STATUTORY INSTRUMENTS

2011 No. 1790

INCOME TAX

The Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) (No. 2) Regulations 2011

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

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in the exercise of the powers conferred by sections 169(1D) and (1E), and 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**), and now exercisable by them(**3**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) (No. 2) Regulations 2011 and come into force on 11th August 2011.

(2) The amendments made by these Regulations have effect for the tax year 2011–12 and subsequent tax years.

Amendment of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006

2.—(1) The Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006(**4**) are amended as follows.

(**1**) 2004 c. 12. Section 169(1D) and (1E) was inserted by paragraph 36 of Schedule 10 to the Finance Act 2005 (c. 7) and section 169(1D) was amended by paragraph 66 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).

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

(**3**) Section 169(1D) of the Finance Act 2004 refers to the Board of Inland Revenue. Section 279(1) provides that "the Board of Inland Revenue" means the Commissioners of Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, in so far as is appropriate in consequence of section 5, a reference, howsoever expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**4**) S.I. 2006/499, amended by S.I. 2011/733; there is one other amending instrument which is not relevant.

(2) For regulation 12 (unsecured pension fund, alternatively secured pension fund, dependants' unsecured pension fund and dependants' alternatively secured pension fund – recognised transfers and prescribed purposes) substitute—

"**Member's drawdown pension fund and dependant's drawdown pension fund – recognised transfers and prescribed purposes**

12.—(1) A transfer within section 169(1) of sums or assets which represent a member's drawdown pension fund or dependant's drawdown pension fund under an arrangement ("the old arrangement"), is not a recognised transfer unless all of those sums and assets become held under an arrangement under which no other sums or assets are held ("the new arrangement").

(2) In a case where the sums and assets become so held, the sums and assets transferred are to be treated as remaining sums and assets held under the old arrangement for the purposes prescribed—

(a) in table 3 in the case of a member's drawdown pension fund, and

(b) in table 4 in the case of a dependant's drawdown pension fund.

Table 3

Prescribed purposes – member's drawdown pension fund

Provision	*Purpose*
Section 165(1)(**5**), pension rule 1 (normal minimum pension age)	To determine whether the individual has reached the normal minimum pension age by reference to the day on which, in the case of income withdrawal, the first payment of drawdown pension was made under the old arrangement.
Section 165(3A) (conditions for flexible drawdown arrangement)	To determine whether the limit in section 165(1), pension rule 5 (withdrawal limit for drawdown pension year) is disapplied by reference to whether the limit was disapplied in relation to the old arrangement (so that if the flexible drawdown conditions have been met in relation to the old arrangement, these conditions are treated as having been met in relation to the new arrangement).
Section 216(1)(**6**), benefit crystallisation event 1 (benefit crystallisation event on designation of sums or assets held as available for payment of drawdown pension to the individual)	To determine whether there has been a designation of sums or assets held as available for payment of drawdown pension to the individual by reference to the designation of sums or assets held under the old arrangement (to prevent a benefit crystallisation event occurring in relation to the sums or assets becoming held under a new arrangement).

(**5**) Section 165 was amended, so far as is relevant to this table, by paragraphs 1 and 64 of Schedule 16 to the Finance Act 2011.

(**6**) Section 216(1), benefit crystallisation event 1 was amended by paragraphs 62, 73(1) and (2) of Schedule 16 to the Finance Act 2011.

Provision	*Purpose*
Paragraph 9(1) of Schedule 28(**7**) (definition of drawdown pension year)	To determine the drawdown pension year for the purpose of paragraphs 9, 10 and 10A of Schedule 28 by reference to the day on which the member first became entitled to a drawdown pension in respect of the old arrangement, except where a determination has been made under paragraph 10B(3) in which case the drawdown pension year is to be determined by reference to that determination.
Paragraph 10(2) and (4)(a) of Schedule 28 (calculation of basis amount for drawdown pension year)	To determine, for the reference period in which the transfer is made, the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's drawdown pension fund on the nominated date, by reference to the sums and assets held under the old arrangement.
Paragraph 10A(2) of Schedule 28 (calculation of basis amount for drawdown pension year beginning after the member's 75th birthday)	To determine, for the drawdown pension year in which the transfer is made, the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's drawdown pension fund on the nominated date, by reference to the sums and assets held under the old arrangement.
Paragraph 1(1) and (3)(a) of Schedule 29(**8**) (pension commencement lump sum)	To determine whether the member has become entitled to a lump sum in connection with the member becoming entitled under an arrangement by reference to the old arrangement (to prevent a lump sum to which a member becomes entitled in connection with becoming entitled under the new arrangement being a pension commencement lump sum).

Table 4

Prescribed purposes – dependant's drawdown pension fund

Provision	*Purpose*
Section 167(2A)(**9**) (conditions for flexible drawdown arrangement)	To determine whether the limit in section 167(1), pension death benefit rule 4 (withdrawal limit for drawdown pension year) is disapplied by reference to whether the limit was disapplied in relation to the old arrangement (so that if the flexible drawdown conditions have been met in

(**7**) Schedule 28 was amended, so far as is relevant to this table, by paragraphs 1 and 19 of Schedule 10 to the Finance Act 2005 (c. 7), paragraphs 1 and 8 of Schedule 20 to the Finance Act 2007 (c. 11) and paragraphs 7 to 9 of Schedule 16 to the Finance Act 2011.

(**8**) Paragraph 1(1) of Schedule 29 was amended by paragraphs 1 and 11 of Schedule 20 to the Finance Act 2007 and paragraph 23 of Schedule 16 to the Finance Act 2011.

(**9**) Section 167 was amended, so far as is relevant to this table, by paragraph 11 of Schedule 16 to the Finance Act 2011.

Provision	*Purpose*
	relation to the old arrangement, these conditions are treated as having been met in relation to the new arrangement).
Paragraph 23(1) of Schedule 28(**10**) (definition of drawdown pension year)	To determine the drawdown pension year for the purpose of paragraphs 23, 24 and 24A of Schedule 28 by reference to the day on which the dependant first became entitled to a dependant's drawdown pension in respect of the old arrangement, except where a determination has been made under paragraph 24B(3) in which case the drawdown pension year is to be determined by reference to that determination.
Paragraph 24(2) and (4)(a) of Schedule 28 (calculation of basis amount for drawdown pension year)	To determine, for the reference period in which the transfer is made, the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's drawdown pension fund on the nominated date, by reference to the sums and assets held under the old arrangement.
Paragraph 24A(2) of Schedule 28 (calculation of basis amount for drawdown pension year beginning after the dependant's 75th birthday)	To determine, for the drawdown pension year in which the transfer is made, the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's drawdown pension fund on the nominated date, by reference to the sums and assets held under the old arrangement."

Melanie Dawes
Dave Hartnett
Two of the Commissioners for Her Majesty's Revenue and Customs

20th July 2011

(**10**) Schedule 28 was amended, so far as is relevant to this table, by paragraphs 1 and 22 of Schedule 10 to the Finance Act 2005, paragraphs 1 and 8 of Schedule 20 to the Finance Act 2007 and paragraphs 17 to 19 of Schedule 16 to the Finance Act 2011.

EXPLANATORY NOTE

(This note is not part of the Regulations)

From 6th April 2011, section 65 of, and Schedule 16 to, the Finance Act 2011 ("FA 2011") amend Part 4 (pension schemes etc) of the Finance Act 2004 ("FA 2004") to remove certain tax rules that require members of registered pension schemes to secure an income, usually by buying an annuity, by age 75. The amendments replace the concepts of an 'unsecured pension' and an 'alternatively secured pension' with a 'drawdown pension' and provide that individuals able to demonstrate that they have a secure pension income for life will have full access ("flexible drawdown") to their drawdown funds without any annual cap. These Regulations make consequential and other minor amendments to regulation 12 of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (S.I. 2006/499; "the principal Regulations").

Regulation 2(2) amends the principal Regulations by substituting a new regulation 12. Regulation 12 provides that a transfer of sums and assets from one arrangement ("the old arrangement"), to a new arrangement under which no other sums or assets are held, is a recognised transfer (so is not therefore liable to a tax charge). It also prescribes purposes for which the sums and assets transferred are to be treated as sums and assets under the old arrangement.

New regulation 12 replaces references to an unsecured pension with references to a drawdown pension and omits provisions referring to alternatively secured pensions. It contains new entries in tables 3 and 4 which make provision for transfers where a member or dependant has met the conditions for flexible drawdown in relation to the old arrangement so that these conditions are treated as having been met in relation to the new arrangement.

The amendments made by Schedule 16 to FA 2011 introduce new paragraphs 10A and 24A (which make provision in relation to drawdown pension years beginning after the member or dependant's 75th birthday) and new paragraphs 10B and 24B (which permit a change to the drawdown pension year in certain circumstances) into Schedule 28 to FA 2004. New regulation 12 contains amended entries in tables 3 and 4 in respect of the definition of drawdown pension year and calculation of the basis amount to reflect these changes. The opportunity has been taken to make minor amendments to regulation 12 which are not consequential but ensure consistency with the new entries.

These Regulations have retrospective effect from 6th April 2011. Section 282(A1) of FA 2004, as that section has effect under paragraph 108 of Schedule 16 to FA 2011, provides that regulations made under Part 4 of FA 2004 may include provision having effect in relation to times before the regulations are made.

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 concerning the removal of the effective requirement to annuitise by age 75 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.