STATUTORY INSTRUMENTS

2013 No. 1740

INCOME TAX

The Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Amendment) Regulations 2013

Made - - - -	*at 11.05 a.m. on 19th July 2013*
Laid before the House of Commons - - - -	*22nd July 2013*
Coming into force - -	*12th August 2013*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of powers conferred by paragraphs 15, 16(1) and 17(1) of Schedule 18 to the Finance Act 2011(**1**):

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Amendment) Regulations 2013 and come into force on 12th August 2013.

(2) Regulations 2(2), 2(4) and 2(5) have effect for the tax year 2012 – 13 and subsequent tax years.

(3) Regulation 2(3) has effect for the tax year 2013 – 14 and subsequent tax years.

Amendments to Schedule 18 to the Finance Act 2011

2.—(1) Paragraph 14 of Schedule 18 to the Finance Act 2011 (transitional provisions) is amended by paragraphs (2) to (5).

(2) After sub-paragraph (1) insert—

"(1A) This paragraph also applies on or after 6 April 2012 in the case of an individual—

(a) who, on that date—

(i) has one or more arrangements under a relieved non-UK pension scheme of which the individual is a relieved member, and

(ii) is not a member of a registered pension scheme,

(**1**) 2011 c. 11; paragraphs 15, 16 and 17 of Schedule 18 were inserted by section 47 of the Finance Act 2013 (c. 29).

(b) in relation to whom paragraph 7 of Schedule 36 to FA 2004(**2**) (primary protection) does not make provision for a lifetime allowance enhancement factor, and

(c) in relation to whom paragraph 12 of that Schedule(**3**) (enhanced protection) does not apply on that date,

if notice of intention to rely on it is given to an officer of Revenue and Customs.".

(3) After sub-paragraph (4) insert—

"(4A) Subject to sub-paragraphs (4B) to (4E), sub-paragraph (4) applies in relation to an individual who is a relieved member of a relieved non-UK pension scheme as if the scheme were a registered pension scheme; and the other sub-paragraphs of this paragraph apply accordingly.

(4B) In relation to an arrangement under a relieved non-UK pension scheme, in sub-paragraph (4) the reference to 6 April 2012 is to be read as a reference to 6 April 2013.

(4C) Sub-paragraphs (4D) and (4E) apply (instead of sub-paragraph (5)) for the purposes of sub-paragraph (4)(a) in determining if there is benefit accrual in relation to an individual under an arrangement under a relieved non-UK pension scheme of which the individual is a relieved member.

(4D) There is benefit accrual in relation to the individual under the arrangement if there is a pension input amount under sections 230 to 237 of FA 2004 (as applied by Schedule 34 to that Act) greater than nil in respect of the arrangement for a tax year; and, in such a case, the benefit accrual is treated as occurring at the end of the tax year.

(4E) There is also benefit accrual in relation to the individual under the arrangement if—

(a) in a tax year there occurs a benefit crystallisation event in relation to the individual (whether in relation to the arrangement or to any other arrangement under any pension scheme or otherwise), and

(b) had the tax year ended immediately before the benefit crystallisation event, there would have been a pension input amount under sections 230 to 237 of FA 2004 greater than nil in respect of the arrangement for the tax year,

and, in such a case, the benefit accrual is treated as occurring immediately before the benefit crystallisation event.".

(4) For sub-paragraphs (13) and (14) substitute—

"(13) The relevant percentage, in relation to a tax year, means—

(a) where the arrangement (or a predecessor arrangement) includes provision for the value of the rights of the individual to increase during the tax year at an annual rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 9 December 2010—

(i) the percentage specified (or, where more than one arrangement includes such provision, the higher or highest of the percentages specified), plus

(ii) the relevant statutory increase percentage;

(b) where the arrangement (or a predecessor arrangement) includes provision for the value of the rights of the individual to increase during the tax year at an annual rate specified by reference to the retail prices index in the rules of the pension

(**2**) 2004 c. 12.

(**3**) Paragraph 12 has been amended by paragraph 53(2) to (6) of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 17 of Schedule 20 and Part 3(2) of Schedule 27 to the Finance Act 2007 (c. 11), paragraph 432(2) of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and paragraph 59 of Schedule 26 to the Equality Act 2010 (c. 15).

scheme (or a predecessor registered pension scheme) on 6 April 2012 which does not exceed an increase in the retail prices index—

(i) the percentage specified (or, where more than one arrangement includes such provision, the higher or highest of the percentages specified), plus

(ii) the relevant statutory increase percentage; or

(c) otherwise—

(i) an increase in the consumer prices index, or

(ii) if higher, the relevant statutory increase percentage.

Where both paragraphs (a) and (b) would otherwise apply giving different percentages, the paragraph giving the higher percentage applies.

(14) In sub-paragraph (13)—

"predecessor arrangement", in relation to an arrangement, means another arrangement (under the same or another registered pension scheme) from which some or all of the sums or assets held for the purposes of the arrangement directly or indirectly derive;

"predecessor registered pension scheme", in relation to a pension scheme, means another registered pension scheme from which some or all of the sums or assets held for the purposes of the arrangement under the pension scheme directly or indirectly derive;

"an increase in the retail prices index" means the percentage by which the retail prices index for a month specified in the rules of the pension scheme (or predecessor pension scheme) is higher than it was for the same month in the year before (or nil per cent if it is not higher);

"an increase in the consumer prices index" means the percentage by which the consumer prices index for the month of September in the previous tax year is higher than it was for the same month in the year before (or nil per cent if it is not higher).

(14A) In sub-paragraph (13) "the relevant statutory increase percentage", in relation to a tax year, means the percentage increase in the value of the individual's rights under the arrangement during the tax year so far as it is attributable solely to one or more of the following—

(a) an increase in accordance with section 15 of the Pension Schemes Act 1993(**4**) or section 11 of the Pension Schemes (Northern Ireland) Act 1993(**5**) (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed);

(b) a revaluation in accordance with section 16 of the Pension Schemes Act 1993 or section 12 of the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of earnings factors);

(c) a revaluation in accordance with Chapter 2 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of accrued benefits);

(**4**) 1993 c. 48; relevant amendments are made by paragraphs 28(a), 28(b) and 62 of Schedule 5 and Part 3 of Schedule 7 to the Pensions Act 1995 (c. 26) and paragraph 4 of Schedule 2 and paragraphs 31(1), 31(2) and 32 of Part 1 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30), and sections 281(1) and 281(2) of the Pensions Act 2004 (c. 35), and Part 3 of the Schedule to the Civil Partnerships (Pensions and Benefits Payments) (Consequential, etc. Provisions) Order 2005 (S.I. 2005/2053), and sections 19(2) and 19(3) of the Pensions Act 2011 (c. 19).

(**5**) 1993 c. 49; relevant amendments are made by paragraphs 21(a), 21(b) and 52 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213) (N.I. 22), and paragraphs 3, 20(2) and 21 of Schedule 9 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147) (N.I. 11).

(d) a revaluation in accordance with Chapter 3 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: protection of increases in guaranteed minimum pensions);

(e) the application of section 67 of the Equality Act 2010 (sex equality rule for occupational pension schemes).

(14B) Sub-paragraph (14C) applies in relation to a tax year if—

(a) the arrangement is a defined benefits arrangement which is under an annuity contract treated as a registered pension scheme under section 153(8) of FA 2004,

(b) the contract provides for the value of the rights of the individual to be increased during the tax year at an annual rate specified in the contract, and

(c) the contract limits the annual rate to the percentage increase in the retail prices index over a 12 month period specified in the contract.

(14C) Sub-paragraph (13)(c)(i) applies as if it referred instead to the annual rate of the increase in the value of the rights during the tax year.

(14D) For the purposes of sub-paragraph (14B)(c) the 12 month period must end during the 12 month period preceding the month in which the increase in the value of the rights occurs.".

(5) After sub-paragraph (18) insert—

"(19) In particular, references to a relieved non-UK pension scheme or a relieved member of such a scheme are to be read in accordance with paragraphs 13(3) and (4) and 18 of Schedule 34 to FA 2004 (application of lifetime allowance charge provisions to members of overseas pension schemes).".

Amendment to the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011

3.—(1) The Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011(**6**) is amended by paragraphs (2) and (3).

(2) In Regulation 4(2) for paragraph (b) substitute—

"(b) received by Her Majesty's Revenue and Customs on or before the following dates—

(i) if it relates to an individual described in sub-paragraph (1) of paragraph 14, 5 April 2012; or

(ii) if it relates to an individual described in sub-paragraph (1A) of paragraph 14, 5 April 2014.".

(3) In Regulation 13(1) omit "in relation to any sums or assets held for the purposes of a registered pension scheme".

(**6**) S.I. 2011/1752. The Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 ("the Regulations") were made under section 251(1) of the Finance Act 2004 and paragraphs 14(2) and 15 of Schedule 18 to the Finance Act 2011. Paragraphs 14(2) and 15 of Schedule 18 to the Finance Act 2011 were omitted, and a new paragraph 15 inserted by sections 47(2) and (3) of the Finance Act 2013; the Regulations, however, by virtue of section 47(5) of the Finance Act 2013 continue to have effect so far as made under paragraphs 14(2) and 15 as though they were made under paragraphs 16 and 17(1) of that Schedule.

Edward Troup
Ruth Owen
Two of the Commissioners for Her Majesty's Revenue and Customs

At 11.05 a.m. on 19th July 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Finance Act 2011 (c. 11) made changes to the Lifetime Allowance Charge applied to pensions by reducing the Lifetime Allowance. Paragraph 14 of Schedule 18 to that Act provided for transitional protection for the Lifetime Allowance provided that conditions contained within that paragraph are met and a person has served notice on the Commissioners for Her Majesty's Revenue and Customs of intention to rely on the protection provided by that paragraph (a "paragraph 14 notice").

These Regulations amend that paragraph to remove restrictions in the transitional protection for the Lifetime Allowance Charge, and modify the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 (S.I. 2011/1752) to enable relieved members of relieved non-UK pension schemes to serve a paragraph 14 notice.

Regulation 1 provides for the citation, commencement and effect of these Regulations. Regulations 2(2), 2(4) and 2(5) have retrospective effect from 6th April 2012. Regulation 2(3) has retrospective effect from 6th April 2013. Paragraphs 15(3) and (4) of Schedule 18 to the Finance Act 2011 provide that regulations made under paragraph 15 may include provisions having effect in relation to a time before the regulations are made provided that that time is no earlier than 6th April 2012 where those provisions do not increase a person's liability to tax or 6th April 2013 where they do.

Regulation 2(2) inserts a new sub-paragraph (1A) into paragraph 14 of Schedule 18 to the Finance Act 2011 in order to extend the transitional protection to relieved members of relieved non-UK pension schemes who are not also members of a registered pension scheme.

Regulation 2(3) inserts new sub-paragraphs (4A) to (4E) to apply the relevant provisions in paragraph 14(4) of that Schedule to relieved non-UK pension schemes from 6th April 2013.

Regulation 2(4) substitutes new sub-paragraphs (13) to (14D). The new sub-paragraph (13) expands the definition of "relevant percentage" in order to provide that certain increases in the value of an individual's rights are ignored for the purposes of determining if there has been a benefit accrual and calculating the value of it. The new sub-paragraph (14) inserts definitions necessary for the operation of the new sub-paragraph (13).

New sub-paragraph (14A) secures that, in relation to certain schemes, increases in value which are as a result of revaluations under relevant statutory provisions are ignored for the purposes of calculating a benefit accrual. New sub-paragraphs (14B) to (14D) secure that certain increases in value in annuity contracts are ignored for the purposes of calculating a benefit accrual. This corrects a consequence of the Finance Act 2011 whereby people would have lost fixed protection in cases where they should not have done so.

Regulation 2(5) inserts new sub-paragraph 19 to make it clear that references to a relieved non-UK pension scheme or a relieved member of such a scheme are to be read in accordance with the provisions of the Finance Act 2004 (c. 12) which applies lifetime allowance provisions to members of overseas pension schemes.

Regulation 3 amends regulation 4(2)(b) of the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 to provide that in the case of relieved members of relieved non-UK pension schemes the deadline for serving a paragraph 14 notice is the 5th April 2014. It also amends regulation 13(1) to remove a now redundant reference to a registered pension scheme.

A Tax Information and Impact Note covering this instrument was published on 3rd March 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.