

2006 No. 3261

INCOME TAX

The Registered Pension Schemes (Enhanced Lifetime Allowance) (Amendment) Regulations 2006

<i>Made</i>	- - - -	<i>6th December 2006</i>
<i>Laid before the House of Commons</i>		<i>7th December 2006</i>
<i>Coming into force</i>	- -	<i>28th December 2006</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred on them by paragraphs 11A(1)(c) and 15A(1)(b) of Schedule 36 to the Finance Act 2004(a), and in exercise of the powers conferred by sections 220(5), 221(6), 224(9), 251(1) and (6) and 256 of, and paragraphs 7(1)(b), 12(1) and 18(6) of Schedule 36 to the Finance Act 2004(b), and section 113(1) of the Taxes Management Act 1970(c), and now exercisable by them(d).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Registered Pension Schemes (Enhanced Lifetime Allowance) (Amendment) Regulations 2006 and shall come into force on 28th December 2006.

(2) In these Regulations “the principal Regulations” means the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(e).

Amendment of the principal Regulations: general

2. The principal Regulations are amended as follows.

Amendment of regulation 2 of the principal Regulations

3.—(1) In regulation 2 (interpretation) amend paragraph (1) as follows.

(2) In the definition of “the closing date” for “4(4),” substitute “3A(4), 4(4), 4A(4),”.

(3) In the definition of “notification” for “4(3),” substitute “3A(3), 4(3), 4A(3),”.

(4) Insert the following definitions at the end—

(a) 2004 c. 12; paragraphs 11A and 15A of Schedule 36 were respectively inserted by paragraphs 38 and 41 of Schedule 23 to the Finance Act 2006 (c. 25).

(b) Section 256 was amended by paragraph 42 of Schedule 23 to the Finance Act 2006; section 251(6) is recited for the meaning given to the word “prescribed”.

(c) 1970 c. 9.

(d) 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 of that Act provides that in so far as it is appropriate in consequence of section 5 a reference in an enactment, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(e) S.I. 2006/131.

““relevant lump sum death benefit” shall be construed in accordance with paragraph 16 of Schedule 32 to the Finance Act 2004;

“the specified regulations” means regulations 3, 4, 5, 6, 7 and 8 of these Regulations.”.

Insertion of regulation 3A in the principal Regulations

4. After regulation 3 insert—

“Reliance on paragraph 11A of Schedule 36 (lifetime allowance enhancement: “primary protection”: taking account of death benefit)

3A.—(1) This regulation applies if a person is paid a relevant lump sum death benefit in respect of an individual in the circumstances specified in paragraphs (a) and (b) of paragraph 11A(1) of Schedule 36.

(2) That person may give notice of intention to rely on paragraph 11A of Schedule 36 (“paragraph 11A”).

(3) If that person intends to rely on paragraph 11A, that person must give a notification to the Revenue and Customs on or before the closing date.

(4) The closing date is the date specified by paragraph (5); but if paragraph (6) applies and specifies a later closing date, the closing date is the date specified in paragraph (6).

(5) The date specified by this paragraph is the date determined in accordance with the following rules.

First rule: Find the 31st January following the tax year in which the relevant lump sum death benefit is paid.

Second rule: Find the 31st January five years after that.

The date so found is the closing date.

(6) This paragraph applies if an assessment to income tax is made under section 217(2) on a person to whom a lump sum death benefit has been paid; and, if this paragraph applies, the closing date specified by this paragraph is 5th April in the tax year following the tax year in which the assessment is made.”.

Insertion of regulation 4A in the principal Regulations

5. After regulation 4 insert—

“Reliance on paragraph 15A of Schedule 36 (lifetime allowances: “enhanced protection”: taking account of death benefit)

4A.—(1) This regulation applies if a person is paid a relevant lump sum death benefit in respect of an individual under an arrangement in the circumstances specified in paragraph 15A(1)(a) of Schedule 36.

(2) That person may give notice of intention to rely on paragraph 15A of Schedule 36 (“paragraph 15A”).

(3) If that person intends to rely on paragraph 15A, that person must give a notification to the Revenue and Customs on or before the closing date.

(4) The closing date is the date specified by paragraph (5); but if paragraph (6) applies and specifies a later closing date, the closing date is the date specified in paragraph (6).

(5) The date specified by this paragraph is the date determined in accordance with the following rules.

First rule: Find the 31st January following the tax year in which the relevant lump sum death benefit is paid.

Second rule: Find the 31st January five years after that.

The date so found is the closing date.

(6) This paragraph applies if an assessment to income tax is made under section 217(2) on a person to whom a lump sum death benefit has been paid; and, if this paragraph applies, the closing date specified by this paragraph is 5th April in the tax year following the tax year in which the assessment is made.”.

Substitution of regulation 10 of the principal Regulations

6. For regulation 10 substitute—

“Form of notification: the specified regulations

10.—(1) This regulation applies if a notification is given under one of the specified regulations.

(2) The notification must be in a form prescribed by the Commissioners for Her Majesty’s Revenue and Customs.

(3) The individual must sign and date the notification.

Form of notification: regulations 3A and 4A

10A.—(1) This regulation applies if a notification is given under regulation 3A or 4A.

(2) The notification must contain the following information—

- (a) the name and address of the person giving the notification;
- (b) the name of the deceased member in respect of whose death the person has received the relevant lump sum death benefit;
- (c) the name of the registered pension scheme under which that person was entitled to receive that relevant lump sum death benefit;
- (d) the name and address of the scheme administrator by whom the relevant lump sum death benefit was paid;
- (e) the amount of the relevant lump sum death benefit the person received; and
- (f) the date on which the relevant lump sum death benefit was paid.

(3) The person who gives the notification must sign and date it.”.

Substitution of regulation 13 of the principal Regulations

7. For regulation 13 substitute—

“Procedure on giving of notification: the specified provisions

13.—(1) If an individual gives a notification to the Revenue and Customs under one of the specified provisions, and there are no obvious errors or omissions in the notification (whether errors of principle, arithmetical mistakes or otherwise), the Revenue and Customs must issue a certificate to the individual.

(2) If an individual gives a notification to the Revenue and Customs under one of the specified provisions, and there are obvious errors or omissions in the notification (whether errors of principle, arithmetical mistakes or otherwise), the Revenue and Customs must return the notification to the individual.

Procedure on giving of notification: regulations 3A and 4A

13A.—(1) If a person gives a notification to the Revenue and Customs under regulation 3A or 4A, and there are no obvious errors or omissions in the notification (whether errors of principle, arithmetical mistakes or otherwise), the Revenue and Customs—

- (a) must notify that person, in writing, that there are no obvious errors or omissions in the notification, and
 - (b) confirm that that person has given a valid notification of intention to rely on paragraph 11A or 15A (as the case may be).
- (2) If a person gives a notification to the Revenue and Customs, and there are obvious errors or omissions in the notification (whether errors of principle, arithmetical mistakes or otherwise), the Revenue and Customs must return the notification to the individual.”.

Amendment of regulation 14 of the principal Regulations

8. In regulation 14 (appeal against refusal to issue certificate), in paragraph (1), for “the notification” substitute “a notification given under one of the specified regulations”.

Insertion of regulation 14A in the principal Regulations

9. After regulation 14 insert—

“Appeal against refusal to confirm validity of notification

14A.—(1) This regulation applies if there is a dispute as to whether the Revenue and Customs are entitled to take the view that there are obvious errors or omissions in a notification given under regulation 3A or 4A (whether errors of principle, arithmetical mistakes or otherwise).

(2) The person may require the Revenue and Customs to give notice of their decision to refuse to confirm the validity of the notification.

(3) If the Revenue and Customs give notice of their decision to refuse to confirm the validity of the notification, the person may appeal to the Commissioners.

(4) The appeal is to the General Commissioners, except that the person may elect (in accordance with section 46(1) of the Taxes Management Act 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.

(5) The notice of appeal must be given to the Revenue and Customs within 30 days after the day on which notice of their decision is given to the person.

(6) On an appeal, the Commissioners shall determine whether the Revenue and Customs were entitled to take the view that there were obvious errors or omissions in the notification (whether errors of principle, arithmetical mistakes or otherwise).

(7) If the Commissioners allow the appeal, they may direct the Revenue and Customs to confirm the validity of the notification with effect from a date specified by the Commissioners.”.

Paul Gray
Mike Hanson

6th December 2006

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which amend the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 (S.I. 2006/131) (“the principal Regulations”), have been made as a result of the inclusion of certain provisions in the Finance Act 2006 (c. 25). Paragraph 38 of Schedule 23 to the Finance Act 2006 inserts a new paragraph 11A into Schedule 36 to the Finance Act 2004 (c. 12), and paragraph 41 of Schedule 23 to the Finance Act 2006 inserts a new paragraph 15A into Schedule 36 to the Finance Act 2004.

Schedule 36 of the 2004 Act falls within Part 4 of that Act, which deals with pension schemes. The pension schemes legislation in that Act includes provision that an individual has a lifetime allowance on the amount of pension savings that may benefit from tax relief; and the lifetime allowance is usually the standard lifetime allowance. However, the legislation also contains provisions relating to an enhanced lifetime allowance and to enhanced protection: but these provisions only apply if notice of intention to rely on the provision in question is given in accordance with regulations.

The principal Regulations contain provisions which enable an individual to rely on the enactments providing for an enhanced lifetime allowance and enhanced protection. Those Regulations also contain provisions of an administrative nature.

Following the enactment of the Finance Act 2006, there are now two further provisions (“the new provisions”) which provide for an enhanced lifetime allowance or for enhanced protection: but once again only if notice of intention to rely on the provision is given in accordance with regulations. Paragraph 11A of Schedule 36 extends the entitlement to an enhanced lifetime allowance in certain circumstances where the entitlement to lump sum benefits in relation to an individual, were the individual to have died on 5th April 2006, is greater than the pre-commencement pension rights previously calculated under paragraph 7 of Schedule 36; and paragraph 15A of Schedule 36 extends the enhanced protection rules in certain circumstances where the entitlement to lump sum benefits in relation to an individual, were the individual to have died on 5th April 2006, is greater than the pre-commencement pension rights previously calculated under paragraph 15(4) of Schedule 36.

These Regulations accordingly amend the principal Regulations to take account of the new provisions. Regulations 4 and 5 of these Regulations insert regulations 3A and 4A into the principal Regulations to enable reliance to be placed, respectively, on paragraphs 11A and 15A of Schedule 36 to the Finance Act 2004. The procedure to be followed in the case of the new provisions differs from that applying in other cases. Regulations 6 to 9 of these Regulations accordingly make further amendments to the principal Regulations to ensure that separate provision is made for the form of notification to be given, the procedure on the giving of a notification and for an appeal hearing if there is a dispute about the validity of the notification.

A regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004, as amended by the Finance Act 2005 and the Finance Act 2006 is available on the website of HM Revenue and Customs at www.hmrc.gov.uk/ria/simplifying-pensions.pdf and may be obtained by writing to the Ministerial Correspondence Unit, 1st Floor, HM Revenue and Customs, Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

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