

EXPLANATORY MEMORANDUM TO
THE TAXATION OF JUDICIAL PENSIONS (CONSEQUENTIAL
PROVISIONS) ORDER 2006

2006 No. 497

THE REGISTERED PENSION SCHEMES (BLOCK TRANSFERS)
(PERMITTED MEMBERSHIP PERIOD) REGULATIONS 2006

2006 No. 498

THE PENSIONS (TRANSFER OF SUMS AND ASSETS) REGULATIONS
2006

2006 No. 499

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

- 2.1. This memorandum follows the Explanatory Memoranda for -
 - Statutory Instruments 2005/3448 to 3458 (laid before the House of Commons on 15 December 2005),
 - Statutory Instruments 2006/129 to 138 (laid before that House on 26th January 2006),
 - Statutory Instruments 2006/206 to 212 (laid before that House on 2nd February), and
 - Statutory Instruments 2006/364 and 365 (laid before that House on 17th February).
- 2.2. These three instruments relate to, and supplement, Part 4 of the Finance Act 2004 as amended.

3. Matters of special interest to the Select Committee on Statutory Instruments

- 3.1. The Select Committee is respectfully referred to the Explanatory Memorandum for Statutory Instruments 2005/3448 to 3458 laid before the House of Commons on 15th December 2005.
- 3.2. The table annexed to this memorandum reflects developments since the 15th December 2005 to the full list of Instruments that are expected to be laid in time for the coming into force of Part 4 of the Finance Act 2004 on 6th April 2006. These Statutory Instruments form the fifth tranche of the Regulations to be laid. They will have effect from 6th April 2006.
- 3.3. An explanation of each instrument follows.

4. Legislative Background

- 4.1. The powers to make these regulations and order are contained in:
- The Judicial Pensions (Consequential Provisions) Order 2006 (SI 2006/497) - section 281(2) and (3) of the Finance Act 2004.
 - The Registered Pension Schemes (Block Transfers) (Permitted Membership period) Regulations 2006 (SI 2006/498) - paragraph 22(6)(b) of Schedule 36 to the Finance Act 2004.
 - The Pensions (Transfer of Sums and Assets) Regulations 2006(SI 2006/499) - sections 169(1B), 1(C), 1(D) and (1E) of, and paragraphs 2(4)(h) and (6A), 3(2B) and 2(C), 6(1B) AND 1(C), 16(2A) and 2(B), 17(3) and (4) and 20 (1B) and 1(C) of Schedule 28 to the Finance Act 2004.
- 4.2. Regulations under these provisions may variously amend primary legislation by Order, specify, modify, prescribe and restrict the application of Part 4 of the Finance Act 2004 as amended by Schedule 10 to the Finance Act 2005

5. Extent

- 5.1. These instruments apply throughout the United Kingdom.

6. European Convention on Human Rights

- 6.1. The Economic Secretary to the Treasury, [Ivan Lewis MP] has made the following statement regarding Human Rights:
In my view the provisions of the Taxation of Judicial Pensions (Consequential Provisions) Order 2006 are compatible with the Convention rights.
- 6.2. The remaining instruments are subject to annulment and do not amend primary legislation. Accordingly, no statement of compatibility with the European Convention on Human Rights is required.

7. Policy Background

- 7.1. The Government wants to encourage today's workers, tomorrow's pensioners, to save for their retirement and offers generous tax incentives to encourage people to save in a pension. Following extensive consultation, pensions tax simplification was legislated for in Part 4 of the Finance Act 2004. As a result of ongoing consultation a package of supplementary measures were introduced in Finance Act 2005. The objectives are to increase individual choice and flexibility and cut industry costs by tackling the complexity and fragmentation caused by the current rules.
- 7.2. From 6th April 2006, a new unified pensions tax regime will replace the numerous existing regimes. The new regime will contain two key controls on tax relief for pension savings, a lifetime allowance and an annual allowance, which will replace the plethora of controls currently in existence.

7.3. An explanation of each instrument follows:

The Taxation of Judicial Pensions (Consequential Provisions) Order 2006 (S.I. 2006/497)

On 15th December 2005 the Secretary of State for Constitutional Affairs and Lord Chancellor (Lord Falconer of Thoroton) announced in a written ministerial statement that, as administrator of the judicial pension schemes, he had concluded that it would be in the best interests of the members that those schemes should not be registered pension schemes for the purposes of Part 4 of the Finance Act 2004.

The judicial pensions legislation contains references to the previous tax regime for pension schemes (notably sections 590C and 594 of the Income and Corporation Taxes Act 1988) which will be redundant following 6th April 2006 ("A Day"). This Order therefore updates provisions which refer to the previous tax regime (there has been consultation with the Department for Constitutional Affairs concerning the terms of the Order).

The Pension Schemes (Block Transfers)(Permitted Membership Period) Regulations 2006 (S.I. 2006/498)

Schedule 36 to the Finance Act 2004 contains transitional provisions and savings, designed to protect rights which existed before 6th April 2006. The general principles are that rights are protected in the scheme under which they were held on 5th April 2006, and that protection is lost if the individual's rights are transferred out of the scheme on or after 6th April 2006; but some protection may be retained if, on or after 6th April 2006, an individual's rights are transferred out of the original pension scheme as part of a block transfer.

One of the characteristics of a block transfer is either that the member;

- was not a member of the pension scheme to which the transfer is made before the transfer, or (alternatively)
- has been a member of the pension scheme to which the transfer is made for no longer than the period prescribed in regulations.

Because the original commencement provision for Part 4 of the Finance Act 2004 was fixed by Parliament for all purposes (other than the making of subordinate legislation) as 6th April 2006, and Parliament clearly envisaged all of the necessary legislation coming into force at the same time, the amended power allowing for a period prescribed in Regulations needs to be exercised so that the Regulations come into force on the same day as the rest of the provisions of Part 4.

These Regulations exercise the power conferred and provide that the period in question is to be a period of twelve months ending with the date on which the transfer is made. However, a period before 6th April 2006 is ignored if, during that period, the member was a member of a personal pension scheme and the membership related solely to contracted rights.

This exclusion will ensure where a block transfer is being made to a personal pension scheme, which has been used for contracting-out, individuals covered by the block transfer who have been a member of the personal pension scheme for longer than twelve months will qualify for block transfer protection when the occupational scheme was transferred to the personal pension scheme.

The Pensions (Transfer of Sums and Assets) Regulations 2006 (S.I. 2006/499)

These regulations provide for the transfer of sums and assets by registered pension schemes and insurance companies, where those sums and assets represent pensions in payment.

Regulations under section 169 (1B), (16C), (1D) and (1E) Finance Act 2004 provide for transfers of sums and assets by a registered pension scheme, in respect of one of the following pensions to which a member has already become entitled:

- scheme pension
- dependants' scheme pension
- unsecured pension
- dependants' unsecured pension
- alternatively secured pension
- dependants' alternatively secured pension

Transfers of sums and assets covered by these regulations must be to another registered pension scheme or to an insurance company, but the latter applies only where the transfer is in respect of a scheme pension or dependants' scheme pension. The sums and assets transferred must meet the rules set out in the regulations, which require that the registered pension scheme (or insurance company) that receives these funds must provide a member with the same type of pension that was paid previously.

For example, if a scheme was paying a scheme pension and transferred the sums and assets that underpinned that pension, then the transfer will be a recognised transfer providing the receiving scheme applies those sums and assets towards a scheme pension for the member. For transfers of sums and assets from an unsecured pension fund (and also a dependants' unsecured pension fund and a member or dependants' alternatively secured pension fund) there is also a requirement that the sums and assets become held in a new arrangement, under which no other sums and assets are held. If a transfer of sums and assets (that is covered by these regulations) does not meet the conditions, then the transfer of the funds will be an unauthorised payment.

Where there has been a recognised transfer in the above circumstances then the regulations also provide that the new pension will be treated as the old for certain purposes. This will, for example, ensure that where sums and assets representing a scheme pension are transferred then there will not be a benefit crystallisation event when the new scheme pension starts becomes payable.

For unsecured pensions, the regulations will ensure that the unsecured pension year structure that applied in the old arrangement must be adopted in the new arrangement. This means that the aggregate withdrawals from both the old and the new arrangement must not exceed the maximum annual withdrawal for the unsecured pension year in which the funds are transferred. Although the sums and assets representing an unsecured pension fund have to be transferred into a new arrangement, the regulations do not prevent uncrystallised rights later arising in the receiving arrangement becoming designated to that unsecured pension fund.

Regulations under paragraphs 2(6A), 3(2B) and (2C), 6(1B) and (1C), 16(2A) and (2B), 17(3) and (4) and 20(1B) and (1C) of Schedule 28 Finance Act 2004 provide for transfers of sums and assets by an insurance company, in respect of one of the following pensions/annuities to which a member has already become entitled:

- scheme pension
- dependants' scheme pension
- lifetime annuity
- dependants' annuity
- short term annuity
- dependants' short term annuity

Transfers by insurance companies will not come within the definition of a "recognised transfer" under section 169 Finance Act 2004, because the sums and assets transferred will not specifically represent the rights of the member. But these regulations make provision for transfers of sums and assets by insurance companies that broadly replicate the rules described above in respect of recognised transfers. For example, where an insurance company is paying a scheme pension then the regulations will permit that pension to be stopped and for another insurance company to start paying it. The regulations also provide for what purposes the new pension or annuity will be treated as the old. So that, for example, this will ensure that there will not be a benefit crystallisation event when the insurance company receiving the transferred funds starts to pay a new lifetime annuity.

8. Impact

- 8.1. The impact of these regulations is contained within the Simplifying the taxation of pensions Regulatory Impact Assessment and Appendix which can be found at www.hmrc.gov.uk/ria/simplifying-pensions.pdf and www.hmrc.gov.uk/ria/simplifying-pensions-appendix.pdf.

9. Contact

- 9.1. Kevin Golightly at HM Revenue & Customs (tel: 020 7147 2825 or e-mail: Kevin.Golightly@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

Annex

List of Instruments laid for Part 4 Finance Act 2004 and coming into force on the 6th April 2006

Laid before the House of Commons 15th December 2005

- The Registered Pension Schemes (Relief at Source) Regulations 2005 No. 3448
- The Registered Pension Schemes (Prescribed Interest Rates for Authorised Employer Loans) Regulations 2005 No. 3449
- The Registered Pension Schemes (Minimum Contributions) Regulations 2005 No. 3450
- The Registered Pension Schemes (Prescribed Schemes and Occupations) Regulations 2005 No. 3451
- The Registered Pension Schemes (Discharge Of Liabilities Under Sections 267 And 268 of the Finance Act 2004) Regulations 2005 No. 3452
- The Employer-Financed Retirement Benefit Schemes (Provision Of Information) Regulations 2005 No. 3453
- The Registered Pension Schemes (Accounting and Assessment) Regulations 2005 No. 3454
- The Registered Pension Schemes and Employer-Financed Retirement Benefits Schemes (Information) (Prescribed Descriptions of Persons) Regulations 2005 No. 3455
- The Registered Pension Schemes (Audited Accounts) (Specified Persons) Regulations 2005 No. 3456
- The Taxes Management Act 1970 (Modifications to Schedule 3 For Pension Scheme Appeals) Order 2005 No. 3457
- The Registered Pension Schemes (Restriction of Employers' Relief) Regulations 2005 No. 3458

Laid before the House of Commons 26th January 2006

- The Registered Pension Schemes (Relevant Annuities) Regulations 2006 No 129
- The Registered Pension Schemes (Uprating Percentages for Defined Benefits Arrangements and Enhanced Protection Limits) Regulations 2006 No.130
- The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 No. 131
- The Armed Forces and Reserve Forces (Compensation Scheme) (Excluded Benefits for Tax Purposes) Regulations 2006 No. 132
- The Registered Pension Schemes (Co-ownership of Living Accommodation) Regulations 2006 No. 133

- The Registered Pension Schemes (Authorised Payments) (Transfers to the Pension Protection Fund) Regulations 2006 No 134
- The Registered Pension Schemes (Meaning of Pension Commencement Lump Sum) Regulations 2006 No. 135
- The Pension Benefits (Insurance Company Liable as Scheme Administrator) Regulations 2006 No. 136
- The Registered Pension Schemes (Authorised Member Payments) Regulations 2006 No. 137
- The Pension Schemes (Reduction in Pension Rates) Regulations 2006 No. 138

Laid before the House of Commons 2nd February 2006

The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 No. 206

The Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulation 2006 No. 207

The Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 No. 208

The Registered Pension Scheme (Authorised Payments) Regulations 2006 No. 209

The Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2006 No. 210

The Registered Pension Schemes (Surrender of Relevant Excess) Regulations 2006 No. 211

The Pension Schemes (Relevant Migrant Members) Regulations 2006 No. 212

Laid before the House of Commons 17th February 2006

The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 No. 364

The Registered Pension Schemes (Unauthorised Payments by Existing Schemes) Regulations 2006 No. 365

List of Instruments anticipated to be laid for Part 4 Finance Act 2004 to come into force by the 6th April 2006

The Registered Pensions (Splitting of Schemes) Regulations 2006

The Registered Pensions Schemes (Provision of Information) Regulations 2006

The Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication Of Returns And Information) Regulation 2006

The Social Security (Contributions) (Amendment No. x) Regulations 2006

The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006

The Registered Pension Schemes (Prescribed Manner of Determining Amount Of Annuities) Regulations 2006

The Pension Protection Fund (Tax) Regulations 2006

The Registered Pension Schemes (Consequential Amendments) Regulations 2006

The Finance Act 2004, Part 4 (Pension Schemes) (Consequential Amendments) Order 2006

The Pension Schemes (Part 4 of the Finance Act 2004 Transitional and Transitory Provisions) Order 2006