STATUTORY INSTRUMENTS

# 2011 No. 1783

# INCOME TAX

## The Registered Pension Schemes (Relevant Income) Regulations 2011

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| *Made - - - -* | *20th July 2011* |
| *Laid before the House of Commons - - - -* | *21st July 2011* |
| *Coming into force - -* | *11th August 2011* |

The Treasury make the following Regulations in exercise of the powers conferred by paragraphs 14B(2)(b) and 24D(2)(b) of Schedule 28 to, and section 282(A1) of, the Finance Act 2004(**1**) as the latter section has effect under paragraph 108 of Schedule 16 to the Finance Act 2011(**2**).

### Citation, commencement and effect

**1.**—(1) These Regulations may be cited as the Registered Pension Schemes (Relevant Income) Regulations 2011 and come into force on 11th August 2011.

(2) These Regulations have effect for the tax year beginning on 6th April 2011 and subsequent tax years.

### Payments not to be regarded as relevant income

**2.** The payments described in regulations 3 and 4 are not to be regarded as relevant income for the purpose of ascertaining whether a member or dependant satisfies the minimum income requirement in paragraphs 14A(1) or 24C(1) of Schedule 28 to the Finance Act 2004.

**3.**—(1) Payments of a scheme pension payable by the scheme administrator and made in respect of a defined benefits arrangement where the pension scheme under which that arrangement is made has fewer than 20 pensioner members unless the payments fall within paragraph (4) or (5).

(2) Payments of a scheme pension made in respect of a money purchase arrangement and payable by the scheme administrator where fewer than 20 pensioner members of the pension scheme under which that arrangement is made are entitled to payment of such a scheme pension unless the payments fall within paragraph (4) or (6).

(**1**) 2004 c. 12. Paragraphs 14A to 14E and 24A to 24G of Schedule 28 were respectively inserted by paragraphs 10 and 20 of Schedule 16 to the Finance Act 2011 (c. 11). Section 282(A1) was inserted by section 75(1) of the Finance Act 2009 (c.10) with effect for the tax year 2010-11 and subsequent tax years.

(**2**) 2011 c. 11.

(3) Payments under an overseas pension scheme which, if the scheme were a registered pension scheme would fall within paragraph (1) or (2).

(4) Paragraphs (1) and (2) do not apply in the case of payments of a scheme pension payable under an annuity contract where that annuity contract is made with an insurance company or a non-EEA annuity provider and was purchased by the application of sums and assets held for the purposes of—

(a) a registered pension scheme

(b) an overseas pension scheme, or

(c) if the purchase took place before 6th April 2006 a pension scheme which at the time of purchase fell within one of the categories set out in paragraph 1(1)(a) to (g) of Schedule 36.

(5) Paragraph (1) does not apply in the case of payments of a scheme pension or dependants' scheme pension payable in respect of a defined benefits arrangement where—

(a) the pension scheme under which that arrangement was made ("the relevant pension scheme") had 20 or more members in relation to whom a defined benefits arrangement was in existence on or before 5th April 2011, and

(b) the defined benefits arrangement under the relevant pension scheme was in existence in relation to the member on or before 5th April 2011.

(6) Paragraph (2) does not apply in the case of payments of a scheme pension payable under an annuity contract where that annuity contract is treated as having become a registered pension scheme under section 153(8A) of the Finance Act 2004(**3**).

(7) For the purposes of this regulation a "non-EEA annuity provider" means a person resident in a country or territory outside the European Economic Area—

(a) whose normal business includes the provision of annuities; and

(b) who is regulated in the conduct of that business by—

(i) the government of that country or territory, or

(ii) a body established under the law of that country or territory for the purpose of regulating such business.

**4.**—(1) Excess payments of a lifetime annuity or dependants' annuity unless the payments fall within paragraph (4).

(2) Excess payments are payments that exceed the amount of the minimum annuity guaranteed to be paid each year under the annuity contract for the annuity over its full term.

(3) For the purposes of this regulation "full term" means the minimum period over which a lifetime annuity or a dependants' annuity must be payable in accordance with the applicable provision of paragraphs 3(1), 17(1)(d) or (e) of Schedule 28 to the Finance Act 2004(**4**).

(4) Paragraph (1) does not apply to payments of a lifetime or dependants' annuity where the annual amount of the annuity—

(a) cannot decrease, or

(b) is determined in accordance with the manner prescribed in regulation 2(2)(a)(i) (variation in line with the RPI) of the Registered Pension Schemes (Prescribed Manner of Determining Amount of Annuities) Regulations 2006(**5**).

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(**3**) Subsection (8A) was inserted by paragraph 3 of Schedule 10 to the Finance Act 2005 (c. 7).

(**4**) Paragraph 3(1) of Schedule 28 was amended by paragraph 13 of Schedule 10 to the Finance Act 2005 (c. 7). Paragraph 17(1) was amended by paragraphs 15 and 29 of Schedule 10 to the Finance Act 2005 and S.I. 2007/493.

(**5**) S.I. 2006/568 as amended by S.I. 2011/1751.

*Angela Watkinson*
*Jeremy Wright*
Two of the Lords Commissioners of Her Majesty's Treasury

20th July 2011

## EXPLANATORY NOTE

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

These Regulations prescribe four categories of payment that are not to be regarded as "relevant income" for the purposes of ascertaining whether or not a member of a registered pension scheme or a dependant of such a member satisfies the "minimum income requirement" as provided for in Schedule 28 to the Finance Act 2004 ("FA 2004") as amended by the Finance Act 2011 ("FA 2011"). Members or dependants with a minimum income requirement of £20,000 or more per annum may draw down an unlimited amount from their remaining drawdown pension funds in registered pension schemes provided the conditions set out in sections 165 and 167 of FA 2004 are met.

Regulation 1 provides for citation, commencement and effect. These Regulations have retrospective effect from 6th April 2011 pursuant to the power contained in section 282(A1) of FA 2004 as that section has effect under paragraph 108(2) of Schedule 16 to FA 2011. Section 282(A1) of FA 2004 provides that regulations made under Part 4 of that Act may include provision having effect in relation to times before the regulations are made if that provision does not increase any person's liability to tax. Paragraph 108(2) of Schedule 16 to FA 2011 provides that regulations which are made for the purposes of the amendments made to Part 4 of FA 2004 by that Schedule in the tax year beginning on 6th April 2011 may have retrospective effect in circumstances where they may increase a person's liability to tax.

Regulation 2 introduces the payments described in regulations 3 and 4.

Regulation 3 provides that three categories of payment are not to be regarded as "relevant income". The first category is payments of scheme pensions made in respect of defined benefit arrangements where there are fewer than 20 pensioner members in the pension scheme. The second category is scheme pensions under money purchase arrangements where the pension scheme has less than 20 pensioner members entitled to such pensions. The third category is payments under overseas pension schemes which if they were to be made by a registered pension scheme, would fall within one of the first two categories. Paragraphs (4) (5) and (6) carve out exceptions from these categories.

Regulation 4 sets out the fourth category of payments that are not be regarded as "relevant income". These are payments of lifetime annuities or dependants' annuities where the payments exceed the minimum amount of the annuity that is guaranteed to be paid each year under the contract over its full term. Payments of a lifetime or dependants' annuity where the annual amount of annuity cannot decrease or is determined in accordance with regulation 2(2)(a)(i) of the Registered Pension Schemes (Prescribed Manner of Determining Amount of Annuities) Regulations 2006 (S.I. 2006/568) (variation in line with the retail prices index) are excepted from this category and therefore can form part of a member or dependant's "relevant income".

A Tax Information and Impact Note covering this instrument was published on 9th December 2010 alongside draft legislation for the Finance (No.3) Bill 2011 and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.