
STATUTORY INSTRUMENTS

2018 No. 373

The Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2018

Amendment of the Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006

8. After regulation 4 (attributing payments to particular funds under a relevant non-UK scheme) insert—

“Fund depletion

4ZA.—(1) This regulation applies to determine when a member’s UK tax-relieved fund, RTF, taxable asset transfer fund (“TATF”), RFTF and RFTATF will be reduced.

(2) In this regulation, and in regulations 4ZB to 4ZF, for the purposes of determining if a payment is of a particular type, a RNUKS is to be treated as a registered pension scheme.

(3) The funds referred to in paragraph (1) will be reduced when—

(a) the following payments are made (or treated as made under Part 4 of the Act) on or after 6th April 2017 to or in respect of a member—

- (i) an unauthorised payment,
- (ii) a recognised transfer,
- (iii) the purchase of a lifetime annuity where the member has reached normal minimum pension age or meets the ill-health condition,
- (iv) the purchase of a lifetime annuity where the member has not reached normal minimum pension age and does not meet the ill-health condition and the contract does not provide for payment, and is not able to be amended to provide for payment before normal minimum pension age (unless the ill-health condition is met),
- (v) the purchase of a dependants’ or nominees’ annuity,
- (vi) a payment pursuant to a pension sharing order or provision,
- (vii) a defined benefits lump sum death benefit,
- (viii) an uncrystallised funds lump sum death benefit,
- (ix) so much of a charity lump sum death benefit paid from a relevant uncrystallised fund as defined in paragraph 15(2) of Schedule 29(1),
- (x) a payment that is an authorised lump sum payment under section 166,
- (xi) an authorised lump sum under regulations 11, 11A or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009(2),
- (xii) a tax liability of the scheme manager, and

(1) Paragraph 15(2) was amended by Schedule 4 to the Finance Act 2015 (c. 11) and Schedule 16 to the Finance Act 2011 (c. 11).
(2) S.I. 2009/1171, relevantly amended by the Finance Act 2014 (c. 26); Taxation of Pensions Act 2014 (c. 30); S.I. 2012/522, and S.I. 2011/1751.

- (b) the following crystallisation events occur on or after 6th April 2017—
- (i) an individual, who has reached normal minimum pension age or meets the ill-health condition, designates sums or assets held for the purposes of a money purchase arrangement as available for payment of a drawdown pension to that individual,
 - (ii) the designation of sums or assets as available for the payment of dependants' drawdown pension or nominees' drawdown pension following the death of the member,
 - (iii) an individual, who has reached normal minimum pension age or meets the ill-health condition, becomes entitled to a scheme pension the member's funds will be reduced on the first date of payment of that scheme pension,
 - (iv) an individual becoming entitled to a dependants' scheme pension following the death of a member.

Payment and crystallisation valuation

4ZB.—(1) The member's funds will be reduced by the amount of the payment set out in regulation 4ZA(3)(a), subject to paragraphs (2) to (4).

(2) Where the payment is the purchase of a dependants' or nominees' annuity, the amount of the payment that reduces the member's funds is the amount of such of the sums and market value of such of the assets applied to purchase the annuity that are unused uncrystallised funds as defined in paragraphs 27E(4) and (5) of Schedule 28(3).

(3) Where the payment is a—

- (a) trivial commutation lump sum,
- (b) winding-up lump sum, or
- (c) lump sum authorised under regulations 11, 11A or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009,

the amount of the payment that reduces the member's funds is so much of that lump sum as was provided from uncrystallised rights under the scheme.

(4) Where the payment is made pursuant to a pension sharing order or provision, the amount of the payment that reduces the member's funds is so much of the pension debit that derives from uncrystallised rights as defined by section 212(4).

(5) For a crystallisation event described in regulation 4ZA(3)(b)(i), the member's funds are reduced by the aggregate of the amount of the sums and market value of the assets so designated.

(6) For a crystallisation event described in regulation 4ZA(3)(b)(ii), the member's funds are reduced by the amount of newly-designated dependant funds or newly-designated nominee funds that are unused uncrystallised funds (as defined in paragraphs 27E(4) and (5) of Schedule 28).

(7) Where an individual becomes entitled to a scheme pension the amount of the reduction is—

20xP

(3) Paragraph 27E was inserted by the Taxation of Pensions Act 2014, and amended by the Finance Act 2015.

(4) Section 212 was amended by the Taxation of Pensions Act 2014 (c. 30), the Finance Act 2011 (c. 11) and the Finance Act 2006 (c. 25).

where P is the amount of the pension which will be payable to the individual in the period of 12 months beginning with the day on which the individual becomes entitled to it (assuming it remains payable throughout that period at the rate at which it is payable on that day).

(8) Where the individual becomes entitled to a dependants' scheme pension, subject to paragraphs (9) and (10), the amount of the reduction is the aggregate of—

- (a) the amount of such of the sums held for the purposes of the pension scheme; and
- (b) the market value of such of the assets held for the purposes of the pension scheme as are applied in (or in connection with) the purchase or provision of a dependants' scheme pension.

(9) If the dependants' scheme pension is related to the member's scheme pension (in accordance with paragraph 3(7C) of Schedule 29(5)) then the amount of the deduction is nil.

(10) If the dependants' scheme pension is funded (in whole or in part) by the application of sums or assets representing the whole or part of—

- (a) the member's drawdown pension fund,
- (b) the member's flexi-access drawdown fund,
- (c) the dependant's drawdown fund, or
- (d) the dependant's flexi-access drawdown fund

the aggregate of the amount of those sums and the market value of those assets is to be deducted from the amount found at paragraph (8).

Order of attributing payments

4ZC.—(1) This regulation applies to determine which part of a RNUKS a payment to, or in respect of, a member, or a crystallisation event referred to in regulation 4ZA(3)(b) is referable.

(2) In this regulation a references to “payment” includes payments treated as made under Part 4 of the Act.

(3) It is assumed that, subject to the provisions in paragraphs (4) and (5), payments made by the scheme to or in respect of the member, and crystallisation events described in regulation 4ZA(3)(b), are made out of the member's funds in the following order of priority—

- (a) so much of the member's UK tax-relieved funds made under the scheme before 6th April 2017,
- (b) the member's RTF,
- (c) the member's RFTF with a key date of 5th April 2017 or earlier and where the member has more than one such fund the payment is referable in priority of the RFTF with the earliest key date to the latest key date,
- (d) so much of the member's UK tax-relieved funds made under the scheme on or after 6th April 2017,
- (e) the member's RFTF with a key date of 6th April 2017 or later, in priority of the RFTF with the earliest key date to the latest key date,
- (f) any other funds under the scheme.

(5) Paragraph 3(7C) was inserted by the Finance Act 2006 (c. 25).

(4) If the payment is a transfer, to the extent that the transfer is not a payment treated as made by virtue of section 174A, it is made out of the member's fund in the following order of priority—

- (a) the member's RFTF made under the scheme (including such funds with a key date of before 6th April 2017) in priority of the latest key date to the earliest key date of the fund,
- (b) so much of the member's UK tax-relieved funds' made under the scheme before 6th April 2017,
- (c) the member's RTF,
- (d) so much of the member's UK tax-relieved funds' made under the scheme on or after 6th April 2017,
- (e) any other funds under that scheme.

(5) If the payment is a transfer, to the extent that the transfer is a payment treated as made by virtue of section 174A, it is attributed in the following order of priority—

- (a) the member's RFTATF and RFTF in priority of the RFTF with the latest key date to the earliest key date of the fund,
- (b) if the RFTATF is nil, the member's RTF and TATF.

(6) If the payment is an unauthorised payment by virtue of section 174A, or a payment other than a transfer, treated as made by virtue of section 174A, it is treated as referable to the member's funds in the following order of priority—

- (a) the payment shall first be treated as referable to the member's RTF and TATF,
- (b) if the member's TATF is nil, or has been reduced to nil, the payment shall be treated as referable to the member's RFTF, in priority of the RFTF with the earliest key date to the latest key date, and the RFTATF.

(7) Where a payment or crystallisation event described in regulation 4ZA(3)(b) is referable to the member's RTF or TATF, the funds will be reduced in accordance with the following Rules (with an earlier Rule applying in preference to a later Rule).

Rule 1

Where an unauthorised payment is made by the scheme by virtue of section 174A—

- (a) the payment shall be treated as made out of the member's RTF and TATF, but
- (b) the interest in taxable property, in respect of which the unauthorised payment is treated as made, shall represent the payment and form part of the member's RTF and TATF (an "appropriated asset"), up to an amount equal to the amount of the payment.

Rule 2

Accordingly, if a scheme transfers that appropriated asset (or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly), or part of it, to another pension scheme, that transfer will be treated as a transfer of the whole or part, as the case may be, of the member's RTF and TATF (limited to the amount of the unauthorised payment) to that other scheme, falling (if appropriate) within regulation 3A(1)(b).

Rule 3

If a scheme disposes of (other than to a pension scheme) an appropriated asset (or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly), or part of it, any other property which directly or indirectly represents proceeds of either of those interests (limited to the amount of the unauthorised payment) will form part of the member's RTF and TATF.

Rule 4

This rule applies to crystallisation events and payments made by the scheme to or in respect of the member, other than—

- (a) a transfer of an interest in taxable property or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly, and
- (b) payments treated as made by virtue of section 174A.

So far as the member's RTF and TATF are not represented by appropriated assets—

- (a) where the member has both an RTF and a TATF, and the amount of his RTF exceeds the amount of his TATF, such payments shall, to the extent of that excess, be treated as made out of his RTF (but not his TATF) and as reducing his RTF, and subject thereto
- (b) such payments are made out of the member's RTF and TATF in priority to any other fund under that scheme, and reduce (but not below nil) the amount of the RTF and TATF.

(8) Where the payment or crystallisation event described at regulation 4ZA(3)(b) is referable to a member's RFTF or RFTATF, the funds shall be reduced in accordance with the following Rules (with an earlier Rule applying in preference to a later Rule).

Rule 1

Where an unauthorised payment is treated as made by the scheme by virtue of section 174A—

- (a) the payment will be treated as made out of the member's RFTF and RFTATF, but
- (b) the interest in taxable property, in respect of which the unauthorised payment is treated as made, will represent the payment and form part of the member's RFTF and RFTATF (an "appropriated asset"), up to an amount equal to the amount of that payment.

Rule 2

Accordingly, if a scheme transfers that appropriated asset (or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly), or part of it, to another pension scheme, that transfer shall be treated as a transfer of the whole or part, as the case may be, of the member's RFTF and RFTATF (limited to the amount of the unauthorised payment) to that other scheme, falling (if appropriate) within regulation 3C(b).

Rule 3

If a scheme disposes (other than to another pension scheme) of an appropriated asset (or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly), or part of it, any other property which directly or indirectly represents proceeds of either of those interests (limited to the amount of the unauthorised payment) will form part of the member's RFTF and RFTATF.

Rule 4

This Rule applies to crystallisation events and payments made by the scheme to or in respect of the member, other than—

- (a) a transfer of an interest in taxable property or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly, and
- (b) payments treated as made by virtue of section 174A.

So far as the member's RFTF and RFTATF are not represented by appropriated assets—

- (a) where the member has both an RFTF and RFTATF, and the aggregate amount of his RFTFs exceeds the amount of his RFTATF, such payments will, to the extent

of that excess, be treated as made out of his RFTF (but not his RFTATF) and as reducing the RFTF, and subject thereto

- (b) such payments are made out of the member's RFTF and RFTATF and reduce (but not below nil) the amount of the RFTF and RFTATF.

(9) References to "payments treated as made by virtue of section 174A" include references to payments treated as made by regulations under paragraph 37 of Schedule 29A and paragraph 7A of Schedule 34(6).

Reversal of fund depletion

4ZD.—(1) Where—

- (a) a scheme makes a transfer, and
 (b) the member's funds have been previously reduced by a crystallisation event described in regulation 4ZA(3)(b),

then immediately before the transfer the amount calculated in accordance with paragraph (3) will be attributed back to the member's funds in accordance with the order provided by regulation 4ZC(4).

(2) Where—

- (a) the scheme receives a transfer,
 (b) after receipt of that transfer the member's funds have been reduced by a crystallisation event set out in regulation 4ZA(3)(b), and
 (c) the transfer is one required by section 244B and 244C to be initially assumed to be excluded by that section but, after the member's funds have been reduced by a crystallisation event set out in regulation 4ZA(3)(b), an event occurring before the end of the relevant period means that the transfer is not so excluded

then immediately before the event causing the transfer to be not excluded from the overseas transfer charge the amount to be calculated in accordance with paragraph (3) will be attributed back to the member's funds in accordance with the order provided by regulation 4ZC(4).

(3) The amount to be attributed back to the member's funds under paragraphs (1) and (2) is—

$$(A + B) - C$$

Where

A is the amount (being not less than nil) found under regulation 4ZB(5) less the aggregate amount of drawdown pension paid from that flexi-access drawdown fund,

B is the amount (being not less than nil) found under regulation 4ZB(7) less the aggregate amount of the scheme pension payments made to the member, and

C is the amount of any pension debit paid from that flexi-access drawdown fund, or sums and assets that have been applied towards the provision of scheme pension, on or after 6th April 2017.

(4) Where—

- (a) the scheme is treated as making an unauthorised payment in accordance with paragraph 2A of Schedule 28(7), and

(6) Schedule 29A and 7A of Schedule 34 were inserted by the Finance Act 2006 (c. 25).

(7) Paragraph 2A was inserted by paragraph 12 of Schedule 10 to the Finance Act 2005 (c. 7) and amended by paragraph 7(3) of Schedule 20 to the Finance Act 2007 (c. 11).

- (b) the member's funds have previously been reduced in accordance with regulation 4ZA(3)(b)(iii)

then immediately before the payment the amount calculated in accordance with paragraph (6) will be attributed back to the member's funds in accordance with paragraph (7).

(5) Where—

- (a) the member's funds have been reduced in accordance with regulation 4ZA(3)(b)(iii), and
- (b) no scheme pension has been paid in a period of 12 months for any reason, other than the death of the member or a recognised transfer

the amount calculated in accordance with paragraph (6) will be attributed back to the member's funds in accordance with paragraph (7) on the first anniversary of the last payment of the scheme pension.

(6) The amount to be attributed back to the member's funds under paragraphs (4) and (5)—

- (a) is the amount found in regulation 4ZB(7) less the aggregate amount of the scheme pension payments made to the member and the amount of any pension debit paid from sums and assets that had been applied towards the provision of that scheme pension, but
- (b) this amount cannot be below nil.

(7) The amount calculated in accordance with paragraph (6) will, subject to paragraph (9), be attributed back in the following order of priority—

- (a) to the member's RFTF, in priority of the RFTF with the latest key date to the earliest key date. The aggregate amount attributed back to the member's RFTF will also be attributed back to the member's RFTATF,
- (b) to so much of the member's UK tax-relieved funds made under the scheme on or after 6th April 2017,
- (c) to the member's RTF and TATF,
- (d) to so much of the member's UK tax-relieved funds made under the scheme before 6th April 2017.

(8) Where a person is temporarily non-resident and the total amount of withdrawals as set out in section 576A(2) of the Income Tax (Earnings and Pensions) Act 2003⁽⁸⁾ in a temporary period of non-residence⁽⁹⁾ exceeds £100,000, for the purposes of section 576A, regulation 4ZA(3)(b) does not apply.

(9) The amount attributed back to a fund will not increase the value of the relevant fund found in accordance regulations 2, 3, 3A, 3B and 3C.

Order of attributing repayment of an overseas transfer charge

4ZE. Any repayment of an overseas transfer⁽¹⁰⁾ charge to a scheme manager will be attributed back to the particular fund or funds from which it was referable.

⁽⁸⁾ 2003 c. 1. Section 576A(2) was inserted by the Taxation of Pensions Act 2014 (c. 30).

⁽⁹⁾ "Temporarily non-resident" and "the temporary period of non-residence" has the meaning given in paragraphs 110 and 113 respectively of Schedule 45 to the Finance Act 2013 (c. 29).

⁽¹⁰⁾ "Overseas transfer charge" has the meaning given in section 244A.

Transitional Provisions

4ZF.—(1) This regulation applies where the member designated sums and assets as available for payment of a drawdown pension, or became entitled to a scheme pension, before 6th April 2017.

(2) The payment of the drawdown pension made on or after 6th April 2017 from a flexi-access drawdown fund or drawdown pension fund, to the extent that it relates to the designation made before 6th April 2017, is to be treated as included in the list of payments in regulation 4ZA(3)(a).

(3) The payment of the scheme pension made on or after 6th April 2017 and from sums and assets applied before 6th April 2017 towards the provision of the scheme pension is to be treated as included in the list of payments in regulation 4ZA(3)(a).

(4) Where a payment described in paragraphs (2) or (3) is made, the member's funds will be reduced by the amount of the payment in the order provided by regulation 4ZC(3).

(5) Where a pension debit is made in respect of sums and assets—

(a) designated before 6th April 2017 as available for payment of a drawdown pension,
or

(b) applied before 6th April 2017 towards the provision of a scheme pension,
regulation 4ZB(4) is treated as including the amount of the pension debit that derives from those funds.

(6) Regulation 4ZD does not apply in respect of any sums and assets—

(a) designated before 6th April 2017 for the payment of a drawdown pension, or

(b) applied before 6th April 2017 towards the provision of a scheme pension.”.