the relevant excess to the extent that the value of the rights surrendered does not exceed the relevant excess.