

2006 No. 574

INCOME TAX

**The Registered Pension Schemes (Authorised Surplus
Payments) Regulations 2006**

<i>Made</i>	- - - -	<i>9th March 2006</i>
<i>Laid before the House of Commons</i>		<i>10th March 2006</i>
<i>Coming into force</i>	- -	<i>6th April 2006</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 177 of the Finance Act 2004(a), and now exercisable by them(b), make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 and shall come into force on 6th April 2006.

(2) In these Regulations—

“the 1995 Act” means the Pensions Act 1995(c);

“the 1988 Act” means the Income and Corporation Taxes Act 1988(d);

“controlling director” means a director to whom subsection (5)(b) of section 417 of the 1988 Act (read with sections (3),(4) and (6) of that section) applies.

(3) In the application of these Regulations to Northern Ireland, a reference to an enactment applying only in Great Britain shall be construed as a reference to the corresponding enactment in Northern Ireland.

Payments falling within section 37 or 76 of the Pensions Act 1995

2.—(1) A payment is an authorised surplus payment if it satisfies either paragraph (2) or (3).

(2) A payment satisfies this paragraph if it is made in compliance with the requirements contained in section 37 (payment of surplus to employer) of the 1995 Act(e).

This paragraph is subject to paragraph (4).

(3) A payment satisfies this paragraph if—

(a) 2004 c. 12.

(b) The functions of the Commissioners of Inland Revenue (“the former Commissioners”), including those under which this instrument is made, 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. 12). Section 50 of that Act provides that a reference in any other enactment to the former Commissioners is to be construed as reference to the new Commissioners in so far as is appropriate in consequence of section 5.

(c) 1995 c.26.

(d) 1988 c.1.

(e) Section 37 was amended by section 250 of the Pensions Act 2004 (c.35).

- (a) it is made in connection with the winding up of an occupational pension scheme and
- (b) the scheme making it satisfies the requirements set out in section 76 (excess assets on winding up) of the 1995 Act^(a).

This paragraph is subject to paragraph (4).

(4) A payment made by an occupational pension scheme to a sponsoring employer, solely in respect of the death of a member is an authorised surplus payment if it satisfies the conditions in paragraphs (2) or (3) and—

- (a) in a case where the deceased member's fund was an alternatively secured pension fund, it satisfies conditions A and B, and
- (b) in other cases, it satisfies condition B.

Condition A

The scheme administrator has been unable to identify any dependants of the deceased member.

Condition B

The member was not connected to the sponsoring employer at the date of his death.

(5) For the purposes of this regulation and regulation 3 a member is connected to a sponsoring employer if—

- (a) the employer is a partnership and he is connected with—
 - (i) a partner in the partnership, or
 - (ii) a person who has been a partner in the partnership at any time during the preceding year, or
- (b) the employer is a company and the member, or a person connected with him, is, or at any time during the preceding year has been, a controlling director of the company.

For the purposes of paragraph (5) any question whether a person is connected with another shall be determined in accordance with section 839(2) of the 1988 Act.

Payments falling outside section 37 or 76 of the Pensions Act 1995

3.—(1) A payment made by an occupational pension scheme to a sponsoring employer which does not satisfy paragraph (2) or (3) of regulation 2 is an authorised surplus payment if it satisfies the following conditions.

Condition A

The rules of the scheme permit such a payment to be made.

Condition B

The rules of the scheme contain a limit, calculated other than by reference to the size of the member's fund, on the maximum amount of benefits that may be paid to, or in respect of, members of the scheme.

Condition C

If the scheme is being wound up, the liabilities of the scheme have been fully discharged including any tax that may be due and there is a surplus of assets over liabilities.

Condition D

If the scheme is not being wound up, the requirements set out in section 37 of the 1995 Act would have been met if the scheme had been one to which the section applied.

This paragraph is subject to paragraph (2).

(2) A payment made by an occupational pension scheme to a sponsoring employer solely in respect of the death of a member is an authorised surplus payment if it satisfies the conditions in paragraph (1) and—

(a) Section 76 is amended by paragraph 62 of Schedule 12 to the Pensions Act 2004 (c.35).

- (a) in a case where the deceased member's fund was an alternatively secured pension fund, it satisfies conditions E and F, and
- (b) in other cases, it satisfies condition F.

Condition E

The scheme administrator has been unable to identify any dependants of the deceased member.

Condition F

The member was not connected to the sponsoring employer at the date of his death.

David Varney
Paul Gray

9th March 2006

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe “authorised surplus payments” for the purposes of section 177 of the Finance Act 2004.

Regulation 2 prescribes as authorised surplus payments, payments which are made in compliance with sections 37 or 76 of the Pensions Act 1995. Payments made by to a sponsoring employer in respect of the death of a member of the scheme must, in addition, satisfy the conditions set out in paragraph (4).

Regulation 3 prescribes as authorised surplus payments, payments which meet conditions A to D as set out in paragraph (1). Paragraph (2) prescribes as authorised payments, payments which are made in respect of the death of a member of the scheme and which, in addition to meeting the requirements set out in paragraph (1), also meet the conditions E and F as set out.

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

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