

2005 No. 3448

INCOME TAX

**The Registered Pension Schemes (Relief at Source) Regulations
2005**

Made - - - - *14th December 2005*

Laid before the House of Commons *15th December 2005*

Coming into force - - *6th April 2006*

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 192(6), (7) and (8) of the Finance Act 2004(a), and now exercisable by them(b), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Registered Pension Schemes (Relief at Source) Regulations 2005 and shall come into force on 6th April 2006.

Interpretation

2.—(1) In these Regulations “section”, without more, means a section of the Finance Act 2004.

(2) In these Regulations, unless the context otherwise requires—

“the basic amount” has the meaning given by section 190(4);

“electronic signature” has the meaning given by section 7(2) of the Electronic Communications Act 2000(c);

“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003(d);

“ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005(e);

“net contribution” means a contribution from which income tax at the basic rate is deductible in accordance with section 192;

“person with parental responsibility” means a person—

(a) in England and Wales, who has such responsibility within section 3 of the Children Act 1989(f);

(a) 2004 c. 12.

(b) The functions of the Commissioners of Inland Revenue (“the former Commissioners”) were transferred to the Commissioners for Her Majesty's Revenue and Customs (“the new Commissioners”) by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) provides that, so far as appropriate in consequence of section 5, references to the former Commissioners are to be read as references to the new Commissioners.

(c) 2000 c. 7.

(d) 2003 c. 1.

(e) 2005 c. 5.

(f) 1989 c. 41.

(b) in Scotland means a person who has parental responsibilities as defined by section 1(3) of the Children (Scotland) Act 1995(a); and

(c) in Northern Ireland, who has such responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995(b);

“pension scheme” and “registered pension scheme” have the meanings given by section 150;

“relevant individual” means the person in respect of whom contributions are payable to a pension scheme;

“scheme administrator” has the meaning given by section 270;

“tax month” means a period beginning on the 6th day of any month and ending with the 5th day of the following month;

“TMA 1970” means the Taxes Management Act 1970(c);

“year of assessment” means a year beginning with 6th April in any year and ending with 5th April in the following year.

Prescribed conditions

3.—(1) Regulations 4, 5 and 6 specify the conditions subject to which relief under section 191 (methods of giving relief for pension contributions) shall be given in accordance with section 192(1) and (2) (relief at source).

(2) The particulars specified in regulation 4(2) and the declarations required by regulations 5(2) and 6(2) must be given to the scheme administrator by the relevant individual.

This paragraph is subject to the qualifications in paragraph (3) and regulation 7.

(3) In a case where—

(a) membership of a registered pension scheme is connected with a particular employment, and

(b) an individual in such employment automatically becomes a member of a registered pension scheme, subject to the right of the individual to opt out of membership of the scheme,

the employer (rather than the relevant individual) may give the scheme administrator the particulars specified in regulation 4(2), and make the declarations required by regulation 5(2) and 6.

Information to be given to the scheme administrator

4.—(1) The scheme administrator must be given—

(a) the particulars specified in paragraph (2), and

(b) the declarations required by regulations 5(2) and 6(2),

before the time specified in paragraph (5).

(2) The particulars are—

(a) the relevant individual’s full name and permanent residential address including, where the address is in the United Kingdom, the postcode.

(b) the relevant individual’s date of birth;

(c) unless the relevant individual is—

(i) aged under 16, or

(ii) a citizen of a country outside the United Kingdom who is not resident in the United Kingdom,

(a) 1995 c. 36.

(b) S.I.1995/755 (N.I.2).

(c) 1970 c. 9.

the relevant individual's National Insurance number, or a statement that he does not have one;

- (d) except where the scheme is an occupational pension scheme within the meaning of section 150(5), the category of status specified in paragraph (3) applicable in the relevant individual's case or, if more than one category is applicable, the category which is that individual's principal source of income.

(3) The categories of status specified for the purposes of paragraph (2)(d) are—

- (a) employed, if the relevant individual is chargeable to tax under Chapter 2 of Part 2 of ITEPA 2003 for the year of assessment concerned in respect of employment income as defined in section 7 of that Act;
- (b) pensioner, where the relevant individual is chargeable to tax under Part 9 of that Act for the year of assessment concerned in respect of a pension;
- (c) self-employed, in the case of an individual chargeable to tax under Chapter 2 of Part 2 of ITTOIA 2005 for the year of assessment concerned in respect of annual profits or gains arising or accruing from any trade, profession or vocation carried on by the individual;
- (d) child, where the individual is under the age of 16;
- (e) other, in the case of a relevant individual not falling within any of sub-paragraphs (a) to (d).

(4) In the case of a relevant individual whose status falls within paragraph (3)(e), the particulars given must specify which of the following descriptors is applicable or, if more than one, the most applicable, namely—

- (a) caring for one or more children aged under 16;
- (b) caring for a person aged 16 or over;
- (c) in full time education;
- (d) unemployed; or
- (e) other.

(5) The time specified in relation to the particulars in paragraph (2)(a) to (d) is when the individual first pays a net contribution.

Declaration that relevant individual entitled to relief

5.—(1) Before a relevant individual pays a net contribution for the first time, the scheme administrator must be given the declaration specified in paragraph (2).

(2) The declaration is one that the total contributions to any registered pension schemes in respect of which he is entitled to relief under section 188 will not exceed the higher of—

- (a) the basic amount, or
- (b) the relevant individual's relevant UK earnings, within the meaning of section 189 for that tax year.

Declaration about accuracy of information

6.—(1) Whenever particulars are given in accordance with regulation 4 they must be accompanied by the declaration specified in paragraph (2).

(2) The declaration is one to the effect that—

- (a) in relation to—
 - (i) the particulars specified in regulation 4(2), they are, to the best of the maker's knowledge and belief, correct and complete;
 - (ii) the declaration specified in regulation 5(2), it is, to the best of the maker's knowledge and belief, correct;

- (b) no later than the date specified in paragraph (3), the maker will give notice to the scheme administrator if an event occurs, as a result of which the relevant individual will no longer be entitled to relief for his contributions pursuant to section 188.
- (3) The date is the later of—
- (a) 5th April in the year of assessment in which the event referred to in sub-paragraph (2)(b) occurs; and
 - (b) the date which is 30 days after the occurrence of that event.
- (4) If a declaration given under this regulation or regulation 5 is in writing, it shall be signed by, or on behalf of, the maker.

Persons under incapacity and disabled persons

7.—(1) Where the obligations imposed by regulations 4 to 6 would fall to be discharged by a person who is—

- (a) a child under the age of 16,
- (b) a person incapable, by reason of mental disorder, of managing and administering his property and affairs, or
- (c) a person suffering from a physical disability, by reason of which he has difficulty executing documents in respect of the management and administration of his property and affairs,

the following provisions of this regulation apply.

(2) In a case falling within paragraph (1)(a) those obligations shall be discharged by the child's parent or guardian, or a person with parental responsibility for the child.

(3) In a case falling within paragraph (1)(b) those obligations shall be discharged—

- (a) in England and Wales or Northern Ireland, by the person's attorney or receiver, or the person managing and administering his property and affairs;
- (b) in Scotland, by the person's guardian within the meaning of the Adults with Incapacity (Scotland) Act 2000(a).

(4) In a case falling within paragraph (1)(c) those obligations may be discharged by a person having a power of attorney in relation to the affairs of the person referred to in that sub-paragraph.

Electronic communications and documents

8.—(1) If particulars or declarations given under regulations 4 to 7—

- (a) are not in writing, or
- (b) are given to the scheme administrator by someone other than the relevant individual,

the following provisions of this regulation apply.

(2) In a case falling within paragraph (1) the scheme administrator shall—

- (a) make a declaration in writing on behalf of the relevant individual under regulations 4 to 6 that the particulars given or the terms of the declarations given are those recorded in the scheme administrator's declaration, and
- (b) send a copy of the declaration to the relevant individual.

(3) Unless the relevant individual notifies the scheme administrator, within 30 days after the date when the copy of the declaration referred to in paragraph (2) ("the original declaration") was sent to him—

- (a) that he does not wish to become a member of the pension scheme, or
- (b) that the original declaration was incorrect,

(a) asp 4.

the original declaration shall take effect as from the date on which the copy of it was sent to the relevant individual in accordance with that paragraph.

(4) If the relevant individual notifies the scheme administrator that the original declaration should be corrected, the original declaration shall cease to have effect, and the scheme administrator shall make a new declaration and paragraphs (2) and (3) shall apply to the new declaration as they applied to the original declaration.

(5) Particulars or declarations furnished under regulation 4, 5, 6 or 7 or this regulation shall be regarded as furnished in writing for the purposes of this regulation if, although not in writing, they are furnished by means of electronic communication and contain the electronic signature of the maker.

(6) Declarations made by the scheme administrator under this regulation shall be regarded as made in writing if they are produced by electronic means.

(7) The copy of a declaration to be sent in accordance with paragraph (2)(b) may be sent to the relevant individual by electronic communications.

(8) In the case of a person to whom regulation 7 applies, references in this regulation to the relevant individual include any person authorised by that regulation to act on his behalf.

Claims: introductory

9.—(1) Amounts recoverable by a scheme administrator under section 192(3)(a) shall be recovered on a claim made to Her Majesty's Revenue and Customs for the purpose of these Regulations.

(2) A claim shall be for a year of assessment (an "annual claim").

This is subject to the following qualification.

(3) A claim may also be made in accordance with regulation 10 for a tax month (an "interim claim").

Interim claims

10.—(1) An interim claim may be made by a scheme administrator within 6 months after the end of the tax month for which it is made.

This is subject to the following qualifications.

(2) An interim claim may not be made for the tax month ending 5th October or for any subsequent month until the annual claim for the preceding year of assessment and any information required by a notice under regulation 15(1) in respect of that year has been made by the scheme administrator and received by an officer of Revenue and Customs.

(3) An interim claim may not be based on an estimate but may only be made to recover an amount deducted in respect of contributions paid in the tax month to which it relates.

(4) If the amount claimed is established to the satisfaction of Her Majesty's Revenue and Customs, they shall pay that amount to the claimant: if they are not so satisfied they shall pay to the claimant any lesser amount which is so established.

(5) If a scheme administrator discovers that an amount paid by Her Majesty's Revenue and Customs under paragraph (4) was excessive the scheme administrator shall bring into account in the interim claim next made after the discovery ("the subsequent claim") the amount of the excess.

If that excess exceeds the amount deducted in respect of the tax month for which the subsequent claim is made—

- (a) the scheme administrator shall repay the amount of the excess to Her Majesty's Revenue and Customs with the claim; and
- (b) if the scheme administrator fails so to do that amount shall immediately be recoverable by Her Majesty's Revenue and Customs in the same manner as tax charged by an assessment on the scheme administrator which has become final and conclusive.

Annual claims

11.—(1) An annual claim may be made at any time within 6 years after the end of the year of assessment to which it relates.

This is subject to the following qualification.

(2) In relation to any year of assessment in which a scheme administrator has received and not repaid in full any amount on an interim claim, the administrator shall within 6 months after the end of the year of assessment make an annual claim.

(3) An annual claim—

- (a) may not be based on an estimate but may only be made to recover an amount deducted in respect of contributions paid in respect of the year of assessment to which it relates, and
- (b) must bring into account payments made in respect of that year.

For the purpose of this regulation “aggregate of the interim payments” means the aggregate of payments made (and not repaid) on interim claims.

(4) Where the aggregate of the interim payments shown by an annual claim exceeds the amount deducted for the year of assessment—

- (a) the scheme administrator shall repay the amount of the excess to Her Majesty’s Revenue and Customs with the claim; and
- (b) if the administrator fails to do so, that amount shall immediately be recoverable by Her Majesty’s Revenue and Customs in the same manner as tax charged by an assessment on the scheme administrator which has become final and conclusive.

(5) If a scheme administrator fails to make an annual claim under paragraph (2) within the time limited by that paragraph, an officer of Revenue and Customs may issue a notice to the scheme administrator showing the aggregate of the interim payments for the year, and stating that they are not satisfied that the amount due to the scheme administrator for the year of assessment exceeds the lower amount stated in the notice.

(6) If an annual claim is not delivered to Her Majesty’s Revenue and Customs within 14 days after the issue of a notice under paragraph (5), the amount of the difference between the aggregate of the interim payments and the amount stated in the notice shall immediately be recoverable by Her Majesty’s Revenue and Customs in the same manner as tax charged by an assessment on the scheme administrator which has become final and conclusive.

(7) If an annual claim has been made and the scheme administrator subsequently discovers that an error or mistake has been made in the claim the scheme administrator may make a supplementary claim within the time limited by paragraph (1).

Claims: supplementary provisions

12.—(1) Section 42 of TMA 1970(a) (procedure for making claims) shall not apply to a claim under these Regulations.

(2) No appeal shall lie from the decision of an officer of Revenue and Customs on an interim claim.

(3) An appeal shall lie to the Special Commissioners from the decision of an officer of Revenue and Customs on an annual claim, and the appeal shall be brought by giving written notice to the officer within 30 days of receipt of written notice of the decision.

(4) No payment made or other thing done on or in relation to an interim claim shall prejudice the decision on an annual claim.

(5) Part 5 of TMA 1970 (appeals and other proceedings) shall apply to an appeal under paragraph (3) and on an appeal the Special Commissioners may vary the decision appealed against whether or not the variation is to the advantage of the appellant.

(a) 1970 c. 9.

(6) All such assessments, payments and repayments shall be made as are necessary to give effect to the decision of an officer of Revenue and Customs on an annual claim, or to any variation of that decision on appeal.

(7) Claims under these Regulations must—

- (a) contain such information and be in such form as the Commissioners for Her Majesty's Revenue and Customs may prescribe (and forms prescribed for annual claims may require a report to be given by the scheme administrator's auditor);
- (b) contain declarations to the effect that—
 - (i) sufficient records in respect of the scheme are maintained so as to enable the requirements of these Regulations to be satisfied, and
 - (ii) the information contained in the claim (including the declaration referred to in paragraph (i)) is correct; and
- (c) be signed by the scheme administrator or an individual in the service of the scheme administrator authorised by him .

Recovery on de-registration of schemes

13.—(1) When a scheme administrator gives information to an officer of Revenue and Customs in accordance with regulation 15(2) the amount (if any) referred to in regulation 15(2)(b) must be paid to Her Majesty's Revenue and Customs.

(2) If an amount payable by virtue of paragraph (1) is not paid as required, that amount shall immediately be recoverable by Her Majesty's Revenue and Customs in the same manner as tax charged by an assessment on the scheme administrator which has become final and conclusive.

Recovery of amounts by assessment &c

14.—(1) Section 30 of TMA 1970 (recovery of overpayment of tax, etc.) shall apply in relation to the payment by Her Majesty's Revenue and Customs of an amount—

- (a) paid under these Regulations to which a scheme administrator was not entitled, or
- (b) recoverable from a scheme administrator under regulations 10(5), 11(4) or (6) or 13,

as if it had been income tax repaid to the scheme administrator to which he was not entitled.

(2) An assessment made by virtue of this regulation shall be made by an officer of Revenue and Customs and, subject to the provisions of these Regulations, TMA 1970 shall apply as if the assessment were an assessment to tax for the year of assessment in respect of which the amount was paid or is recoverable.

(3) For the purposes of section 86 TMA 1970 (interest on overdue income tax and capital gains tax) the relevant date shall be the later of—

- (a) 1st January in the year in which the amount was paid or is recoverable; or
- (b) the date of the making of the repayment by Her Majesty's Revenue and Customs following receipt of the annual claim for that year.

(4) Section 95 of TMA 1970 (incorrect return or accounts of income tax or capital gains tax) shall apply to an amount—

- (a) paid under these Regulations to a scheme administrator by reason of an incorrect claim made by him and
- (b) to which the scheme administrator was not entitled,

as if that amount were tax payable by him.

Information

15.—(1) An officer of Revenue and Customs may by notice in writing require any person who is, or who at any time has been—

- (a) a scheme administrator to whom net contributions have been paid, or
- (b) an individual or other person who has paid such contributions,

to give the officer, within such time (not being less than 14 days) as may be provided in the notice, such information and in such form as may be prescribed in the notice.

(2) If an officer of Revenue and Customs by notice under section 157 withdraws the registration of a scheme under which net contributions have been paid, within 30 days the scheme administrator in relation to that scheme must give to that officer the following information—

- (a) the full name, address and national insurance number of each individual who has paid net contributions after the date specified in the notice in relation to the scheme (“the relevant contributions”); and
- (b) the amount of relief obtained under section 189 by means of the relevant contributions.

(3) If the requirements of regulations 4 to 6 or 7(2) or (3) have not been met in relation to an individual who has paid net contributions, the scheme administrator to whom such contributions have been made shall give to an officer of Revenue and Customs the information prescribed in paragraph (2) within 30 days.

Inspection of records

16.—(1) Every scheme administrator to whom net contributions have been paid shall, whenever required so to do, make available for inspection by an officer of Revenue and Customs all books, documents and other records (including all particulars and declarations furnished under regulations 4 to 6 and 7(2) to 7(4)) in the scheme administrator’s possession or control relating to—

- (a) contributions paid to the scheme administrator,
- (b) the scheme under which those contributions were paid, and
- (c) the individual who paid the contributions.

(2) Where records are maintained by computer, the scheme administrator shall provide the person making the inspection with all facilities necessary to obtain information from them.

(3) All books, documents and records referred to in paragraph (1), shall be preserved by the scheme administrator so as to be available for inspection under this regulation for a period of six years following the end of the tax year to which they relate, or, where there is more than one such year, the later or latest of them.

This is subject to the following qualification.

(4) All particulars and declarations furnished under regulations 4 to 8 shall be preserved for a period of six years following the end of the tax year in which the individual to whom they relate ceased to make net contributions.

Transitional provision

17.—(1) If information has been furnished to, or a declaration made to, the scheme administrator of a personal pension scheme in relation to an individual in accordance with any provision of the Personal Pension Schemes (Relief at Source) Regulations 1988(a) (“the 1988 Regulations”), paragraph (2) applies.

(2) If this paragraph applies, and the scheme administrator to whom information or a declaration under these Regulations would fall to be made—

- (a) is the same person as the scheme administrator to whom that information was furnished (whether in the form of particulars or a certificate), or that declaration was made, under the 1988 Regulations, or

(a) S.I.1988/1013, amended by S.I. 2000/2315.

(b) is the successor, as the scheme administrator of the scheme to which the 1988 Regulations applied, of the person to whom that information was furnished or that declaration was made,

the information furnished under the 1988 Regulations, and the declaration under those Regulations, shall be treated as having been furnished or made under these Regulations.

D. A. Hartnett

M. J. Eland

14th December 2005

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for relief from tax on payments made to scheme administrators of registered pension schemes under Part 4 of the Finance Act 2004 (c. 12).

Regulation 1 provides for the citation and commencement of these Regulations, and regulation 2 for the interpretation of terms used in them.

Regulations 3 to 6 prescribe conditions which are to be satisfied in order for relief to be given at source in respect of payments of contributions to registered pension schemes. Regulation 7 deals with persons under a legal disability and those who have physical difficulties in signing documents. Regulation 8 makes provision for electronic documents.

Regulations 9 to 12 make provision about claims to relief.

Regulations 13 and 14 deal with the recovery of relief in circumstances where it should not have been allowed.

Regulations 15 and 16 deal respectively with information which is required to be given to HM Revenue and Customs for inspection by them of records maintained by the scheme administrator.

Regulation 17 contains a transitional provision continuing the effectiveness of information delivered, and declarations made, under the Personal Pension Schemes (Relief at Source) Regulations 1988.

A regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it was published by the Board of Inland Revenue on 8 April 2004, and is available on the Inland Revenue website at www.inlandrevenue.gov.uk/ria/simplifying-pensions.pdf or obtained by writing to HM Revenue and Customs, Capital & Savings Ministerial Correspondence Unit, 1st Floor, Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

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**The Registered Pension Schemes (Relief at Source) Regulations
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£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1800 12/2005 151800T 19585