

2009 No. 1172

INCOME TAX

**The Taxation of Pension Schemes (Transitional Provisions)
(Amendment) Order 2009**

<i>Made</i> - - - -	<i>7th May 2009</i>
<i>Laid before the House of Commons</i>	<i>8th May 2009</i>
<i>Coming into force</i> - -	<i>1st June 2009</i>

The Treasury make the following Order in exercise of the power conferred by section 283(2) of the Finance Act 2004(a):

Citation and Commencement

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

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

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

3. After article 23 insert—

“Modification of trivial commutation lump sum rules

23A. Part 4 of the 2004 Act shall be modified as set out in articles 23B to 23D.

23B.—(1) For subsection (2)(a) of section 166 (lump sum rule)(c) substitute—

“(a) in the case of a pension commencement lump sum, either—

(i) immediately before the person becomes entitled to the pension in connection with which it is paid (or, if the person dies before becoming entitled to the pension in connection with which it was anticipated it would be paid, immediately before death), or

(ii) if the person becomes entitled to a trivial commutation lump sum within paragraph 7A of Schedule 29, immediately before becoming so entitled.”.

(a) 2004 c. 12. Section 283 was amended by paragraph 35 of Schedule 23 to the Finance Act 2006 (c. 25).

(b) S.I. 2006/572; there are amendments, but none is relevant.

(c) Article 1(2) of S.I. 2006/572 provides that a reference to a numbered section or Schedule (without more) is a reference to the section or Schedule bearing that number in Part 4, and that “Part 4” means Part 4 of the Finance Act 2004. Section 166(2)(a) of the Finance Act 2004 was amended by paragraph 9 of Schedule 20 to the Finance Act 2007 (c. 11).

23C.—(1) Schedule 29 (registered pension schemes: authorised lump sums - supplementary) is modified as follows.

(2) For paragraph (aa) of paragraph 1(1) (pension commencement lump sum)(a) substitute—

“(aa) the member becomes entitled to it either—

- (i) in connection with becoming entitled to a relevant pension (or dies after becoming entitled to it, but before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to it), or
- (ii) in connection with a trivial commutation lump sum within paragraph 7A.”.

(3) In paragraph 7(1) (trivial commutation lump sum), after the words “trivial commutation lump sum if” insert “it is a lump sum within paragraph 7A or”.

(4) After paragraph 7 insert—

“**7A.**—(1) A lump sum is within this paragraph if—

- (a) it does not exceed £2,000;
- (b) the member has reached the age of 60, but has not reached the age of 75;
- (c) it is paid when all or part of the member’s lifetime allowance is available;
- (d) except for any pension to which the member had an actual entitlement on or before 5th April 2006, it extinguishes the member’s entitlement to benefits under the pension scheme;
- (e) the PCLS conditions are satisfied.

(2) The PCLS conditions are that—

- (a) the lump sum is paid in connection with a pension commencement lump sum (“PCLS”);
- (b) that PCLS would not have been a PCLS had the modifications in paragraph 34 of Schedule 36 not applied;
- (c) the lump sum is paid no later than one month after the PCLS;
- (d) since the payment of the PCLS—
 - (i) no contribution in respect of the member has been made into the scheme,
 - (ii) no recognised transfer(b) in respect of the member has been made into or out of the scheme, and
 - (iii) no annuity or scheme pension(c) has been purchased by the application of the sums or assets held by the scheme for the benefit of the member. ”.

(5) After paragraph 9 insert—

“**9A.** If a lump sum is a trivial commutation lump sum by virtue of its being within paragraph 7A, the member shall be treated as not having any uncrystallised rights under an arrangement under the pension scheme immediately before it was paid.”.

23D.—(1) Schedule 36 (pension schemes etc: transitional provisions and savings) is modified as follows.

(2) For paragraph 31(3) (entitlement to lump sums exceeding 25% of uncrystallised rights) substitute—

(a) Paragraph (aa) of paragraph 1(1) of Schedule 29 was inserted by paragraph 11 of Schedule 20 to the Finance Act 2007.
(b) Section 169 of the Finance Act 2004 defines “recognised transfer”.
(c) Paragraph 2 of Schedule 28 to the Finance Act 2004 defines “scheme pension”.

“(3) The pension condition is that either—

- (a) the individual becomes entitled to all the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) on the same date; or
- (b) the individual is paid a trivial commutation lump sum within paragraph 7A of Schedule 29.”.

(3) In the sub-paragraph (7A) of paragraph 2 of Schedule 29 that is substituted by paragraph 34(2) (modification of Schedule 29)—

- (a) in the definition of “LS”, for “lump sum” substitute “pension commencement lump sum”; and
- (b) for the definition of “AC” substitute—

“AC is either—

 - (a) the amount crystallised on the individual becoming entitled to the pension in connection with which the lump sum is paid (see section 216) (but this is subject to sub-paragraphs (7AA)(a) and (7B)), or
 - (b) the amount of the trivial commutation lump sum within paragraph 7A of Schedule 29 in connection with which the lump sum is paid, and”.

Tony Cunningham
Dave Watts

7th May 2009

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) The text substituted by paragraph 34(2) of Schedule 36 by way of modification of paragraph 2 of Schedule 29 was amended by paragraph 25 of Schedule 23 to the Finance Act 2006 (c. 25) by the insertion of new sub-paragraph (7AA).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Taxation of Pension Schemes (Transitional Provisions) Order 2006 in order to make further transitional provision in relation to trivial commutation lump sums.

Article 3 inserts new articles 23A to 23D in the 2006 Order.

New article 23B modifies section 166 of the Finance Act 2004 so as to allow an additional category of lump sum to qualify under the “lump sum rule” and thus avoid the unauthorised payment charge which would otherwise arise. The new lump sums are those created by new article 23C.

New article 23C modifies Schedule 29 to the Finance Act 2004 by inserting a new paragraph 7A. The effect is to allow pension schemes to convert what are small pensions into lump sums without creating a charge to income tax for the scheme member. The maximum lump sum is £2,000. There are several conditions that must be satisfied, but this nevertheless represents an easing of the existing conditions relating to trivial commutations.

New article 23D makes consequential amendments to the existing transitional provisions in Schedule 36 to the Finance Act 2004.

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.

An Impact Assessment was produced to accompany the Budget announcement, made on 12th March 2008, of the Government’s intention to make these changes. This is available on the HMRC website at <http://www.hmrc.gov.uk/budget2008/widen-scope-authpyt.pdf>.

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