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STATUTORY INSTRUMENTS

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**2009 No. 1989**

**INCOME TAX**

**The Taxation of Pension Schemes (Transitional Provisions) (Amendment No. 2) Order 2009**

<i>Made</i>	- - - -	<i>20th July 2009</i>
<i>Laid before the House of Commons</i>	- - - -	<i>21st July 2009</i>
<i>Coming into force</i>	- -	<i>1st September 2009</i>

The Treasury make the following Order in exercise of the powers conferred by section 283(2) and (3C) of the Finance Act 2004<sup>(1)</sup>.

**Citation and commencement**

**1.** This Order may be cited as the Taxation of Pension Schemes (Transitional Provisions) (Amendment No. 2) Order 2009, shall come into force on 1st September 2009 and have effect in respect of payments of pension death benefit<sup>(2)</sup> made on or after 6th April 2006.

**Amendment of the Taxation of Pension Schemes (Transitional Provisions) Order 2006**

**2.—(1)** The Taxation of Pension Schemes (Transitional Provisions) Order 2006<sup>(3)</sup> is amended as follows.

(2) For article 34 substitute—

**“Payments to children aged 23 or over**

**34.—(1)** Paragraph (2) applies to the payment of a pension death benefit by a pension scheme which falls within paragraph 1(1) of Schedule 36<sup>(4)</sup> where—

(a) either of Conditions A and B is satisfied and the first scheme rules condition is satisfied; or

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(1) 2004 c. 12; subsection (3C) of section 283 was inserted by paragraph 35 of Schedule 23 to the Finance Act 2006 (c. 25) and section 161(2) of that Act deems it to have had effect from 6th April 2006.  
(2) Section 167(2) of the Finance Act 2004 defines “pension death benefit”. Section 167(2) was amended by paragraph 22 of Schedule 20 to the Finance Act 2007 (c. 11).  
(3) S.I. 2006/572, to which there are amendments not relevant to this Order.  
(4) Article 1(2) of S.I. 2006/572 provides that a reference to a numbered section or Schedule (without more) is a reference to that section or Schedule in “Part 4”, which is in turn defined as meaning Part 4 of the Finance Act 2004.

- (b) Condition C and the second scheme rules condition are satisfied.
- (2) Paragraph 15(2) of Schedule 28 shall be modified as follows—
- (a) at the end of paragraph (a) omit the word “or”; and
- (b) after paragraph (b) insert—
- “(c) has reached that age and is in full time education or undertaking vocational training, or
- (d) on reaching that age or, if later, on ceasing full time education or vocational training is, in the opinion of the scheme administrator, suffering from physical or mental deterioration which is sufficiently serious to prevent the individual from following a normal employment or which would seriously impair his earning capacity.”.
- (3) The Conditions A, B and C mentioned in paragraph (1) are:

*Condition A*

The pension<sup>(5)</sup> was in payment to a child (“C”) of the member (“M”) on 5th April 2006 or M had died on or before that date and a pension was due to come into payment to C.

*Condition B*

The pension was in payment to M on 5th April 2006 and C was born on or before 5th April 2007.

*Condition C*

An election such as is described in the second scheme rules condition had been made by M and accepted by the scheme administrator on or before 5th April 2006.

- (4) The scheme rules conditions mentioned in paragraph (1) are:

*First scheme rules condition*

The rules of the pension scheme allowed a pension to be paid to a child (“C”) of the member (“M”) following M’s death until C ceased full-time education or vocational training.

*Second scheme rules condition*

The rules of the pension scheme on 10 December 2003 allowed an irrevocable election to be made designating part of the sums or assets representing M’s rights as available for the payment of a pension to C following M’s death until C ceased full-time education or vocational training.

- (5) For the purpose of the first scheme rules condition, a rule that the pension would not be paid to C if or after C reached a specified age (even if that is before C ceased full-time education or vocational training) does not prevent the condition being satisfied.

- (6) Paragraph (2) also applies to the payment of a pension death benefit by a qualifying transferee scheme (as to which see article 34B) where either—

- (a) paragraph (2) had applied to payment by the original pension scheme or another transferee pension scheme; or
- (b) paragraph (2) would have applied—
- (i) if there had been no block transfer on or after 6th April 2006, and
- (ii) if payment had been by the original pension scheme.

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(5) Section 165(2) of the Finance Act 2004 defines “pension”.

### **Payments to financially dependent children aged 23 or over**

**34A.**—(1) Paragraph (2) applies to the payment of a pension death benefit by a pension scheme which falls within paragraph 1(1) of Schedule 36 where—

- (a) any of Conditions A to D is satisfied; and
- (b) the scheme rules condition is satisfied.

(2) Paragraph 15(2) of Schedule 28 shall be modified as follows—

- (a) at the end of paragraph (a) omit the word “or”; and
- (b) after paragraph (b) insert—
  - “(c) has reached that age and—
    - (i) is financially dependent on the member at the date of the member’s death, or
    - (ii) the financial relationship with the member at the date of the member’s death is one of mutual dependence.”.

(3) The Conditions A to D mentioned in paragraph (1) are:

*Condition A*

The member’s (“M’s”) pension was in payment on or before 1st July 2008.

*Condition B*

The pension death benefit was in payment on 1st July 2008.

*Condition C*

The entitlement to the pension death benefit arose before 1st July 2008.

*Condition D*

The entitlement to the pension death benefit was subject to the discretion of the trustees of the scheme and the discretion was capable of being exercised (in favour of the child having such an entitlement) so that the entitlement could have arisen before 1st July 2008.

(4) The scheme rules condition mentioned in paragraph (1) is:

*Scheme rules condition*

The rules of the pension scheme on 5th April 2006 allowed a pension to be paid to a child (“C”) of the member (“M”) following M’s death if, at the date of M’s death, C was financially dependent on M or C’s financial relationship with M was one of mutual dependence.

(5) Paragraph (2) also applies to the payment of a pension death benefit by a qualifying transferee scheme (as to which see article 34B) where—

- (a) paragraph (2) had applied to payment by the original pension scheme or another transferee pension scheme; or
- (b) paragraph (2) would have applied—
  - (i) if there had been no block transfer on or after the relevant date, and
  - (ii) if payment had been by the original pension scheme.

(6) For the purposes of paragraph (5), the relevant date is—

- (a) in relation to Condition A, the later of—
  - (i) 6th April 2006, and
  - (ii) the date on which the member’s pension came into payment; and
- (b) in relation to Condition B, C or D, the later of—

- (i) 6th April 2006, and
- (ii) the date of the member's death.

**Meaning of “qualifying transferee scheme”**

**34B.**—(1) A pension scheme is a qualifying transferee scheme for the purposes of articles 34 and 34A if it is a pension scheme to which there has been a relevant block transfer.

- (2) A block transfer is relevant if any of Conditions A to C is satisfied as a result of—
  - (a) a block transfer from a pension scheme within paragraph 1(1) of Schedule 36 (“the original pension scheme”); or
  - (b) a block transfer to a pension scheme (“a transferee pension scheme”) from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of sub-paragraph (a) or the previous application (on one or more occasions) of this sub-paragraph.
- (3) The Conditions A to C mentioned in paragraph (2) are:

*Condition A*

The member became a member of the transferee pension scheme.

*Condition B*

The child is a pensioner member<sup>(6)</sup> of the transferee pension scheme.

*Condition C*

An irrevocable election having been made designating part of the sums or assets representing the member's rights as available for the payment of a pension to the child, the child is entitled to such payment from the transferee pension scheme.

(4) In this article, “block transfer” has the meaning given by paragraph 22(6) of Schedule 36<sup>(7)</sup>, but with the modification that for “as is prescribed” in paragraph (b) there is substituted “as has been prescribed”.

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

20th July 2009

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<sup>(6)</sup> Section 151(3) of the Finance Act 2004 defines “pensioner member”.

<sup>(7)</sup> Paragraph 22 of Schedule 36 to the Finance Act 2004 was amended by paragraph 55 of Schedule 10 to the Finance Act 2005 (c. 7); there are other amendments but none is relevant.

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## EXPLANATORY NOTE

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

This Order amends the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (“the principal Order”) in making further transitional provision in relation to the taxation of pensions paid to dependants, specifically children.

Article 1 provides for the citation, commencement and effect of this Order. The Order has retrospective effect, from 6th April 2006. That is the effective date of the pensions taxation simplification measures enacted by the Finance Act 2004 (known as “A Day”), as well as the date of coming into force of the principal Order. Section 283(3C) of the Finance Act 2004 provides that an order made under subsection (2) (such as this) may include provision having effect in relation to times before it is made.

Article 2 amends the principal Order by substituting article 34 and inserting new articles 34A and 34B. The only substantive change to article 34 is allowing block transfers to qualify for transitional relief. This relies in part on the concept of a “qualifying transferee scheme”, which is defined in the new article 34B. The remainder of the changes to article 34 are designed to achieve consistency with the structure and style of the new article 34A. The new article 34A modifies paragraph 15(2) of Schedule 28 to the Finance Act 2004 in relation to financially dependent children who are over 23 so that they are treated as dependants (if the conditions are met). This prevents tax charges arising.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private and voluntary sectors is foreseen.