STATUTORY INSTRUMENTS

2008 No. 2990

INCOME TAX

The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2008

Made - - - -	*17th November 2008*
Laid before the House of Commons - - - -	*18th November 2008*
Coming into force - -	*1st January 2009*

The Treasury make the following Order in exercise of the powers conferred by section 283(2), (3A) and (3C) of the Finance Act 2004(**1**):

Citation, commencement and effect

1.—(1) This Order may be cited as the Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2008 and shall come into force on 1st January 2009.

(2) Article 3 shall have effect in respect of payments of pension made on or after 6th April 2006.

(3) Article 4 shall have effect in respect of lump sums paid on or after 6th April 2006.

Amendment of Taxation of Pension Schemes (Transitional Provisions) Order 2006

2. The Taxation of Pension Schemes (Transitional Provisions) Order 2006(**2**) is amended as follows.

3. After article 5 insert—

"**Reduction in rate of pension**

5A.—(1) Part 4 of the 2004 Act(**3**) shall be modified as set out in paragraph (2) in a case where the following conditions are satisfied—

(a) the pension came into payment before 3rd July 2007;

(b) the pension is paid to a person who was a member of the pension scheme on 5th April 2006;

(**1**) 2004 c. 12; subsections (3A) to (3C) of section 283 were inserted by paragraph 35 of Schedule 23 to the Finance Act 2006 (c. 25) and section 161(2) of that Act effectively deems them to have had effect from 6th April 2006.
(**2**) S.I. 2006/572; there are amendments, but none is relevant.
(**3**) Article 1(2) of S.I. 2006/572 defines "the 2004 Act" as meaning the Finance Act 2004.

(c) on 5th April 2006 the rules of the pension scheme included provision that there shall or may be a reduction in the rate of the pension ("the rate reduction provisions");

(d) the pension is paid at a rate required or permitted by the rate reduction provisions;

(e) the rate reduction provisions would not have prejudiced the approval of the pension scheme by the Inland Revenue or by Her Majesty's Revenue and Customs;

(f) the rate reduction provisions did not change in any material particular between 5th April 2006 and the date at which the pension became payable at the reduced rate.

(2) In paragraph 2(4) of Schedule 28 to the 2004 Act(**4**) insert after paragraph (d)—

"(da) a reduction in respect of which an order made under section 283(2) and (3C) makes transitional provision,".

(3) For the purposes of this article, whether something would have prejudiced the approval of the pension scheme by the Inland Revenue or by Her Majesty's Revenue and Customs is to be determined—

(a) in the case of an occupational pension scheme approved for the purposes of Chapter 1 of Part 14 of ICTA(**5**), in accordance with the publication IR 12(2001) (known as the Occupational Pension Schemes Practice Notes) published by the former Inland Revenue Pension Schemes Office on 23rd March 2001, and

(b) in the case of a personal pension scheme approved under Chapter 4 of Part 14 of ICTA, in accordance with the publication IR 76(2000) published by the former Inland Revenue Pension Schemes Office on 20th November 2000,

as each of those publications stood at 5th April 2006.".

4. In article 23, in the provisions of paragraph 34(2) of Schedule 36 to the Finance Act 2004(**6**) that are substituted by paragraph (2) (in certain cases; see article 21)—

(a) in sub-paragraph (5), omit the words from "relevant benefit accrual" to "2006"; and

(b) omit sub-paragraph (6).

Tony Cunningham
Steve McCabe
Two of the Lords Commissioners of Her Majesty's Treasury

17th November 2008

(**4**) Paragraphs (d) to (h) of paragraph 2(4) were inserted by paragraph 11(6) of Schedule 10 to the Finance Act 2005 (c. 7).

(**5**) Section 280(1) of the Finance Act 2004 defines "ICTA" as meaning the Income and Corporation Taxes Act 1988 (c. 1).

(**6**) Paragraph 34 was amended by paragraph 11(6) of Schedule 10 to the Finance Act 2005 and paragraph 25 of Schedule 23 to the Finance Act 2006.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Taxation of Pension Schemes (Transitional Provisions) Order 2006 ("the principal Order") in making further transitional provision in relation to the taxation of pension benefits.

Article 1 provides for the citation, commencement and effect of this Order. It will have retrospective effect in relation to pensions and lump sums paid since 6th April 2006. Section 283(3C) of the Finance Act 2004 allows an order made under subsection (2) or (3A) (both those powers are exercised here) to include provision having effect in relation to times before it is made if it does not increase any person's liability to tax.

Article 3 amends the principal Order by inserting a new article 5A. This modifies paragraph 2(4) of Schedule 28 to the Finance Act 2004 to allow a further case where payment of a reduced pension will qualify as a "scheme pension". The effect is that where the conditions are satisfied, which requires among other things that the pension was being paid before 3 July 2007, payment of the reduced pension will not give rise to a charge to tax.

Paragraph (3) of the new article 5A that is inserted in the principal Order refers to two publications. Both of these are available on the Revenue & Customs website at:

www.hmrc.gov.uk/pensionschemes/former-regime.htm

Article 4 amends article 23 of the principal Order. The changes mirror those made by paragraph 13 of Schedule 29 to the Finance Act 2008 (c. 9), which simplify the rules relating to the protection of tax-free lump sums paid to persons who had accrued rights to them before 6th April 2006 (the date upon which the simplified pensions taxation regime in the Finance Act 2004 came into effect). There is now only one rule, instead of two, with the presence or absence of "relevant benefit accrual" no longer relevant. The resulting rule is potentially more generous, because it allows for the possibility of an additional lump sum allowance (ALSA) to be taken into account in determining the "permitted maximum" up to which lump sums may be paid without incurring tax.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.