

**2009 No. 1311**

**INCOME TAX**

**The Pension Schemes (Reduction in Pension Rates)  
(Amendment) Regulations 2009**

<i>Made</i> - - - -	<i>28th May 2009</i>
<i>Laid before the House of Commons</i>	<i>28th May 2009</i>
<i>Coming into force</i> - -	<i>1st July 2009</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by paragraph 2(4)(h) and (8) of Schedule 28 to the Finance Act 2004(a), and now vested in them(b).

**Citation, commencement and effect**

1. These Regulations may be cited as the Pension Schemes (Reduction in Pension Rates) (Amendment) Regulations 2009 and—

- (a) shall come into force on 1st July 2009; and
- (b) have effect from 6th April 2006.

**Amendment of the Pension Schemes (Reduction in Pension Rates) Regulations 2006**

2. In the Pension Schemes (Reduction in Pension Rates) Regulations 2006(c), for regulation 3 substitute—

**“Reduction of pension – prescribed circumstances**

3. The circumstances described in regulations 4 and 5 are prescribed circumstances for the purpose of paragraph 2(4)(h) (scheme pension - other circumstances in which reduction does not breach condition in paragraph 2(3)).

**Reduction of pension under certain provisions**

4. The circumstances are that the pension is reduced under any of the following provisions—

- (a) section 138(2) of the Pensions Act 2004 (payment of scheme benefits);

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- (a) 2004 c. 12. Sub-paragraphs (4)(h) and (8) of paragraph 2 were inserted by paragraph 11(6) and (9) respectively of Schedule 10 to the Finance Act 2005 (c. 7) and sub-paragraph (8) was amended by paragraph 20(4) of Schedule 23 to the Finance Act 2006 (c. 25).
  - (b) 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(1) of that Act provides that a reference to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
  - (c) S.I. 2006/138.

- (b) article 122(2) of the Pensions (Northern Ireland) Order 2005 (payment of scheme benefits);
- (c) paragraph 14(3) or 15(3) of Schedule 5 to the Gender Recognition Act 2004 (guaranteed minimum pension etc).

#### **Reduction of pension during winding-up**

5.—(1) The circumstances are that—

- (a) an occupational pension scheme(a) reduces the pension while the scheme is being wound up; and
- (b) the reason for the reduction is that the sums or assets held for the purposes of the scheme are insufficient to pay the pension at the rate at which the pension was being paid at the relevant time.

(2) A reduction of pension is not within the circumstances described in this regulation if the reduction is part of avoidance arrangements.

(3) In this regulation, “avoidance arrangements” includes schemes, arrangements and understandings of any kind (whether or not legally enforceable) the main purpose, or one of the main purposes, of which is to increase the member’s entitlement to a lump sum on which there is no liability to income tax.”.

*Steve Lamey*  
*Mike Eland*

28th May 2009

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

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(a) Section 150(5) of the Finance Act 2004 defines “occupational pension scheme”.

## EXPLANATORY NOTE

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

These Regulations amend the Pension Schemes (Reduction in Pension Rates) Regulations 2006 (“the 2006 Regulations”) in order to prescribe further circumstances in which a pension may be reduced without infringing the condition in paragraph 2(3) of Schedule 28 to the Finance Act 2004 (“the 2004 Act”). If that condition is breached, the pension will not qualify as a “scheme pension” and this will give rise to certain tax charges.

Regulation 1 makes provision about citation, commencement and effect. The Regulations have retrospective effect, from 6th April 2006. That is the effective date of the pensions taxation simplification measures enacted by the 2004 Act (known as “A Day”), as well as the date of coming into force of the 2006 Regulations. Paragraph 2(8) of Schedule 28 to the 2004 Act provides that regulations made under paragraph 2(4)(h) (such as these) may include provision having effect in relation to times before they are made.

Regulation 2 substitutes three regulations for regulation 3 of the 2006 Regulations. The new regulation 3 will introduce regulations 4 and 5, which will describe the detail of what are to constitute prescribed circumstances. The new regulation 4 is essentially the existing regulation 3, but with some modifications of style that do not affect its substance. Regulation 5 is wholly new. It will apply when the pension scheme is being wound up and there are insufficient sums and assets in the fund to continue to pay the pension at the existing rate. Reductions in pension that are part of “avoidance arrangements”, as defined, are excluded.

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.

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STATUTORY INSTRUMENTS

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£4.00