STATUTORY INSTRUMENTS

2010 No. 529

INCOME TAX

The Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) (Amendment) Order 2010

Made - - - -	*2nd March 2010*
Laid before the House of Commons - - - -	*3rd March 2010*
Coming into force - -	*24th March 2010*

The Treasury make the following Order in exercise of the powers conferred by sections 282(A1) and 283(2) of the Finance Act 2004(**1**).

Citation, commencement and effect

1.—(1) This Order may be cited as the Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) (Amendment) Order 2010 and shall come into force on 24th March 2010.

(2) This Order shall have effect on and after 6th April 2006.

Amendment of the principal Order

2. The Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) Order 2006(**2**) is amended as follows.

Amendment of Article 10

3.—(1) Article 10 (the reorganisation condition) is amended as follows.

(2) For paragraph (2) substitute—

"(2) Condition A is that, during the period beginning with 10th December 2003 and ending with 5th April 2006—

(a) there was a transfer in a single transaction of all the sums and assets held for the purposes of, or representing the employee's accrued rights under, the original pension scheme to another pension scheme ("the new pension scheme"),

(**1**) 2004 c.12; section 282(A1) was inserted by section 75(1) of the Finance Act 2009 (c.10).
(**2**) S.I. 2006/573.

(b) there was a transfer in a single transaction of all the sums and assets held for the purposes of, or representing the employee's accrued, non contracted-out rights under the original pension scheme to the new pension scheme, or

(c) there were transfers of sums and assets held for the purposes of, or representing the employee's accrued rights under, the original pension scheme to the new pension scheme, and those transfers were made—

(i) in two separate transactions, and

(ii) in circumstances where paragraph (2A) applies.

(2A) This paragraph applies in circumstances where—

(a) the employee's accrued rights under the original pension scheme included contracted-out rights;

(b) all the sums and assets held for the purposes of, or representing accrued, non contracted-out rights under the original pension scheme were transferred to the new pension scheme in a single transaction; and

(c) the sums and assets held for the purposes of, or representing contracted-out rights under the original pension scheme were transferred in a single transaction to—

(i) the new pension scheme referred to in sub-paragraph (b) of this paragraph, or

(ii) another pension scheme that satisfies the new pension scheme condition (see article 11)."

(3) In paragraph (4)—

(a) omit the word "or" at the end of sub-paragraph (a),

(b) at the end of sub-paragraph (b) insert the word ", or", and

(c) after sub-paragraph (b) insert—

"(c) a former employee of a former sponsoring employer of the original pension scheme in a case where the relevant sums and assets are transferred at the same time as the relevant sums and assets held for another employee or former employee who falls within sub-paragraphs (a) or (b).".

(4) In paragraph (5) —

(a) after the definition of "active member" insert—

""appropriate personal pension scheme" means a scheme in respect of which an appropriate scheme certificate is in force under section 7 of the Pension Schemes Act 1993(**3**),

"contracted-out rights" means rights under or derived from an occupational pension scheme or an appropriate personal pension scheme which fell within the following categories—

(a) entitlement to payment of, or accrued rights to, guaranteed minimum pensions;

(b) protected rights; or

(c) section 9(2B) rights.";

(b) omit "and" at the end of the definition of "deferred member" and after that definition insert—

""guaranteed minimum pensions" has the meaning given by section 8 of the Pension Schemes Act 1993,

(**3**) 1993 c.48.

"occupational pension scheme" has the meaning given by section 1(1) of the Pension Schemes Act 1993,

"protected rights" has the meaning given by section 10 of the Pension Schemes Act 1993,

"relevant sums and assets", in relation to an employee or former employee, are the sums and assets held for the purposes of, or representing the accrued rights of the employee or former employee (as the case may be) under, the original pension scheme, and

"section 9(2B) rights" has the meaning given by regulation 1(2) of the Protected Rights

(Transfer Payment) Regulations 1996(**4**).".

Amendment of Article 14

4.—(1) Article 14 (the winding up condition) is amended as follows.

(2) In paragraph (1)—

(a) after the words "the winding up condition is met if" insert "the first or second condition is met.", and

(b) omit sub-paragraphs (a), (b) and (c).

(3) After paragraph (1) insert—

"(1A) The first condition is met if—

(a) a pension scheme ("the original pension scheme") is being wound up,

(b) the original pension scheme is within any of paragraphs (a) to (d) of paragraph 1(1) of Schedule 36 (deemed registration of existing schemes), and

(c) condition A, B or C is met as set out in paragraphs (2), (3) and (4).

(1B) The second condition is met if—

(a) a registered pension scheme which is not within any of the paragraphs 1(1)(a) to (d) of paragraph 1(1) of Schedule 36 is being wound up, and

(b) immediately before the commencement of the winding up, an individual member of that registered pension scheme has rights which are protected under paragraph 22 or 31(**5**) of Schedule 36 (or under both of those paragraphs).".

Amendment of Article 15

5.—(1) For article 15 (the annuity purchase condition) substitute—

"**15.**—(1) The annuity purchase condition is met if—

(a) condition A is met in the case of an annuity policy that has been assigned, or

(b) conditions A to C are met in the case of an annuity policy that has been purchased.

(2) Condition A is that all the rights of the member have been extinguished by—

(a) purchasing one annuity policy which satisfies the requirements prescribed under section 74(3)(c) of the Pensions Act 1995(**6**) ("the prescribed requirements"), or

(**4**) S.I.1996/1461.

(**5**) Paragraphs 22 and 31 of Schedule 36 to the Finance Act 2004 (c.12) were amended by paragraph 55 of Schedule 10 to the Finance Act 2005 (c.7) with effect from 6 April 2006.

(**6**) 1995 c .26.

(b) assigning one annuity policy which satisfies the prescribed requirements, to the member.

(3) Condition B is that the contract under which the annuity policy was purchased ("the annuity contract") does not authorise the making of any payment which would be an unauthorised payment within the meaning of Part 4 of the Finance Act 2004.

(4) Condition C is that the annuity contract does not provide for the immediate payment of benefits.

(5) If the annuity purchase condition is met, paragraph 1(1) of Schedule 36 shall be modified so as to provide in addition that—

(a) in the case of an annuity policy within paragraph (2)(a), the annuity policy is treated as having become a registered pension scheme ("the new pension scheme") on the date on which the contract was made, and

(b) in the case of an annuity policy within paragraph (2)(b), the annuity policy is treated as having become a registered pension scheme ("the new pension scheme") on the date the annuity policy was assigned.".

6.—(1) After Article 16 (membership of the new pension scheme) insert—

"**Stand-alone lump sums**

17.—(1) Paragraph (6) applies if condition A, B or C is met.

(2) Condition A is that—

(a) a pension scheme is being wound up ("the original pension scheme") and the winding up commenced before 6th April 2006,

(b) the stand-alone lump sum condition (see paragraph (5)) would have been met immediately before the commencement of the winding up, if the pension scheme had commenced winding up on or after 6th April 2006, and

(c) the annuity purchase condition set out in article 15 is met.

(3) Condition B is that—

(a) the original pension scheme is being wound up and the winding up commenced before 6th April 2006,

(b) an individual became a member of the original pension scheme before 6th April 2006 but after the commencement of the winding up,

(c) the stand-alone lump sum condition would have been met immediately before the commencement of the winding up, if the pension scheme had commenced winding up on or after 6th April 2006, and

(d) the annuity purchase condition set out in article 15 is met.

(4) Condition C is that—

(a) the original pension scheme is being wound up and the winding up commenced on or after 6th April 2006,

(b) the annuity purchase condition set out in article 15 is met, and

(c) the stand-alone lump sum condition is met.

(5) The stand-alone lump sum condition is that a member of the original pension scheme was entitled to be paid, a stand-alone lump sum which, if it had been paid would have been a stand-alone lump sum paid in circumstances where article 25B(4) (circumstance C) of

the Taxation of Pension Schemes (Transitional Provisions) Order 2006(**7**) ("the Transitional Provisions Order") applied.

(6) The new pension scheme (within the meaning of article 15(5)(a) or (b) as the case may be) is treated as the same pension scheme as the original pension scheme (so that accordingly, the new pension scheme may pay a stand-alone lump sum to the member in circumstances where Article 25B(4) (circumstance C) of the Transitional Provisions Order applies).".

Dave Watts
Tony Cunningham
Two of the Lords Commissioners of Her Majesty's Treasury

2 March 2010

(**7**) S.I. 2006/572, amended by S.I. 2006/2004.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) Order 2006 (S.I. 2006/573) ("the 2006 Order"). The 2006 Order extends the transitional protection contained in Schedule 36 of the Finance Act 2004 (c.12) ("FA 2004") to cover additional pension rights that were acquired before 6 April 2006 ("A-Day"). The pension rights continue to receive transitional protection where those rights are transferred away from the original scheme to another scheme in the context of a scheme reorganisation or winding up. The amendments contained in this Order extend this transitional protection.

Article 1 provides for citation commencement and effect. The Order has retrospective effect back to A-Day. Section 282(A1) of FA 2004 contains the power to make secondary legislation with retrospective effect if the provision does not increase any person's liability to tax. This Order does not increase any person's liability to tax.

Article 2 introduces the amendments.

Article 3 extends the definition of the "reorganisation condition" contained in article 10 of the 2006 Order. Protection is extended to cover situations where accrued contracted-out rights and accrued non contracted-out rights are transferred out of the original scheme in two separate transactions either to a new pension scheme or to a new pension scheme and another scheme. Consequential amendments are made to the definitions paragraph of the article.

Article 4 amends the winding up condition contained in article 14 of the 2006 Order. The condition is extended so as to provide transitional protection to a member's rights under certain registered pension schemes which were receiving transitional protection under paragraph 22 or 31 of Schedule 36 to FA 2004. Paragraph 22 covers pre A-Day rights to take benefits before the "normal minimum pension age" of 55 and paragraph 31 covers pre A-Day rights to take a tax-free retirement lump sum of more than the normal post A-Day limit of 25% of the total value of the retirement benefits coming into payment.

Article 5 amends the "annuity purchase condition" contained in article 15 of the 2006 Order. The amendments extend transitional protection to situations where the member's rights under a registered pension scheme have been transferred to an annuity policy which has been assigned to the member.

Article 6 inserts a new article 17 into the 2006 Order concerning "stand-alone lump sums" ("SALS"). SALS (lump sums that are paid out with no connected pension) are given transitional protection under the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572) (as amended by S.I. 2006/2004). Article 17 extends the transitional protection in certain wind-up situations where a member's right to a stand-alone lump sum is secured by purchasing or assigning an annuity policy to the member.

A full Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is anticipated.