

Draft Order laid before the House of Commons under section 282(1A) of the Finance Act 2004 for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2015 No. 0000

INCOME TAX

The Finance Act 2004 (Registered Pension Schemes and Annual Allowance Charge) (Amendment) Order 2015

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| <i>Made</i> | - | - | - | - | *** |
| <i>Coming into force</i> | - | - | | | *** |

The Treasury make the following Order in exercise of the powers conferred by sections 238A and 282(A1) of the Finance Act 2004⁽¹⁾:

A draft of this instrument has been laid before the House of Commons in accordance with section 282(1A) of that Act and approved by a resolution of that House.

Citation, commencement and effect

1. This Order may be cited as the Finance Act 2004 (Registered Pension Schemes and Annual Allowance Charge) (Amendment) Order 2015 and comes into force on the day after the day it is made.

2. The amendments made by the following articles have effect in relation to pension input periods ending in tax year 2011-12 and subsequent years—

- (a) article 12;
- (b) article 13(a) to (d);
- (c) article 15; and
- (d) article 16(a) to (d),

but see article 3.

3.—(1) Where the insertion by article 12(b) of subsection (5BC) of section 230 of the Finance Act 2004 (cash balance arrangements) (“the Act”) has effect in respect of times before the date on which this Order comes into force, it does so as if that subsection consisted only of the words from “In determining” to “disregarded”.

(1) [2004 c. 12](#). Section 282(A1) was inserted by section 75(1) of the Finance Act [2009 \(c. 10\)](#) and section 238A was inserted by paragraph 17 of Schedule 17 to the Finance Act [2011 \(c. 11\)](#).

(2) Where the insertion by article 15(b) of subsections (5B) to (5BE) of section 234 of the Act (defined benefits arrangements) has effect in respect of times before the date on which this Order comes into force, it does so as if—

- (a) subsection (5BD) were to consist only of the words from “In determining” to “disregarded”; and
- (b) subsection (5BE) were omitted.

(3) The amendments made by paragraphs (a) and (b) of article 13 do not have effect in relation to any transfer of sums or assets that occurs before the date on which this Order comes into force if any person’s liability to tax would be higher as a result of—

- (a) the application of those amendments in relation to that transfer; and
- (b) any application in relation to that transfer of the amendments made by article 13(c) and (d),

than it would have been if none of those amendments had effect.

(4) The insertion by article 13(e) of subsection (6D) of section 232 of the Act (cash balance arrangements: adjustments of closing value) does not have effect in relation to transfers of sums or assets that occur before the date on which this Order comes into force.

(5) The amendments made by paragraphs (a) and (b) of article 16 do not have effect in relation to any transfer of sums or assets that occurs before the date on which this Order comes into force if any person’s liability to tax would be higher as a result of—

- (a) the application of those amendments in relation to that transfer; and
- (b) any application in relation to that transfer of the amendments made by article 16(c) and (d),

than it would have been if none of those amendments had effect.

(6) The insertion by article 16(e) of subsection (5D) of section 236 of the Act (defined benefits arrangements: adjustments of closing value) does not have effect in relation to transfers of sums or assets that occur before the date on which this Order comes into force.

4. The amendment made by article 13(f) has effect in relation to benefit crystallisation events⁽²⁾ that occur on or after the date on which this Order comes into force.

5. The amendment made by article 13(g) has effect in relation to cases where the liability mentioned in section 232(8D) of the Act arose on or after the date on which this Order comes into force and results from a notice under section 237B given on or after that date.

6. The amendment made by article 14 has effect in relation to payments of a refund of excess contributions lump sum made in pension input periods ending in tax year 2014-15 and subsequent tax years.

7. The amendment made by article 16(f) has effect in relation to cases where the liability mentioned in section 236(8D) of the Act arose on or after the date on which this Order comes into force and results from a notice under section 237B given on or after that date.

8. The amendments made by article 17(a) have effect in relation to—

- (a) the individual becoming actually entitled to benefits, and
- (b) benefit crystallisation events occurring,

after the end of the period of 6 months beginning with the date on which this Order comes into force.

9. The amendment made by article 17(b) has effect in relation to transfers of sums or assets that occur on or after the date on which this Order comes into force.

(2) Benefit crystallisation events are set out in section 216 of the Finance Act 2004.

Amendments to the Finance Act 2004

10. Part 4 of the Act (pension schemes etc) is amended as follows.

Carry forward of unused annual allowance

11. After section 228A (carry forward of unused annual allowance)(3) insert—

“228B Carry forward: certain periods treated as pension input periods

(1) This section applies where the first pension input period for a relevant arrangement relating to an individual ends in the tax year 2011-12, 2012-13 or 2013-14.

(2) A period is a “carry forward period” for the purposes of this section if it—

- (a) is one of the 3 consecutive periods of 12 months immediately before the commencement date of the first pension input period, and
- (b) is a period in which the arrangement was in existence at any time.

(3) Any amount that would, if a carry forward period were a pension input period of the arrangement, have been unused annual allowance available to the individual for the tax year 2011-12, 2012-13 or 2013-14 is to be treated as unused annual allowance available to the individual for that tax year.

(4) In this section “relevant arrangement” means—

- (a) a cash balance arrangement,
- (b) a defined benefits arrangement, or
- (c) a hybrid arrangement the only benefits under which may be cash balance benefits or defined benefits.”.

Amendments to section 230

12. In section 230 (cash balance arrangements)—

(a) for subsection (4)(4) substitute—

“(4) The opening value of the individual’s rights under the arrangement—

- (a) where the pension input period is the first pension input period of the arrangement, is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits immediately before that pension input period (or is nil if no such amount would be available), or
- (b) in any other case, is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of the immediately preceding pension input period.”;

(b) for subsection (5B)(5) substitute—

“(5B) The pension input amount in respect of the cash balance arrangement is nil where subsection (5BA) or (5BB) applies and the value of the relevant rights of the individual under the arrangement does not increase during the pension input period by more than—

(3) Section 228A was inserted by paragraph 5 of Schedule 17 to the Finance Act 2011.

(4) Subsection (4) was amended by paragraph 7 of Schedule 17 to the Finance Act 2011.

(5) Subsections (5B) and (5C) were inserted by paragraph 7 of Schedule 17 to the Finance Act 2011.

- (a) the relevant percentage, plus
- (b) the relevant statutory increase percentage.
- (5BA) This subsection applies where the individual—
 - (a) is, throughout the pension input period, a deferred member of the pension scheme that the arrangement is under,
 - (b) is such a deferred member for part of the pension input period and a pensioner member for the rest of it, or
 - (c) would meet the condition in paragraph (a) or (b) if the arrangement were the only arrangement under the pension scheme relating to that individual.
- (5BB) This subsection applies where—
 - (a) during the pension input period all the sums or assets held for the purposes of, or representing accrued rights under, the arrangement are transferred so as to become held for the purposes of, or to represent rights under—
 - (i) a registered pension scheme, or
 - (ii) a qualifying recognised overseas pension scheme,
 in connection with the individual,
 - (b) the individual is a deferred member of the pension scheme that the arrangement is under from the beginning of the pension input period until the transfer (or would be if the arrangement were the only arrangement under the pension scheme relating to that individual), and
 - (c) rights do not accrue under the arrangement to or in respect of the individual during so much of the pension input period as falls after the transfer.
- (5BC) In determining for the purposes of this section whether or not a member of a pension scheme is a deferred member (see particularly the definition of “active member” in section 151(2)), arrangements made under the pension scheme for benefits to accrue, as a consequence of (and immediately after) a relevant inward transfer (as defined in section 232(6)) to or in respect of that member, are to be disregarded—
 - (a) if condition B in section 232(6A) is met in relation to the accrual of benefits under the arrangements, or
 - (b) so far as the accrual of benefits under the arrangements is to be an increase in the rights of the individual which falls to be subtracted by virtue of section 232(6A) (b).”; and
- (c) in subsection (5C)—
 - (i) for the definition of “the relevant percentage” substitute—
 - ““the relevant percentage” means—
 - (a) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an annual rate which is an RPI-related rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 6th April 2012, that rate,
 - (b) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an annual rate, other than an RPI-related rate, specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 14th October 2010, that rate, and

- (c) in a case not falling within paragraph (a) or (b), the percentage by which the consumer prices index for a month falling within the pension input period and nominated by the scheme administrator is higher than it was for the same month in the previous period of 12 months (or nil per cent if it is not higher);”;
- (ii) after the definition of “the relevant rights of the individual” insert—

““the relevant statutory increase percentage” in relation to a pension input period means the percentage increase in the value of the individual’s rights under the arrangement during the pension input period so far as it is attributable solely to one or more of the following—

 - (a) an increase in accordance with section 15 of the Pension Schemes Act 1993⁽⁶⁾ or section 11 of the Pension Schemes (Northern Ireland) Act 1993⁽⁷⁾ (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed);
 - (b) a revaluation in accordance with section 16⁽⁸⁾ of the Pension Schemes Act 1993 or section 12⁽⁹⁾ of the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of earning factors);
 - (c) a revaluation in accordance with Chapter 2 of Part 4 of the Pension Schemes Act 1993⁽¹⁰⁾ or the Pension Schemes (Northern Ireland) Act 1993⁽¹¹⁾ (early leavers: revaluation of accrued benefits);
 - (d) a revaluation in accordance with Chapter 3 of Part 4 of the Pension Schemes Act 1993⁽¹²⁾ or the Pension Schemes (Northern Ireland) Act 1993⁽¹³⁾ (early leavers: protection of increases in guaranteed minimum pensions);
 - (e) the application of section 67 of the Equality Act 2010⁽¹⁴⁾ (sex equality rule for occupational pension schemes);

“RPI-related rate” (in the definition of “the relevant percentage”) means—

 - (a) a rate produced solely by movement in the retail prices index, or
 - (b) a rate which (however expressed) is the lower of such a rate and a percentage figure;”.

⁽⁶⁾ 1993 c. 48.

⁽⁷⁾ 1993 c. 49.

⁽⁸⁾ Section 16 was amended by paragraph 28 of Schedule 5 to the Pensions Act 1995 (c. 26) and by paragraph 4 of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c. 30).

⁽⁹⁾ Section 12 was amended by paragraph 21 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213) (N.I.22), and by paragraph 3 of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147) (N.I.11).

⁽¹⁰⁾ Chapter 2 was amended by paragraph 62 of Schedule 5 and Part 3 of Schedule 7 to the Pensions Act 1995, by paragraphs 28, 31 and 32 of Schedule 12 to the Welfare Reform and Pensions Act 1999, by section 281 of the Pensions Act 2004 (c. 35), by section 19 of the Pensions Act 2011 (c. 19) and by paragraphs 18 and 25 of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 (c. 30).

⁽¹¹⁾ Chapter 2 was amended by section 20 of the Pensions Act (Northern Ireland) 2012 (c. 3), by paragraph 52 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213) (N.I.22), by paragraphs 20 and 21 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147) (N.I.11), by article 258 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255) (N.I.1) and by paragraph 13 of Schedule 1 to the Civil Partnership (Benefits and Payments) (Consequential, etc. Provisions) Order (Northern Ireland) 2005 (S.I. 2005/434).

⁽¹²⁾ Chapter 3 was amended by paragraph 28 of Schedule 4 to the Pensions Act 2007 (c. 22) and paragraphs 18 to 21 of Schedule 1 to the Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050).

⁽¹³⁾ Chapter 3 was amended by paragraphs 18 to 21 of Schedule 1 to the Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order (Northern Ireland) 2005 (S.I. 2005/433) and by paragraph 28 of Schedule 4 to the Pensions Act (Northern Ireland) 2008 (c. 1).

⁽¹⁴⁾ 2010 c. 15.

Amendments to section 232

13. In section 232 (cash balance arrangements: adjustments of closing value)—

(a) in subsection (4)(15)—

- (i) for the words from “If” to “by reason of” substitute “In subsection (4A) “relevant outward transfer” means”; and
- (ii) omit “the amount of the reduction is to be added”;

(b) after subsection (4) insert—

“(4A) If there is a relevant outward transfer during the pension input period, then—

- (a) if condition A is met, the amount of the reduction specified in paragraph (b) of that condition is to be added;
- (b) if condition A is not met but the rights of the individual under the arrangement have been reduced by reason of the relevant outward transfer, the amount of that reduction is to be added.

Condition A is that—

- (a) the relevant outward transfer (“the transfer”) takes place within a block transfer,
- (b) the rights of the individual under the arrangement have been reduced, and the rights of the individual under the pension scheme mentioned in subsection (4) have been increased, as a consequence (whether direct or indirect) of the transfer, and
- (c) the amount of that reduction is equal (or virtually equal) to the amount of that increase.”;

(c) in subsection (6)(16)—

- (i) for the words from “If” to “by reason of” substitute “In subsection (6A) “relevant inward transfer” means”; and
- (ii) omit “, the amount of the reduction is to be subtracted”;

(d) after subsection (6) insert—

“(6A) If there is a relevant inward transfer during the pension input period, then—

- (a) if condition B is met, the amount of the increase specified in paragraph (b) of that condition is to be subtracted;
- (b) if condition B is not met but the rights of the individual under arrangement have been increased by reason of the relevant inward transfer, the amount of that increase is to be subtracted.

Condition B is that—

- (a) the relevant inward transfer (“the transfer”) takes place within a block transfer,
- (b) the rights of the individual under the arrangement have been increased, and the rights of the individual under the pension scheme mentioned in subsection (6) have been reduced, as a consequence (whether direct or indirect) of the transfer, and
- (c) the amount of that increase is equal (or virtually equal) to the amount of that reduction.

(15) Subsection (4) was amended by paragraph 9 of Schedule 17 to the Finance Act 2011 (c. 11).

(16) Subsection (6) was amended by paragraph 9 of Schedule 17 to the Finance Act 2011.

(6B) For the purposes of Condition A in subsection (4A) and Condition B in subsection (6A)—

- (a) normal actuarial practice must be used when determining and comparing the amount of the reduction, and the amount of the increase, in rights,
- (b) the amount of a reduction or increase in rights under the arrangement is the difference between the amount of those rights under the arrangement immediately before the transfer and immediately after the transfer, and
- (c) the amount of an increase or reduction in rights under a pension scheme is the difference between the amount of those rights under the pension scheme immediately before the transfer and immediately after the transfer.

(6C) In subsections (4A) and (6A)—

“block transfer” means a transfer which involves the transfer in a single transaction of all the sums or assets held for the purposes of, or representing accrued rights under, the arrangements under a pension scheme which relate to the individual and at least one other member of that pension scheme so as to become held for the purposes of, or to represent rights under, any pension scheme.”;

(e) after subsection (6C) (as inserted by sub-paragraph (d)) insert—

“(6D) For the purposes of subsections (4A) and (6A), the rights of the individual under the arrangement have been reduced or increased, as the case may be, “by reason of” a transfer of sums or assets only where that reduction or increase is solely attributable to the value of those sums or assets.”;

(f) in subsection (8B)(17) omit paragraphs (a) and (b); and

(g) in subsection (8D) for “in a case where” to the end substitute—

“in a case where—

- (a) the individual becomes actually entitled to all of the individual’s benefits under the pension scheme or benefit crystallisation event 5, 5A or 5B occurs in relation to the individual and the pension scheme, and
- (b) the adjustment takes place after the individual becomes so entitled or the benefit crystallisation event occurs.”.

Amendment to section 233

14. In section 233 (other money purchase arrangements)(18) after subsection (3) insert—

“(4) References to “contributions” in subsection (1) do not include any amount which is a refund of excess contributions lump sum (see paragraph 6 of Schedule 29)(19).”.

Amendments to section 234

15. In section 234 (defined benefits arrangements)—

(a) in subsection (4)(20), for the words from “where—” to the end substitute—

“where—

PB is—

(17) Subsections (8B) and (8D) were inserted by paragraph 9 of Schedule 17 to the Finance Act 2011.

(18) Section 233 was amended by section 52 of the Finance Act 2013 (c. 29).

(19) Paragraph 6 was amended by paragraph 28 of Schedule 23 to the Finance Act 2006 (c. 25).

(20) Subsection 4 was amended by paragraph 10 of Schedule 17 to the Finance Act 2011.

- (a) if the pension input period is the first pension input period of the arrangement, the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became entitled to payment of it immediately before that pension input period (or is nil if no such annual rate would be so payable), or
- (b) in any other case, the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of the immediately preceding pension input period, and
 LSB is—
 - (a) if the pension input period is the first pension input period of the arrangement, the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it immediately before that pension input period (or is nil if there is no such lump sum to which the individual would be so entitled), or
 - (b) in any other case, the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at the end of the immediately preceding pension input period.”;
- (b) for subsection (5B)(21) substitute—

“(5B) The pension input amount in respect of the arrangement is nil where—

 - (a) subsection (5BA) or (5BB) applies and the value of the relevant rights of the individual under the arrangement does not increase during the pension input period by more than—
 - (i) the relevant percentage, plus
 - (ii) the relevant statutory increase percentage, or
 - (b) subsection (5BC) applies.

(5BA) This subsection applies where the individual—

 - (a) is, throughout the pension input period, a deferred member of the pension scheme that the arrangement is under,
 - (b) is such a deferred member for part of the pension input period and a pensioner member for the rest of it, or
 - (c) would meet the condition in paragraph (a) or (b) if the arrangement were the only arrangement under the pension scheme relating to the individual.

(5BB) This subsection applies where—

 - (a) during the pension input period there is a transfer of all the sums or assets held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under—
 - (i) a registered pension scheme, or
 - (ii) a qualifying recognised overseas pension scheme,
 in connection with the individual,
 - (b) the individual is a deferred member of the pension scheme that the arrangement is under from the beginning of the pension input period until the transfer (or

would be if the arrangement were the only arrangement under the pension scheme relating to that individual), and

- (c) rights do not accrue under the arrangement to or in respect of the individual during so much of the pension input period as falls after the transfer.

(5BC) This subsection applies where—

- (a) the arrangement (“the annuity arrangement”) is a defined benefits arrangement under an annuity contract which is treated as a registered pension scheme under section 153(8)(22),
- (b) throughout the pension input period the annuity arrangement (or a predecessor arrangement) includes provision for the relevant rights of the individual to increase at an annual rate (“the annuity rate”) which—
 - (i) was specified in the contract (or in the rules of a predecessor registered pension scheme) on 14 October 2010, or
 - (ii) is the CPI percentage or the RPI percentage, and
- (c) the value of the relevant rights of the individual does not increase during the pension input period at an annual rate greater than the annuity rate plus the relevant statutory increase percentage.

(5BD) In determining for the purposes of this section whether or not a member of a pension scheme is a deferred member (see particularly the definition of “active member” in section 151(2)), arrangements made under the pension scheme for benefits to accrue, as a consequence of (and immediately after) a relevant inward transfer (as defined in section 236(5)) to or in respect of that member, are to be disregarded—

- (a) if condition B in section 236(5A) is met in relation to the accrual of benefits under the arrangements, or
- (b) so far as the accrual of benefits under the arrangements is to be a subtractable increase in the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the defined benefits arrangement.

(5BE) In subsection (5BD) “subtractable increase” means an increase which falls to be subtracted from PE or LSE by virtue of section 236(5A)(b).”; and

(c) in subsection (5C)—

- (i) before the definition of “guaranteed minimum pension” insert—

““CPI percentage” means the percentage mentioned in paragraph (c) of the definition of “the relevant percentage” (see below)”;

- (ii) for the definition of “the relevant percentage” substitute —

““the relevant percentage” means—

- (a) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an annual rate, which is an RPI-related rate, specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 6 April 2012, that rate,
- (b) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an annual rate, other than an RPI-related rate, specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 14 October 2010, that rate, and

- (c) in a case not falling within paragraph (a) or (b), the percentage by which the consumer prices index for a month falling within the pension input period and nominated by the scheme administrator is higher than it was for the same month in the previous period of 12 months (or nil per cent if it is not higher);”; and
- (iii) after the definition of “the relevant rights of the individual” insert—
 - ““the relevant statutory increase percentage” in relation to a pension input period means the percentage increase in the value of the individual’s rights under the arrangement during the pension input period so far as it is attributable solely to one or more of the following—
 - (a) an increase in accordance with section 15 of the Pension Schemes Act 1993 or section 11 of the Pension Schemes (Northern Ireland) Act 1993 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed);
 - (b) a revaluation in accordance with section 16 of the Pension Schemes Act 1993 or section 12 of the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of earning factors);
 - (c) a revaluation in accordance with Chapter 2 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of accrued benefits);
 - (d) a revaluation in accordance with Chapter 3 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: protection of increases in guaranteed minimum pensions);
 - (e) the application of section 67 of the Equality Act 2010 (sex equality rule for occupational pension schemes);
 - “RPI percentage” means the percentage by which the retail prices index for a month falling within the pension input period and nominated by the scheme administrator is higher than it was for the same month in the previous period of 12 months (or nil per cent if it is not higher);
 - “RPI-related rate” (in the definition of “the relevant percentage”) means—
 - (a) a rate produced solely by movement in the retail prices index, or
 - (b) a rate which (however expressed) is the lower of such a rate and a percentage figure;”.

Amendments to section 236

16. In section 236 (defined benefits arrangements: adjustments of closing value)—

- (a) in subsection (4)(23)—
 - (i) for the words from “If” to “by reason of” substitute “In subsection (4A) “relevant outward transfer means”; and
 - (ii) omit “the amount of the reduction is to be added to PE or LSE”;
- (b) after subsection (4) insert—
 - “(4A) If there is a relevant outward transfer during the pension input period, then—
 - (a) if condition A is met, and there has been a reduction in the annual rate of the pension or a reduction in the amount of the lump sum to which the individual

(23) Subsections (4) and (5) were inserted by paragraph 12 of Schedule 17 to the Finance Act 2011.

would be entitled under the arrangement, as a consequence (whether direct or indirect) of the relevant outward transfer, the amount of that reduction is to be added to PE or LSE, so far as that amount is reflected in the reduction in the value of benefits mentioned in paragraph (b) of condition A;

- (b) if condition A is not met but the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been reduced by reason of the relevant outward transfer, the amount of that reduction is to be added to PE or LSE.

Condition A is that—

- (a) the relevant outward transfer (“the transfer”) takes place within a block transfer,
 - (b) the value of the benefits to be paid to or in respect of the individual under the arrangement has been reduced and the value of the benefits to be paid to or in respect of the individual under the pension scheme mentioned in subsection (4) has been increased, as a consequence (whether direct or indirect) of the transfer,
 - (c) the amount of that reduction is equal (or virtually equal) to the amount of that increase, and
 - (d) the transfer is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.”;
- (c) in subsection (5)—
- (i) for the words from “If” to “by reason of” substitute “In subsection (5A) “relevant inward transfer means”; and
 - (ii) omit “the amount of the increase is to be subtracted from PE or LSE”;
- (d) after subsection (5) insert—
- “(5A) If there is a relevant inward transfer during the pension input period, then—
- (a) if condition B is met, and there has been an increase in the annual rate of the pension or an increase in the amount of the lump sum to which the individual would be entitled under the arrangement, as a consequence (whether direct or indirect) of the relevant inward transfer, the amount of that increase is to be subtracted from PE or LSE, so far as that amount is reflected in the increase in the value of benefits mentioned in paragraph (b) of condition B;
 - (b) if condition B is not met but the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been increased by reason of the relevant inward transfer, the amount of that increase is to be subtracted from PE or LSE.

Condition B is that-

- (a) the relevant inward transfer (“the transfer”) took place within a block transfer,
 - (b) the value of the benefits to be paid to or in respect of the individual under the arrangement has been increased, and the value of the benefits to be paid to or in respect of the individual under the pension scheme mentioned in subsection (5) has been reduced, as a consequence (whether direct or indirect) of the transfer,
 - (c) the amount of that increase in value is equal (or virtually equal) to the amount of that reduction, and
 - (d) the transfer is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.
- (5B) For the purposes of Condition A in subsection (4A) and Condition B in subsection (5A)—

- (a) normal actuarial practice must be used when determining and comparing the amount of a reduction, and the amount of an increase, in the value of benefits to be paid to or in respect of the individual,
 - (b) the amount of a reduction or increase in the value of benefits to be paid to or in respect of the individual under the arrangement is the difference between the value of those benefits under that arrangement immediately before the transfer and immediately after the transfer, and
 - (c) the amount of an increase or reduction in the value of benefits to be paid to or in respect of an individual under a pension scheme is the difference between the value of those benefits under that pension scheme immediately before and immediately after the transfer.
- (5C) In subsections (4A) and (5A)—
- “block transfer” means a transfer which involves the transfer in a single transaction of all the sums or assets held for the purposes of, or representing accrued rights under, the arrangements under a pension scheme which relate to the individual and at least one other member of that pension scheme so as to become held for the purposes of, or to represent rights under, any pension scheme.”;
- (e) after subsection (5C) (as inserted by sub-paragraph (d)) insert—
- “(5D) For the purposes of subsections (4A) and (5A), the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been reduced or increased, as the case may be, “by reason of” a transfer of sums or assets only where that reduction or increase is solely attributable to the value of those sums or assets.”; and
- (f) in subsection (8D) for “in a case where” to the end substitute—
- “in a case where—
- (a) the individual becomes actually entitled to all of the individual’s benefits under the pension scheme or benefit crystallisation event 5, 5A or 5B occurs in relation to the individual and the pension scheme, and
 - (b) the adjustment takes place after the individual becomes so entitled or the benefit crystallisation event occurs.”.

Amendments to section 237B

17. In section 237B (liability of scheme administrator)(24)—

- (a) in subsection (6)—
 - (i) for “In a case in which” substitute “A notice may not be given after”;
 - (ii) omit “in the tax year” (twice); and
 - (iii) omit “, the notice must be given” to the end; and
- (b) in subsection (9) for “the pension scheme” substitute—

“arrangements relating to the individual under the pension scheme”.

(24) Section 237B was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 and amended by paragraphs 119 and 129 of Schedule 46 to the Finance Act 2013 (c. 29).

Date

name
name
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to provisions about the annual allowance charge contained in Part 4 of the Finance Act 2004 (c. 12) (“the Act”).

Articles 1 to 9 provide for when this Order comes into force and the times and events from which provisions of this Order take effect. The amendments mentioned in articles 2 and 6 apply in relation to past times. When read with article 3 they do not increase any person’s liability to tax. This accords with section 282(A1) of the Act which provides that an Order that is made under Part 4 of the Act (which includes section 238A under which this Order is made) may include provision having effect in relation to times before the Order is made, if that provision does not increase any person’s liability to tax.

Article 11 inserts a new section into the Act. It concerns where a first pension input period (“PIP”) ends in tax year 2011-12, 2012-13 or 2013-14. The PIP is the time period used for calculating the annual allowance charge. The new section has the effect that unused annual allowance is to be available to be carried forward for those tax years. This applies in relation to so called defined benefits, cash balance and some hybrid pension arrangements.

Articles 12 and 15 make amendments which affect the calculation of the “pension input amount” (“PIA”). They apply to a cash balance or defined benefits pension arrangement. PIA is the increase in the value of the individual’s pension rights which is relevant for determining the annual allowance charge. When calculating the PIA for the first PIP, the opening balance is based on benefits that are available under the arrangement just before the PIP (see articles 12(a) and 15(a)). A “deferred member” – a member who only has accrued rights - will not stop being a deferred member merely because additional rights are granted to that member under a new pension scheme in respect of funds transferred from their old pension scheme. That transfer must however meet conditions in new sections 230(5BC) and 234(5BD)). In addition, articles 12 and 15 make provision for more situations where a deferred member’s PIA will be nil.

Articles 13 and 16 make amendments about a “block transfer”, meaning a transfer between schemes or arrangements in respect of at least two persons. Those amendments apply where a reduction in the value of an individual’s benefits in the transferring scheme is equal to an increase in the value of the individual’s benefits in the receiving scheme. The reduction and increase must be in consequence of the transfer. The Order specifies what is then to be added in the transferring scheme, and subtracted in the receiving scheme, for PIA purposes. Articles 13 and 16 also deal with individual transfers by setting out definitions which ensure that only amounts which are solely attributable to the value of transferred sums or assets will count for PIA purposes (see new sections 232(6D) and 236(5D)).

Article 13(f) makes amendments in relation to a cash balance arrangement. The amendments determine what is to be added to the closing balance for PIA purposes. They apply where the individual becomes entitled to a pension because of a relevant “benefit crystallisation event” (“BCE”) such as retirement. Articles 13(g) and 16(f) make amendments relating to an adjustment to the individual’s pension rights where the individual has given notice under section 237B of the Act so that the scheme and the individual are jointly liable to pay that individual’s annual allowance charge (“scheme pays notice”). The amendment applies to cash balance and defined benefits arrangements. It ensures that, if the adjustment occurs before the individual takes all their benefits (or if BCE 5, 5A or 5B occurs), an amount is to be added to the closing balance for PIA purposes.

Article 14 amends section 233 of the Act in relation to a “refund of excess contributions lump sum” (see paragraph 6 of Schedule 29 to the Act). That amendment ensures that the sum will not be included in PIA. It applies to a money purchase arrangement other than a cash balance arrangement. Article 17(a) makes amendments which prevent an individual giving a scheme pays notice after that individual has taken all their pension benefits (or BCE 5, 5A or 5B occurs). Article 17(b) ensures that an individual can give a scheme pays notice even where there is a transfer of all the individual’s sums or assets into that scheme during a PIP.

A Tax Information and Impact Note (“TIIN”) covering this instrument was published on 3rd March 2011. It remains an accurate summary of the impacts that apply to this instrument and is available on the Government website at <https://www.gov.uk>.