
STATUTORY INSTRUMENTS

1998 No. 728

INCOME TAX

The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) (Amendment) Regulations 1998

<i>Made</i>	- - - -	<i>17th March 1998</i>
<i>Laid before the House of Commons</i>	- - - -	<i>17th March 1998</i>
<i>Coming into force</i>	- -	<i>7th April 1998</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 591(6) of the Income and Corporation Taxes Act 1988(1), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) (Amendment) Regulations 1998 and shall come into force on 7th April 1998.

2. In these Regulations “the principal Regulations” means the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991(2) and “regulation” means a regulation of the principal Regulations.

Amendments to the principal Regulations

3. In regulation 2(1)—

(a) the definition of “administrator” shall be omitted;

(b) for the definition of “small self-administered scheme” there shall be substituted—

““small self-administered scheme” means a retirement benefits scheme where—

(a) some or all of the income and other assets are invested otherwise than in insurance policies;

(b) a scheme member is connected with—

(1) 1998 c. 1; section 591(6) was amended by paragraph 6 of Schedule 13 to the Finance Act 1988 (c. 39).

(2) S.I. 1991/1614.

- (i) another scheme member, or
 - (ii) a trustee of the scheme, or
 - (iii) a person who is an employer in relation to the scheme; and
 - (c) there are fewer than 12 scheme members;”.
4. In regulation 4(1) for sub-paragraph (c) there shall be substituted—
- “(c) the amount found by the formula—
- $$\frac{(A - B) \times 45}{100}$$
- where—
- A is the market value of the assets of the scheme at that time, other than assets franking any pension in payment under the rules of the scheme where the purchase of an annuity has been deferred (including any pension that would be payable to a widow or widower of a member of the scheme following the member’s death in a case where the rules of the scheme limit such pension to the person to whom the member was married at retirement), and
- B is the aggregate of any sums borrowed to purchase those assets, and any other liabilities incurred by the trustees which are outstanding at that time, other than liabilities to pay benefits under the scheme.”
5. In regulation 4(2) for sub-paragraph (a) and the word “and” immediately following it there shall be substituted—
- “(a) the amount found—
- (i) where the scheme has been established for three years or more at the time of any borrowing, by dividing the amount of the contributions paid by employers in the period of three years which ended at the end of the previous accounting period of the scheme by three, or
 - (ii) where the scheme has been established for less than three years at the time of any borrowing, by dividing the amount of the contributions paid by employers in the period since the scheme was established ending at the time of that borrowing by the number of years falling within that period (a part of a year being counted as one year), and.”
6. In regulation 5(1)(c)(ii) there shall be added at the end the words “in respect of shares of the class held”.
7. After regulation 5(3) there shall be added—
- “(4) For the purposes of paragraph (1), trustees shall not be regarded as indirectly holding as an investment residential property other than that specified in paragraph (2) where—
- (a) they hold as an investment subject to the trusts of the scheme a right which confers entitlement to receive payment of any rentcharge, ground annual, feu duty or other annual payment reserved in respect of, or charged on or issuing out of, that property, and
 - (b) the property is not occupied by a scheme member or a person connected with him.”
8. In regulation 7 for paragraphs (2) and (3) there shall be substituted—
- “(2) The figure specified in this paragraph is the amount found by the formula—

$$\frac{(C - D) \times 25}{100}$$

where—

C is the market value at the time in question of the assets of the scheme which are derived from contributions made by an employer and by employees since the scheme was established, other than assets franking any pension in payment under the rules of the scheme where the purchase of an annuity has been deferred (including any pension that would be payable to a widow or widower of a member of the scheme following the member's death in a case where the rules of the scheme limit such pension to the person to whom the member was married at retirement), and

D is the aggregate of any sums borrowed to purchase those assets, and any other liabilities incurred by the trustees which are outstanding at that time, other than liabilities to pay benefits under the scheme.

(3) The figure specified in this paragraph is the amount found by the formula—

$$\frac{(E - F) \times 50}{100}$$

where—

E is the market value at the time in question of all the assets of the scheme, other than assets franking any pension in payment under the rules of the scheme where the purchase of an annuity has been deferred (including any pension that would be payable to a widow or widower of a member of the scheme following the member's death in a case where the rules of the scheme limit such pension to the person to whom the member was married at retirement), and

F is the aggregate of any sums borrowed to purchase those assets, and any other liabilities incurred by the trustees which are outstanding at that time, other than liabilities to pay benefits under the scheme.”

9. For regulation 9 there shall be substituted—

“Provisions as to pensioner trustees

9.—(1) The description of provision specified in this regulation is a provision to the effect that—

- (a) one of the trustees of the scheme shall be a pensioner trustee,
- (b) the appointment of that trustee as a pensioner trustee, and his obligation and entitlement to act as such, shall be incapable of termination at any time except—
 - (i) by the death of the trustee,
 - (ii) by an order of the court,
 - (iii) by withdrawal by the Board of their approval of the trustee to act as a pensioner trustee, or
 - (iv) in the circumstances specified in paragraph (2), and
- (c) where termination occurs by virtue of any of the events specified in paragraph (1)(b)(i) to (iii) or in the circumstances specified in paragraph (2)(b), the appointment of a successor to the former pensioner trustee of the scheme is made no more than 30 days after the termination.

(2) The circumstances specified in this paragraph are where—

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- (a) another trustee is appointed to act as pensioner trustee in place of the trustee, and the appointment of the other trustee takes effect at the same time as the termination;
- (b) the trustee has committed a fraudulent breach of trust in relation to the scheme and that is the reason for the termination.”

10. Regulation 10 (provisions as to furnishing of information and documents) is hereby revoked.

17th March 1998

S. C. T. Matheson
C. W. Corlett
Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991 (S.I.1991/1614) (“the principal Regulations”) which impose restrictions on the Board of Inland Revenue’s discretion to approve under section 591 of the Income and Corporation Taxes Act 1988 retirement benefits schemes that are small self-administered schemes.

Regulation 1 provides for citation and commencement, and regulation 2 for interpretation.

Regulation 3 omits the definition of “administrator” from paragraph (1) of regulation 2 of the principal Regulations (in consequence of the revocation of regulation 10 of the principal Regulations by regulation 10 of these Regulations) and substitutes a new definition of “small self-administered scheme” in that paragraph.

Regulations 4 and 5 amend regulation 4 of the principal Regulations which restricts the amount which the scheme trustees are permitted to borrow. Regulation 4 amends paragraph (1)(c) of regulation 4 of the principal Regulations so as to provide that the restriction in the maximum amount which the trustees are permitted to borrow shall be calculated by reference to 45 per cent. of the amount that results after deducting from the market value of the assets of the scheme at the time of the borrowing, other than assets used in the payment of a pension, any sums borrowed to purchase those assets and other liabilities of the scheme which are outstanding at that time. Regulation 5 amends the definition of “ordinary annual contribution” in paragraph (2) of regulation 4 of the principal Regulations.

Regulation 6 amends regulation 5(1) of the principal Regulations so as to amend the limit on the number of shares in an unlisted company which may be held by the scheme trustees.

Regulation 7 adds a paragraph to regulation 5 of the principal Regulations so as to provide that the restriction from holding residential property as an investment imposed by that regulation does not extend to a right held by the scheme trustees to receive any rentcharge or other annual payment reserved in respect of such property.

Regulation 8 amends regulation 7 of the principal Regulations so as to provide that the limit on the aggregate of the amount of money which may be lent to an employer by the scheme trustees and the market value of shares in the employer company which the trustees may hold, shall be calculated by reference to the specified percentage of the amount that results after deducting from the market value of the assets of the scheme at the relevant time, other than assets used in the payment of a pension, any sums borrowed to purchase those assets and other liabilities of the scheme which are outstanding at that time.

Regulation 9 substitutes a new regulation 9 of the principal Regulations relating to pensioner trustees.

Regulation 10 revokes regulation 10 of the principal Regulations (provisions as to furnishing of information and documents by the administrator of a scheme) which is superseded by the Retirement Benefits Schemes (Information Powers) Regulations 1995 (S.I. 1995/3103).