STATUTORY INSTRUMENTS

2006 No. 919

PENSIONS

The European Parliamentary (United Kingdom Representatives) Pensions (Amendment) Order 2006

Made - - - -	*23rd March 2006*
Laid before Parliament	*29th March 2006*
Coming into force - -	*6th April 2006*

ARRANGEMENT OF ORDER

The Leader of the House of Commons, in exercise of the powers conferred by section 4(1), (2) and (3) of the European Parliament (Pay and Pensions) Act 1979(**a**), and now vested in him(**b**), makes the following Order:

Introductory

Citation, commencement and interpretation

1.—(1) This Order may be cited as the European Parliamentary (United Kingdom Representatives) Pensions (Amendment) Order 2006.

(2) This Order comes into force on 6th April 2006.

(3) In this Order—

"the Principal Order" means the European Parliamentary (United Kingdom Representatives) Pensions (Consolidation and Amendment) Order 1994(**c**); and

"the AVC Order" means the European Parliamentary (United Kingdom Representatives) Pensions (Additional Voluntary Contributions Scheme) (No 2) Order 1995(**d**).

Amendments of the Principal Order

The earnings cap and maximum pensions

2.—(1) Article 2 of the Principal Order (interpretation) is amended as specified in paragraphs (2) and (3).

(2) In paragraph (1)—

(a) after the definition of "guaranteed minimum pension" insert—

""index" means the retail prices index, as defined for the purposes of the Income Tax Acts by section 833(2) of the Taxes Act 1988(**e**) and, except in paragraphs (1B) and (1C) of this article, references to the index at any time are to the index for the calendar month three months before that time;",

(b) for the definition of "permitted maximum" substitute—

""permitted maximum", except in article 8(5)(a), (b)(i), (c), (5B)(a), (5C)(a) and (5D)—

(a) in relation to the tax years 1988-89 and 1989-90, means £60,000,

(b) in relation to any other tax year before the tax year 2006-07, means the figure specified for that tax year in an order made under section 590C of the Taxes Act 1988, and

(c) in relation to any later tax year, means the figure found for that year by virtue of paragraphs (1A) to (1C) of this article;

and, except where the context indicates otherwise, references to the permitted maximum in relation to a person mean the permitted maximum for the tax year in which the person ceases to be a participant;", and

(c) after the definition of "permitted maximum" insert—

(**a**) 1979 c. 50; (Section 3 of the European Communities (Amendment) Act 1986 (c. 58) substituted references to the European Parliament for references in Acts to the Assembly of the European Communities).

(**b**) See the Transfer of Functions (European Parliamentary Pay and Pensions) Order 1995 (S.I. 1995/2995), article 2 and the Transfer of Functions (European Parliamentary Pay and Pensions) Order 2003 (S.I. 2003/2922), article 2.

(**c**) S.I. 1994/1662, amended by S.I. 1996/1493, S.I. 1997/1291, S.I. 2003/1416 and S.I. 2005/1924.

(**d**) S.I. 1995/739 amended by S.I. 1995/2995, S.I. 1999/2101, S.I. 2001/3649, S.I. 2003/2922 and S.I. 2004/2418.

(**e**) Section 833(2) was amended by paragraph 22 of Schedule 2 to the Transfer of Functions (Registration and Statistics) Order 1996 (S.I. 1996/273).

““registered pension scheme” has the same meaning as in Part 4 of the Finance Act 2004 (see section 150(2) of that Act);”.

(3) After paragraph (1) insert—

“(1A) The figure is £108,600 subject to paragraphs (1B) and (1C) of this article.

(1B) If the index for the month of September preceding the tax year 2007-08 or any later tax year is higher than it was for the previous September, the figure for that year shall be an amount arrived at by—

(a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the index, and

(b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

(1C) If the index for the month of September preceding the tax year 2007-08 or any later tax year is not higher than it was for the previous September, the figure for that year shall be the same as for the previous tax year.”.

(4) Schedule 2 to the Principal Order (maximum pensions) is amended as follows.

(5) In paragraph 1 (interpretation)—

(a) omit the definition of “index”,

(b) after the definition of “the multiple” insert—

““pension value”, in relation to a person’s retained benefits, means—

(a) in the case of a pension to which the person is actually entitled, the annual amount of the pension, adjusted by an amount determined by the Managers having regard to guidance issued from time to time by the Government Actuary in any case where the Managers consider, in view of that guidance, that the amount of the pension may fluctuate,

(b) in the case of a lump sum to which the person has become entitled, the annual amount of a pension payable under the scheme to someone of the person’s description that has a value equal to that sum as determined by the Managers having regard to such guidance, and

(c) in the case of a benefit to which the person is prospectively entitled, the annual amount of a pension payable under the scheme to someone of the person’s description that has a value equal to the value of that benefit as determined by the Managers, having regard to such guidance;”, and

(c) in the definition of “retained benefits” for the words from the beginning to the end of paragraph (e) substitute—

““retained benefits”, in relation to a participant, means benefits for the participant that—

(a) are derived from a registered pension scheme, or

(b) were retained benefits in relation to the participant for the purposes of this Schedule immediately before 6th April 2006,”.

(6) In paragraph 3(4) (restriction of Class A participant’s total retirement benefit under the Principal Order and additional voluntary contributions to one thirtieth of the permitted maximum for each year of service) omit “total”, in the first and third places where it occurs, and “from any additional free-standing voluntary contributions scheme and from any other additional voluntary contributions”.

Limits on purchase of added years

3.—(1) Schedule 7 to the Principal Order (purchase of added years) is amended as follows.

(2) In paragraphs 2(1)(c) and 6(2)(d) for “the maximum permitted” substitute “the maximum permitted by virtue of the contributions that are permitted to be made”.

(3) In paragraph 5(5) (interrupted service) for “8(1)” substitute “8”.

(4) For paragraph 8 (limits on purchase of added years) substitute—

“Limits on contributions for purchase of added years

8. The total amount of a participant’s contributions for the purchase of added years (whether made as periodical contributions or by way of lump sum) shall not in any tax year exceed 10 % of a participant’s pensionable salary.”

Re-employment of pensioners

4.—(1) Article 7 of the Principal Order (pension entitlement) is amended as follows.

(2) In paragraph (7)—

(a) for “no such pension shall be payable” substitute “such a pension shall be reduced to nil if it is payable”, and

(b) omit “or a candidate for election as a Representative”.

Pension commencement lump sums

5.—(1) Article 8 of the Principal Order (commutation into lump sum) is amended as follows.

(2) After paragraph (1) insert—

“(1A) But a person may only give notice under paragraph (1) at least six months before he reaches the age of 75 or at such later time before he reaches that age as the Managers allow, and the lump sum payable as a result of the notice must be paid to him before he reaches that age.”.

(3) For paragraph (5) substitute—

“(5) For the purposes of paragraph (4) above, subject to paragraph (6), the maximum commutable lump sum is—

(a) in the case of a person who becomes a participant after 5th April 2006, the permitted maximum, as defined in paragraph 2 of Schedule 29 to the Finance Act 2004 (which is usually the applicable amount, as defined in paragraph 3(6) of that Schedule),

(b) in the case of a person who was a participant before 6th April 2006 and has pension commencement lump sum protection (see paragraph (5A)), the higher of—

(i) the permitted maximum referred to in sub-paragraph (a), and

(ii) the sum of the appropriate amount in respect of the person’s service before 6th April 2006 (see paragraphs (5B) and (5C)) and the permitted maximum referred to in sub-paragraph (a) in respect of the person’s service on and after that date,

(c) in the case of a person who was a participant before 6th April 2006 and does not have pension commencement lump sum protection, the permitted maximum referred to in sub-paragraph (a).

(5A) A person has pension commencement lump sum protection for the purposes of paragraph (5) if he is a person in relation to whom the provisions of Schedule 29 to the Finance Act 2004 relating to pension commencement lump sums apply with the modifications specified in paragraph 34 of Schedule 36 to that Act by virtue of paragraph 31 of Schedule 36 to that Act (entitlement to lumps sums exceeding 25% of uncrystallised rights).

(5B) In the case of a person who became a participant before 1st June 1989, the appropriate amount in respect of the person’s service before 6th April 2006 is the higher of—

(a) the permitted maximum referred to in paragraph (5)(a) in respect of that service, and

(b) so much of the maximum commutable sum calculated in accordance with Schedule 3 as may be paid to the person in respect of that service as a pension commencement lump sum (see paragraph (5D)).

(5C) In the case of a person who became a participant on or after 1st June 1989, the appropriate amount in respect of the person's service before 6th April 2006 is the higher of—

(a) the permitted maximum referred to in paragraph (5)(a) in respect of that service, and

(b) the lower of—

(i) so much of the maximum commutable sum calculated in accordance with Schedule 3 as may be paid to the person in respect of that service as a pension commencement lump sum, and

(ii) one and a half times the permitted maximum in respect of that service, as defined in article 2(1).

(5D) In this article "pension commencement lump sum" has the meaning given in paragraph 1 of Schedule 29 to the Finance Act 2004; and in determining for the purposes of paragraphs (5B)(b) and (5C)(b) the maximum sum that may be paid to a person in respect of his service before 6th April 2006 as a pension commencement lump sum, it is to be assumed that the whole of the permitted maximum referred to in paragraph (5)(a) in respect of his service on and after that date qualifies as a pension commencement lump sum.".

(4) In Schedule 3 to the Principal Order—

(a) for "article 8(4)", wherever it occurs, substitute "article 8(5B)(b) and (5C)(b)", and

(b) in paragraph 4 after "maximum commutable sum" insert "for the purposes of article 8(5B)(b) and (5C)(b)".

Death benefits: dependants' pensions

6.—(1) In article 12(3) after "(7) and (8)" insert "and article 15B (restriction on the amount of dependants' scheme pensions under Finance Act 2004)".

(2) At the beginning of articles 12A(3)(**a**), 13(3), 14(2)(**b**) and 15(5)(**c**) (amount of pensions payable to surviving adults and children) insert "Subject to article 15B (restriction on the amount of dependants' scheme pensions under Finance Act 2004)".

(3) In article 14 of the Principal Order (children's pensions) in paragraph (5)(**d**) (meaning of "child" in that article)—

(a) for "in relation to any person" substitute "in relation to any deceased person does not include any person who is not a dependant of the deceased person for the purposes of section 167 of the Finance Act 2004 (pension death benefit rules) because paragraph 15(2) or (3) of Schedule 28 to that Act applies to him, but subject to that it", and

(b) in sub-paragraph (c) for "bodily or mental infirmity" substitute "physical or mental impairment".

(4) At the end of article 15(8)(**e**) add "or article 15B".

(5) In article 15A(1)(**f**) after "12A", in the second place where it occurs, insert "(before account is taken of article 15B)".

(**a**) Article 12A was inserted, with retrospective effect as from 3 November 2004, by article 8 of S.I. 2005/1924.
(**b**) Article 14(2) was amended, with retrospective effect as from 3 November 2004, by article 9 of S.I. 2005/1924.
(**c**) Article 15(5) was amended, with retrospective effect as from 3 November 2004, by article 10 of S.I. 2005/1924.
(**d**) Article 14(5) was amended, with retrospective effect as from 3 November 2004, by article 9 of S.I. 2005/1924.
(**e**) Article 15(8) was amended, with retrospective effect as from 3 November 2004, by article 10 of S.I. 2005/1824.
(**f**) Article 15A was inserted, with retrospective effect as from 3 November 2004, by article 11 of S.I. 2005/1924.

(6) After article 15A insert—

"**Restriction on the amount of dependants' scheme pensions under Finance Act 2004**

15B.—(1) This article applies if, apart from this article, any part of a pension to which any person becomes entitled under articles 11A to 15A on the death of a former participant after the age of 75 would not qualify as a dependants' scheme pension for the purposes of section 167 of the Finance Act 2004 (the pension death benefit rules) (see paragraphs 16 to 16C of Schedule 28 to that Act).

(2) Only so much of the pension as is a dependants' scheme pension for those purposes is payable.".

Death benefits: lump sum gratuities

7.—(1) In article 16 of the Principal Order (gratuity on the death of a serving participant) after paragraph (1) insert—

"(1A) But no gratuity may be granted under paragraph (1) if the deceased person had reached the age of 75.".

(2) Omit article 17 of the Principal Order (gratuity on death of a pensioner after retirement).

Death benefits: participants' pension guarantees

8.—(1) In article 12 of the Principal Order (widows', widowers' and surviving civil partners' pensions) in paragraph (2) after "Subject to the provisions of this article" insert "and paragraph 1(2)(a) of Schedule 6".

(2) In article 12A of the Principal Order (pensions for surviving adult dependants) at the beginning of paragraph (2) insert "Subject to paragraph 1(2)(a) of Schedule 6,".

(3) In article 14(1)(**a**) and (1A)(**b**) of the Principal Order (children's pensions) after "Subject to the provisions of this article" insert "and paragraphs 1(3)(a) and 2(2)(a) of Schedule 6".

(4) For paragraphs 1 to 5(**c**)of Schedule 6 to the Principal Order (five year guarantees) substitute—

"Guarantees for adult survivors

1.—(1) This paragraph applies if a pensioner dies during the pensioner's five year period (see sub-paragraph (4)) leaving an adult survivor.

(2) Until the end of the pensioner's five year period—

(a) no pension is payable to the adult survivor under article 12 or 12A (including any enhancement payable under article 15), but

(b) so much of the pensioner's unpaid pension (see sub-paragraph (4)) as is not payable to any person under sub-paragraph (3) is payable as a pension under this paragraph—

(i) to the adult survivor, or

(ii) if the adult survivor dies within that period, to his personal representatives.

(3) If the pensioner leaves any person for whose benefit any amount would (apart from this paragraph) be payable as a pension under article 14 (by virtue of a direction of the Managers under article 14(4)) until the end of the pensioner's five year period—

(a) no pension is payable to the person under article 14, but

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(**a**) Article 14(1) was amended, with retrospective effect as from 1 April 2001, by article 5(1) of S.I. 2003/1416.
(**b**) Article 14(1A) was inserted, with retrospective effect as from 1 April 2001, by article 5(2) of S.I. 2003/1416.
(**c**) Paragraphs 1 to 5 of Schedule 6 were amended, with retrospective effect as from 3 November 2004, by articles 15 to 19 of S.I. 2005/1924.

(b) so much of the pensioner's unpaid pension (see sub-paragraph (4)) as does not exceed the amount that would from time to time be payable to the person apart from paragraph (a) is payable to the person as a pension under this paragraph.

(4) In this Schedule—

(a) "the pensioner's five year period", in relation to a pensioner, means the period of five years beginning with the day on which he became entitled to the pension under article 7 (including an early retirement pension or an ill-health pension payable by virtue of article 10 or 11),

(b) "the pensioner's unpaid pension" means any amount which, if the pensioner had lived, would have been payable to him by way of pension under article 7 (including an early retirement pension or an ill-health pension payable by virtue of article 10 or 11), and

(c) references to a person becoming entitled to a pension have the same meaning as in Part 4 of the Finance Act 2004 (see section 165(3) of that Act).

Guarantees where children but no adult survivor

2.—(1) This paragraph applies if a pensioner dies during the pensioner's five year period (see paragraph 1(4) of this Schedule) leaving any person for whose benefit any amount would (apart from this paragraph) be payable as a pension under article 14 (by virtue of a direction of the Managers under article 14(4)), but not leaving any adult survivor.

(2) Until the end of the pensioner's five year period—

(a) no pension is payable to the person under article 14,

(b) so much of the pensioner's unpaid pension (see paragraph 1(4)) as does not exceed the amount that would from time to time be payable to the person apart from paragraph (a) is payable to the person as a pension under this paragraph, and

(c) so much of the pensioner's unpaid pension as is not payable to any person under paragraph (b) is payable as a pension under this paragraph to his personal representatives.

Guarantees where no survivors: death before 75

3.—(1) This paragraph applies if a pensioner dies before reaching the age of 75 leaving no person for whose benefit any amount is payable as a pension under article 14 (by virtue of a direction of the Managers under article 14(4)), nor any adult survivor.

(2) If the pensioner dies during the pensioner's five year period (see paragraph 1(4)), then, unless a payment is made under sub-paragraph (3), a lump sum is payable to the pensioner's personal representatives that is equal to the aggregate of the amounts of the pensioner's unpaid pension (see paragraph 1(4)) that, apart from his death, would have been payable to him in the period from his death until the end of the pensioner's five year period.

(3) If—

(a) the pensioner was a participant at any time on or after 6th April 1988,

(b) there is a guarantee shortfall, and

(c) in a case where sub-paragraph (2) applies, the guarantee shortfall exceeds the lump sum payable to the personal representatives under sub-paragraph (2),

the Managers may pay a lump sum equal to the guarantee shortfall to the personal representatives.

(4) For the purposes of this paragraph—

(a) there is a guarantee shortfall if the article 16 gratuity exceeds the paid pension amount, and

(b) the guarantee shortfall is equal to the amount of the excess.

(5) In sub-paragraph (4)—

“the article 16 gratuity” means the gratuity that the Managers could have granted the pensioner’s personal representatives under article 16 if the pensioner had died immediately before he last ceased to be a participant, and

“the paid pension amount” means the aggregate amount of the payments made to the pensioner by way of pension under article 7, 10 or 11, together with any lump sum paid to him under article 8.

Guarantees where no survivors: death after reaching 75

4.—(1) This paragraph applies if a pensioner dies after reaching the age of 75 leaving no person for whose benefit any amount is payable as a pension under article 14 (by virtue of a direction of the Managers under article 14(4)), nor any adult survivor.

(2) If the pensioner—

(a) was a pensioner on 5th April 2006, and

(b) dies during the pensioner’s five year period (see paragraph1(4)),

then, unless a pension is granted under sub-paragraph (4), a lump sum is payable to the pensioner’s personal representatives that is equal to the aggregate of the amounts of the pensioner’s unpaid pension (see paragraph 1(4)) that, apart from his death, would have been payable to him in the period from his death until the end of the pensioner’s five year period.

(3) If the pensioner—

(a) was not a pensioner on 5th April 2006, and

(b) dies during the pensioner’s five year period (see paragraph 1(4)),

then, unless a pension is granted under sub-paragraph (4), the pensioner’s pension is payable to his personal representatives until the end of the pensioner’s five year period as a pension under this paragraph.

(4) If—

(a) the pensioner was a participant at any time on or after 6th April 1988,

(b) he dies during the pensioner’s ten year period (see sub-paragraph (6)),

(c) there is a guarantee shortfall (see paragraph 1(4)),

(d) in a case where sub-paragraph (2) applies, the aggregate amount of the pension payable under this sub-paragraph exceeds the lump sum payable to the personal representatives under that sub-paragraph, and

(e) in a case where sub-paragraph (3) applies, that aggregate exceeds the aggregate amount of the pension payable under that sub-paragraph,

the Managers may grant the pensioner’s personal representatives a pension under this sub-paragraph of amounts totalling in aggregate not less than the guarantee shortfall.

(5) A pension payable under this paragraph is payable for—

(a) the pension shortfall period (see sub-paragraph (6)), or

(b) the pensioner’s ten year period,

whichever is the shorter.

(6) For the purposes of this paragraph—

(a) there is a guarantee shortfall if the assumed article 16 gratuity exceeds the paid pension amount, and

(b) the guarantee shortfall is equal to the amount of the excess.

(7) In this paragraph—

“the assumed article 16 gratuity” means the gratuity that the Managers could have granted the pensioner’s personal representatives under article 16 if the pensioner had died immediately before he last ceased to be a participant and had not reached the age of 75,

"the paid pension amount" means the aggregate amount of the payments made to the pensioner by way of pension under article 7, article 10 or article 11, together with any lump sum paid to him under article 8,

"the pension shortfall period" means the shortest period in which an amount at least equal to the guarantee shortfall will be paid if—

(a) payments of amounts equal to the pension payments payable to the pensioner under this Order immediately before his death are made at the same intervals as those at which those pension payments were paid to him, and

(b) the first payment is made on the date on which the first payment of a pension granted to the personal representatives under this paragraph would be made, and

"the pensioner's ten year period" means the period of ten years beginning with the day on which the pensioner became entitled to the pension under article 7 (including an early retirement pension or an ill-health pension payable by virtue of article 10 or 11).

Power to remove adult survivor's pension on change of status

5.—(1) This paragraph applies if—

(a) a pensioner who ceased to be a participant before 3rd November 2004 dies during the pensioner's five year period (see paragraph 1(4)) leaving an adult survivor, and

(b) the adult survivor marries, forms a civil partnership or cohabits with another person.

(2) The Managers may direct that any pension payable to the adult survivor under this Schedule is payable instead to the pensioner's personal representatives.

(3) If the adult survivor is entitled to a guaranteed minimum pension in respect of the pensioner, sub-paragraph (2) only applies to so much of the pension payable to the adult survivor under this Schedule as exceeds the guaranteed minimum.

(4) The amendments made by this paragraph only apply where the death in question occurs after 5th April 2006.".

Ill-health pensions

9.—(1) Article 11 of the Principal Order (ill-health pensions) is amended as follows.

(2) After paragraph (10) insert—

"(10A) No person is entitled to receive a pension by virtue of this article unless the person has in fact ceased to carry on the person's occupation.".

(3) For paragraph (11) (medical evidence) substitute—

"(11) Every application under this article must be accompanied by evidence from a registered medical practitioner that the applicant is (and will continue to be) incapable of carrying on the applicant's occupation because of physical or mental impairment.".

Cases where certain charges under the Finance Act 2004 apply

10.—(1) After article 29 of the Principal Order insert—

"**Payment on behalf of participants of lifetime allowance charge**

29A.—(1) A participant or former participant may request the person who is the scheme administrator for the purposes of section 217 of the Finance Act 2004 ("the administrator") to pay on his behalf any amount that is payable by way of the lifetime allowance charge under section 214 of the Finance Act 2004 when—

(a) an event that is a benefit crystallisation event listed in the table in section 216(1) of the Finance Act 2004 occurs in relation to him, and

(b) the participant or former participant and the administrator are jointly and severally liable to the charge in respect of the event.

(2) Such a request may only be made by notice in writing given before the event occurs.

(3) The administrator may only comply with such a request if the participant or former participant pays him the amount in question on or before the date on which the event occurs.

Reduction of benefits and transfer values where lifetime allowance charge payable

29B.—(1) This article applies if—

(a) an event that is a benefit crystallisation event listed in the table in section 216(1) of the Finance Act 2004 ("the table") occurs in relation to a participant or former participant,

(b) the participant or former participant and the person who is the scheme administrator for the purposes of section 217 of the Finance Act 2004 ("the administrator") are jointly and severally liable to the charge in respect of the event, and

(c) no request has been duly made under article 29A in relation to the event or, if such a request has been made, the administrator is prevented from complying with it by paragraph (3) of that article.

(2) Where this article applies—

(a) the administrator must pay the tax payable on the event,

(b) if the event is benefit crystallisation event 8 in the table (transfer to qualifying recognised overseas pension scheme), the amount or value of the sums or assets transferred must be reduced, and

(c) in the case of any other event, the amount or value of the benefits payable to or in respect of the participant must be reduced.

(3) The amount or value of the reduction must be determined by the Managers, having regard to the opinion of the Government Actuary, such that it fully reflects the amount of the tax paid under this article.

Deduction from payments of other tax due under the Finance Act 2004

29C.—(1) This article applies where—

(a) a payment is made under article 18 and Schedule 6 of this Order that is a pension protection lump sum death benefit for the purposes of Part 4 of the Finance Act 2004 (see paragraph 14 of Schedule 29 to that Act), or

(b) a repayment of contributions (including interest on contributions) is made under article 25 of this Order that is a short service refund lump sum for the purposes of Part 4 of that Act (see paragraph 5 of Schedule 29 to that Act).

(2) Before making the payment the person who is the scheme administrator for the purposes of section 217 of that Act may deduct from it any tax due in respect of it under—

(a) section 206 of that Act (the special lump sum death benefits charge), or

(b) section 205 of that Act (short service refund lump sum charge).".

(2) Omit article 30 (deduction of tax from contributions).

Transfers to and from other schemes

11. (1) For articles 19 to 24 of the Principal Order substitute the articles set out in Schedule 1.

(2) In article 1(2) of the Principal Order (interpretation)—

(a) in the definition of "actual reckonable service" for paragraph (ii) substitute "any period increased pursuant to article 24C or added by a direction of the Managers made before 6th April 2006 in respect of a transfer from another pension scheme; and",

(b) in the definition of "aggregate period of reckonable service" for "24(2)(b)" substitute "24C (or a direction made by the Managers before 6th April 2006 in respect of a transfer from another pension scheme)",

(c) after the definition of "fraction of a year" insert—

""guarantee date" has the meaning assigned to it by article 20(2);

"guaranteed cash equivalent transfer payment" has the meaning assigned to it by article 21(2);", and

(d) after the definition of "normal retirement date" insert ""occupational pension scheme" has the meaning given in section 1 of the Pension Schemes Act 1993;".

(3) In article 6(1)(**a**) of the Principal Order for "22" substitute "24".

(4) In articles 6(2)(a)(ii) and 7(13)(b) for the words from "under" to "that date", substitute "made before that date in respect of a transfer from another pension scheme".

(5) In article 7(13)(ii) for the words from "under" to "that date", substitute "in respect of a transfer from another pension scheme or increased by the appropriate period under article 24C".

(6) In paragraph 3(4) of Schedule 2 to the Principal Order for "19, 20 or 21" substitute "19 to 24".

(7) In paragraph 2(2)(ii) of Schedule 3 to the Principal Order (commutation of pensions), for "under article 24" substitute "by virtue of articles 24C(3) and 24D".

Refunds of contributions

12. —(1) Article 25 of the Principal Order (repayment of contributions) is amended as follows.

(2) In paragraph (2)—

(a) at the end of sub-paragraph (c) add "and he is not entitled to short service benefit by virtue of section 71 of the Pensions Act 1993 (basic principles as to short service benefit);" and

(b) after that sub-paragraph insert—

"(cc) there has been no previous benefit crystallisation event (within the meaning given by section 216(1) of the Finance Act 2004) in relation to the person and the scheme;".

(3) Omit paragraph (3).

(4) In paragraph (4) omit from "provided that" onwards.

(5) In paragraph (6) for the words from "certified" onwards substitute "of any contributions equivalent premium paid in respect of the person".

Application of pensions

13. For article 28 substitute—

"A pension under this Order or under the 1979 Act shall not be assignable or chargeable with debts or other liabilities except to the extent permitted by section 44 of the Welfare Reform and Pensions Act 1999.".

(**a**) Article 6 was substituted by article 3 of S.I. 1996/1493, with retrospective effect.

Participants entitled to enhanced protection

14.—(1) In article 2(1) of the Principal Order (interpretation) insert at the appropriate place—

"“protected individual” has the meaning assigned to it by regulation 31A(2);".

(2) After article 31 of the Principal Order insert—

"Application of articles 31A to 31E

31A.—(1) Articles 31A to 31E relate to individuals in the case of whom paragraph 12 of Schedule 36 to the Finance Act 2004 applies (enhanced protection).

(2) In this Order such individuals are referred to as "protected individuals".

Option to cease contributions

31B.—(1) A protected individual may opt for article 5 of this Order (contributions) not to apply in respect of the individual's salary.

(2) The option under paragraph (1) may only be exercised by notice in writing to the Managers.

(3) An individual who has exercised such an option may revoke it by such a notice if—

(a) the individual has ceased to be a protected individual, and

(b) the Managers consent.

(4) A notice exercising or revoking such an option must specify the date on which the option is to take effect or, as the case may be, cease to have effect.

(5) In the case of a notice exercising such an option, that date may not be earlier than—

(a) 6th April 2006, or

(b) the beginning of the month in which the notice is given,

whichever is the later.

(6) In the case of a notice revoking such an option, the date specified as the date on which the option is to take effect may not be earlier than the beginning of the month in which the notice is given.

(7) Where such an option is revoked, any option as to the rate at which deductions are made under article 5 that was effective immediately before the option under this article took effect is treated as continuing in force from the date on which the revocation takes effect, subject to any further exercise of any option as to that rate.

Effect of option to cease contributions

31C.—(1) An individual shall not be regarded as a participant for the purposes of article 5 (contributions) at any time when an option exercised by the individual under article 31B has effect.

(2) But, except as provided by paragraph (3), the fact that the individual is not making contributions deducted from his salary under article 5 shall be disregarded for the purposes of determining whether the individual falls within the definition of "participant" in article 2(1).

(3) Notwithstanding anything in paragraph (2)—

(a) no period during which the individual's option has effect shall be regarded as a period of reckonable service (or actual reckonable service) as a participant, except for the purpose of determining the relevant terminal salary of the individual under article 7, and

(b) if a pension becomes payable to the individual under article 7 by virtue of article 11 (ill-health pensions based on service as a participant) for the purposes of calculating the annual amount of the pension the words in article 11(4) from "but for the purposes of that calculation" onwards (by virtue of which the individual's reckonable service would be increased) are disregarded.

Surrender of excess rights for the purpose of obtaining enhanced protection

31D.—(1) An individual who proposes to give notice under paragraph 12 of Schedule 36 to the Finance Act 2004 (enhanced protection) may surrender the whole or part of such rights as in accordance with regulations made under paragraph 12(5) of that Schedule are to be treated as representing the relevant excess (as defined in paragraph 12(6) of that Schedule) in the case of the individual.

(2) Such a surrender may only be made by notice in writing to the Managers and is irrevocable.

(3) A surrender under this article is ineffective so far as it purports to affect—

(a) any rights in respect of an excluded pension (as defined in section 172A(10) of the Finance Act 2004) that is payable under article 18 and Schedule 6, or

(b) any rights entitlement to which is required for the employment of the individual to be contracted-out in relation to the scheme.

Surrender to avoid relevant benefit accrual

31E.—(1) Subject to paragraphs (2) and (3), a protected individual may surrender the whole or part of any rights to any benefit to which he (or any dependant of his) has a prospective entitlement under this Order.

(2) Such a surrender may only be made by notice in writing to the Managers and is irrevocable.

(3) A surrender under this article is ineffective so far as it purports to affect—

(a) any rights in respect of an excluded pension (as defined in section 172A(10) of the Finance Act 2004) that is payable under article 18 and Schedule 6, or

(b) any rights entitlement to which is required for the employment of the individual to be contracted-out in relation to the scheme.".

Election for non-aggregation of reckonable service on entering new service

15.—(1) In article 2(1) of the Principal Order (interpretation) after the definition of "aggregate period of reckonable service" insert—

""article 31F optant" has the meaning assigned to it by article 31F(3);",

(2) At the end of article 6 of the Principal Order add—

"(3) This article is subject to articles 31F and 31G.".

(3) After article 31E of the Principal Order (as inserted by this Order) insert—

"Election for separate treatment on becoming a participant again

31F.—(1) Articles 31F and 31G apply if a person who has ceased to be a participant becomes a participant again on or after 6th April 2006 and makes an election for articles 31F and 31G to apply.

(2) An election under this article is made by giving notice in writing to the Managers within the period of 6 months beginning with the day on which the person becomes a participant.

(3) A person who makes such an election is referred to in this Order as an "article 31F optant".

(4) More than one election may be made under this article.

Effect of election

31G.—(1) Where a person makes an election under article 31F, the general rule is that this Order applies as if the person becoming a participant again were a different person from the person who ceased to be a participant earlier.

(2) Accordingly, in particular, for the purposes of this Order—

(a) the reckonable service ("the earlier service") that the person was entitled to count immediately before becoming a participant again (including reckonable service that is attributable to the purchase of added years or any transfer payment accepted by the Managers during the course of that service) ("the earlier service") is disregarded in determining rights in respect of his service after becoming a participant again,

(b) he is regarded as a deferred pensioner in respect of the earlier service, and

(c) in determining rights in respect of the earlier service—

(i) the reckonable service that the person is entitled to count as a result of becoming a participant again (including reckonable service that is attributable to the purchase of added years or any transfer payment accepted by the Managers during the course of that service), and

(ii) the fact that he has again become a participant and a Representative,

are disregarded.

(3) Paragraphs (1) and (2) are subject to paragraphs (4) and (5) and need to be read with article 16(5)(b).

(4) The fact that a person who has made an election under this article is a Representative is not disregarded for the purposes of article 10 (early retirement).

(5) For the purpose of articles 19 to 24E(transfers), paragraphs (1) and (2) apply only so far as they affect the value of the rights of the person who has made the election.".

(4) In article 16(5)(b) after "not refunded to him" insert "(whether during the aggregate period of reckonable service in which he died or, in the case of an article 31F optant, any earlier period of reckonable service)".

Amendments of the AVC Order

Restrictions on contributions and transfers in and benefits attributable to them

16.—(1) The AVC Order is amended as follows.

(2) In article 2(1) (interpretation) omit the definitions of "Class A contributor", "Class B contributor", "Class C contributor", "final remuneration", "maximum pension", "permitted maximum", "retained benefits" and "retained death benefits".

(3) In article 5 (contributions)—

(a) omit paragraphs (3)(**a**) and (4), and

(b) for paragraph (5) substitute—

"(5) The Managers shall only accept payment of a transfer value in respect of a person to the AVC scheme if it is from a registered pension scheme and—

(a) the scheme is a personal pension scheme, or

(b) the transfer value relates to voluntary contribution rights.".

(4) Omit article 11 (maximum benefits) and Schedules 1 and 2 (final remuneration and maximum benefits).

(**a**) Sub-paragraph (a) of article 5(3) was substituted by article 4 of S.I. 1999/2101.

Restriction of membership to contributors under 75

17. In article 4(1) of the AVC Order (application to become contributor) after "any participant in the principal scheme" insert "who has not reached the age of 75".

Benefits which may be provided

18.—(1) Article 7 of the AVC Order(**a**) (benefits which may be provided) is amended as specified in paragraphs (2) to (5).

(2) For paragraph (1) substitute—

"(1) A contributor will be entitled to such benefits as—

(a) are secured by the contributions paid by the contributor and by any transfer value accepted under article 5(5), and

(b) are benefits for which a registered pension scheme that is a money purchase arrangement for the purposes of Part 4 of the Finance Act 2004 (see section 152(2) of that Act) is authorised to make payments under section 160(1) of the Finance Act 2004.".

(3) In paragraph (2) (death in service benefits)—

(a) at the beginning insert "In particular, but without prejudice to the generality of paragraph (1),"

(b) in sub-paragraph (a) at the beginning insert "in the case of a contributor who dies before reaching the age of 75,",

(c) in sub-paragraph (b)—

(i) for "retirement benefits" substitute "pension benefits and any transfer values accepted under article 5(5)",

(ii) after "by the contributor" insert "and any transfer value accepted under article 5(5)", and

(d) in sub-paragraph (c) for "spouse" substitute "adult survivor".

(4) In paragraph (3) (benefits at or after retirement)—

(a) in sub-paragraph (a)—

(i) at the beginning insert "In particular, but without prejudice to the generality of paragraph (1),"

(ii) for "after retirement" substitute "after he becomes entitled to the payment of a pension under this Order", and

(iii) omit "and" at the end,

(b) in sub-paragraph (b)(ii) for the words "being paid in one lump sum on death" substitute "being paid, in the case of a participant who dies before reaching the age of 75, in one lump sum on death", and

(c) after sub-paragraph (b) insert—

"(c) if a pension is secured under sub-paragraph (b), a lump sum payable to the contributor at the time that pension becomes payable not exceeding the permitted maximum, as defined in paragraph 2 of Schedule 29 to the Finance Act 2004 (which is usually the applicable amount, as defined in paragraph 3(6) of that Schedule); and

(d) a lump sum meeting the conditions required for it to be a lifetime allowance excess lump sum for the purposes of Part 4 of the Finance Act 2004 (see paragraph 11 of Schedule 29 to the Finance Act 2004).".

(5) For paragraph (5) substitute—

(**a**) Article 7 was amended, with retrospective effect as from 19 July 2004, by article 3 of S.I. 2004/2418.

"(5) A pension under paragraph (3)(b) must commence—

(a) not later than the day before the contributor's 75th birthday; and

(b) not earlier than the earlier of—

(i) the date on which the contributor becomes entitled to receive a pension under article 7 of the principal Order and

(ii) the day mentioned in sub-paragraph (a).".

(6) In article 8 of the AVC Order (payment of lump sums on death) omit paragraph (3) (payment to contributor's personal representatives of any part of a lump sum payable on his death that has not been paid within 2 years of the death).

(7) In article 9 of the AVC Order (purchase of pensions) for paragraph (1)(**a**) substitute—

"(1) At least six months before the date on which a contributor would like a pension to come into payment or at such later time before that date as the Managers allow, the contributor shall specify in writing to the Managers—

(a) the pension or pensions which are to be purchased on his behalf or on behalf of his dependants, and

(b) where a pension is to be purchased on his behalf and he would also like a lump sum to be paid to him or he wishes a sum that is a lifetime allowance excess lump sum for the purposes of Part 4 of the Finance Act 2004 to be paid to him—

(i) that that is the case, and

(ii) the amount he would like to be paid as a lump sum.".

Leaving the AVC scheme: refunds of contributions, transfers out etc.

19.—(1) Article 10 of the AVC Order (leaving the AVC scheme) is amended as follows.

(2) In paragraph (1)—

(a) for paragraphs (a) and (b) substitute—

"(a) to apply an amount equal to the value of the contributor's accrued benefits in such one or more of the ways permitted under section 95 of that Act as the contributor specifies;" and

(b) in paragraph (c) after "less than two years" insert "and the payment to the contributor of an amount equal to the contributions paid by him would qualify as a short service refund lump sum for the purposes of section 166(1) of the Finance Act 2004 (lump sum rule) (see paragraph 5 of Schedule 29 to that Act)".

(3) In paragraph (2) at the end insert "and any transfer values accepted under article 5(5)".

The lifetime allowance charge

20. For article 14 of the AVC Order (taxation) substitute—

"**Reduction of benefits where lifetime allowance charge payable**

14.—(1) This article applies if—

(a) an event that is a benefit crystallisation event listed in the table in section 216(1) of the Finance Act 2004 ("the table") occurs in relation to a contributor or former contributor, and

(b) the contributor or former contributor and the Managers are jointly and severally liable to the charge in respect of the event.

(2) Where this article applies—

(**a**) Article 9(1) was amended, with retrospective effect from 19 July 2004, by S.I. 2004/2418.

(a) the Managers must pay the tax payable on the event,

(b) if the event is benefit crystallisation event 8 in the table (transfer to qualifying recognised overseas pension scheme), the amount or value of the sums or assets transferred must be reduced, and

(c) in the case of any other event, the total realisable value of the investments made with the contributions made by the contributor and any transfer values accepted under article 5(5) must be reduced.

(3) The amount or value of the reduction must be determined by the Managers, having regard to the opinion of the Government Actuary, such that it fully reflects the amount of the tax so paid.".

Minor amendments of the AVC Order

21.—(1) The AVC Order is amended as follows.

(2) In article 2(1)—

(a) omit the definitions of "approved scheme", "FSAVC scheme" and "retirement benefits scheme",

(b) for the definition of "personal pension scheme" substitute—

""personal pension scheme" has the meaning given in section 1 of the Pensions Act 1993;",

(c) at the appropriate places insert the following definitions—

""occupational pension scheme" has the meaning given in section 1 of the Pensions Act 1993;",

""registered pension scheme" has the same meaning as in Part 4 of the Finance Act 2004 (see section 150(2) of that Act);" and

""voluntary contribution rights", in relation to a person, means rights under an occupational pension scheme that derive from voluntary contributions made by the person;".

(3) In article 2(2)—

(a) in paragraph (a) omit "or Schedule" and "or the Schedule to,", and

(b) in paragraph (b) omit "or Schedule" both times it occurs.

(4) For article 3(5) substitute—

"(5) The Managers shall be responsible for the discharge of the functions conferred or imposed on the scheme administrator of the AVC scheme by or under Part 4 of the Finance Act 2004.".

(5) Omit article 12 (surplus monies).

Revocations

Revocations

22. The subordinate legislation specified in Schedule 2 is revoked to the extent specified in the second column of that Schedule.

Geoffrey Hoon
Leader of the House of Commons

23 March 2006

SCHEDULE 1

Article 11

Articles substituted for articles 19 to 24 of the Principal Order

19 Right to transfer value payment

(1) Articles 19 to 24E supplement the rights conferred under Chapter 4 of Part 4 of the Pensions Act 1993 (transfer values).

(2) These articles are without prejudice to that Chapter or Chapter 5 of that Part(**a**) (early leavers: cash transfer sums and contribution refunds).

(3) Accordingly—

(a) a former participant to whom Chapter 4 of that Part applies (see section 93(1)(a) of that Act) is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of him under the scheme, and

(b) a former participant to whom Chapter 5 of that Part applies (see section 101AA(1) of that Act) is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.

(4) Subject to the provisions of articles 19 to 24E, any other former participant, other than a pensioner, is entitled to require such a payment as if rights under Chapter 4 of Part 4 of the Pensions Act 1993 had accrued to or in respect of him by reference to his reckonable service (and references in articles 19 to 24E to his accrued rights or benefits are to be read accordingly).

(5) Paragraph (4) does not apply if the former participant is entitled under article 25 and article 26 to repayment of the contributions he has paid during the period of service ending with his ceasing to be a participant or acquires a right to a contribution refund under Chapter 5 of Part 4 of the Pensions Act 1993.

20. Applications for statements of entitlement

(1) A former participant who requires a transfer value payment to be made must apply in writing to the Managers for a statement of the amount of the cash equivalent of the former participant's accrued benefits under the scheme at the guarantee date ("a statement of entitlement").

(2) In this Order, "the guarantee date" means any date that—

(a) falls within the required period,

(b) is chosen by the Managers,

(c) is specified in the statement of entitlement, and

(d) is within the period of 10 days ending with the date on which the former participant is provided with the statement of entitlement.

In counting the period of 10 days referred to in sub-paragraph (d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(3) In paragraph (2) "the required period" means—

(a) the period of 3 months beginning with the date of the former participant's application for a statement of entitlement, or

(b) such longer period (not exceeding six months beginning with that date) as may reasonably be required if, for reasons beyond the control of the Managers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(4) The former participant may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

(5) A former participant who—

(**a**) Chapter 5 (sections 101AA to 101AI) is inserted by section 264 of the Pensions Act 2004 (c. 35).

(a) has made an application for a statement of entitlement under this article ("the first application"), and

(b) has not withdrawn it,

may make only one other such application in the period of twelve months beginning with the date of the first application.

21. Applications for transfer value payments

(1) A former participant who has applied for and received a statement of entitlement under article 20 may apply in writing to the Managers for a transfer value payment to be made.

(2) On making such an application a former participant becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of paragraph (12)).

(3) In this Order such a payment is referred to as "the guaranteed cash equivalent transfer value payment".

(4) An application under paragraph (1) must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than—

(a) six months after that date, or

(b) if it is earlier, the date on which the former participant reaches 65.

(5) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(6) An application by a person who is entitled to apply for a guaranteed cash equivalent transfer value payment under Chapter 4 of Part 4 of the Pensions Act 1993 may only be made—

(a) on or before the applicant's 64th birthday, or

(b) before the end of the period of 6 months beginning with the day after that on which the applicant ceases to be a participant,

whichever is the later. This is subject to paragraph (7).

(7) An application for a transfer value payment to be made under the public sector transfer arrangements may only be made before the first anniversary of the day on which the participant becomes eligible to be an active member of the scheme to which the transfer is to be made and before the participant reaches 65.

(8) In this article, and article 24E—

(a) "active member" has the meaning given in section 124(1) of the Pensions Act 1993, and

(b) "public sector transfer arrangements" means arrangements approved by the Managers as providing reciprocal arrangement for the payment and receipt of transfer values between the scheme and other occupational pension schemes.

(9) An application by a person who is not entitled to apply for a guaranteed cash equivalent transfer value payment under Chapter 4 of Part 4 of the Pensions Act 1993 may only be made—

(a) before the expiry of the period of one year beginning with the day on which the applicant ceases to be a participant,

(b) before the applicant reaches the age of 65, and

(c) if Chapter 5 of Part 4 of the Pensions Act 1993 applies to the person, before the expiry of—

(i) the period of 3 months beginning with the day after that on which the Managers notify the person in writing of his options in accordance with section 101AC of that Act, or

(ii) such longer period as the Managers allow.

(10) The Managers may extend any time limit applying to an application under paragraph (1) if they consider it reasonable to do so in the circumstances.

(11) An application under this article may be withdrawn by notice in writing, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

(12) If the payment is made later than six months after the guarantee date, the amount of the payment to which the former participant is entitled must be increased by—

(a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made, or

(b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of 1% above the Bank of England base rate.

(13) In this article "Bank of England base rate" means—

(a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, and

(b) where an order under section 19 of the Bank of England Act 1998(**a**) (Treasury's reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

22. Ways in which transfer value payments may be applied

(1) A former participant may only require the Managers to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 95 of the Pensions Act 1993 (whether or not he is entitled to a guaranteed cash equivalent transfer value payment under that Act).

(2) The whole of the guaranteed cash equivalent transfer value payment must be applied, except so far as paragraph (3) applies.

(3) The benefits attributable to—

(a) the former participant's accrued rights to a guaranteed minimum pension, or

(b) the former participant's accrued rights attributable to service in contracted-out employment on or after 6 April 1997,

may be excluded from the guaranteed cash equivalent transfer value payment if section 96(2) of the Pensions Act 1993 applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the participant's other rights).

23. Calculating amounts of transfer value payments

(1) The amount of the guaranteed cash equivalent transfer value payment is to be determined by the Managers having regard to guidance and tables provided by the Government Actuary to the Managers for use at the guarantee date.

This is subject to paragraph (3).

(2) In preparing those tables the Government Actuary must use such factors as he considers appropriate, having regard to section 97 of the Pensions Act 1993 and regulations made under that Act (whether or not the payment is in respect of a person entitled to a guaranteed cash equivalent transfer value payment under that Act).

(3) If the amount calculated in accordance with paragraph (1) is less than the minimum transfer value, the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value instead.

(4) In paragraph (3) "the minimum transfer value", in relation to any person, means the sum of any of such payments as are mentioned in paragraph (5) as a result of which he is entitled to count

(**a**) 1998 c.11.

any reckonable service under the principal scheme by reference to which the accrued rights subject to the transfer are calculated.

(5) The payments are—

(a) any transfer value payments that have been made to the principal scheme in respect of him,

(b) any contributions deducted in respect of him under article 5 (contributions from salary), and

(c) any payments made under article 27 for the purchase of added years.

24. Effect of transfers out

Where a transfer value payment is made under articles 19 to 23 in respect of a person's rights under the scheme, those rights are extinguished.

Transfers in

24A Right to apply for acceptance of transfer value payment from another scheme

Subject to the provisions of articles 19 to 24E, a participant may apply for a transfer value payment from a registered pension scheme to be accepted by the scheme.

24B Procedure for applications under article 24A

(1) An application under article 24A—

(a) must be made in writing,

(b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment, and

(c) must be made on or before the applicant's 64th birthday.

(2) If the application relates to—

(a) a transfer value payment from a personal pension scheme, or

(b) a transfer value payment relating only to voluntary contribution rights,

it must be made before the expiry of the period of 12 months beginning with the relevant date, unless paragraph (3) applies.

(3) This paragraph applies in the case of a transfer value payment within paragraph (2)(b) ("the relevant payment") if—

(a) the applicant is also applying for the Managers to accept a transfer value payment from a different occupational pension scheme from that by which the relevant payment is payable (the "second scheme"),

(b) the second scheme relates to the same employment as that to which the scheme by which the relevant payment is payable relates, and

(c) the transfer value payment payable by the second scheme relates to rights that are or include rights that are not voluntary contribution rights.

(4) In this article—

"joining date" means the day on which the applicant becomes a participant or, if the person has become a participant more than once, the day on which he last becomes a participant before the application,

"personal pension scheme" has the meaning given in that section,

"relevant date" means the joining date of the applicant or 6th April 2006, whichever is the later, and

"voluntary contribution rights" means rights under an occupational pension scheme that derive from voluntary contributions made by the applicant.

24C. Acceptance of transfer value payments

(1) Where an application is duly made by a participant under article 24A, the Managers may accept the transfer value payment if such conditions as they may require are met, unless paragraph (6) applies.

(2) If the Managers accept the payment on an application by a participant, paragraphs (3) and (4) apply.

(3) The participant's aggregate period of reckonable service for the purposes of the principal scheme and his aggregate period of reckonable service as a participant are increased by the appropriate period.

(4) So much of the payment accepted by the Managers as in their opinion represents the participant's own contributory payments are treated for the purposes of articles 25 and 26 as contributions paid by the participant, at the same time as those contributory payments were made, by deduction from his salary under article 5 of this Order.

(5) In this article "the appropriate period" means the period so calculated.

(6) The Managers may not accept a transfer value payment if—

(a) it would be applied in whole or in part in respect of the participant's or the participant's adult survivor's entitlement to a guaranteed minimum pension, and

(b) it is less than the amount required for that purpose, as determined by the Managers, having regard to guidance and tables prepared by the Government Actuary for the purposes of this paragraph.

24D. Calculation of transferred-in reckonable service

(1) The increase in the period of reckonable service that a participant is entitled to count under article 24C(3) is calculated—

(a) as at the date on which the transfer payment is received by the principal scheme, and

(b) determined by the Managers, having regard to guidance and tables provided by the Government Actuary for the purpose.

(2) For the purposes of that calculation the participant's ordinary salary is to be taken to be the amount of that salary as at—

(a) two months after the application under article 24A is received, or

(b) the date on which the transfer value payment is received,

whichever is the later, and, in a case where the transfer value payment is received earlier than two months after that application is received, any necessary adjustment is to be made to that calculation to reflect any change in the amount of that salary.

24E. Public sector transfer arrangements

Articles 19 to 24D apply, in the case of a transfer to which the public sector transfer arrangements apply, as it applies in other cases, except to the extent that any provision of those articles provides otherwise or the arrangements themselves make different provision.

SCHEDULE 2

Article 22

REVOCATIONS

Title of statutory instrument	*Extent of revocation*
European Parliamentary (United Kingdom Representatives) Pensions (Consolidation and Amendment) Order 1994 (S.I. 1994/1662)	In article 7(7) "or a candidate for election as a Representative". Article 17. Article 25(3). In article 25(4) from "provided that" onwards. Article 30. In paragraph 1 of Schedule 2, the definition of "index". In paragraph 3(4) of Schedule 2, the word "total", in the first and third places where it occurs, and the words "from any free-standing additional voluntary contributions scheme and from any other additional voluntary contributions".
European Parliamentary (United Kingdom Representatives) Pensions (Additional Voluntary Contributions Scheme) (No 2) Order 1995 (S.I. 1995/739)	In article 2(1) the definitions of "approved scheme", "Class A contributor", "Class B contributor", "Class C contributor", "FSAVC scheme", "final remuneration", "maximum pension", "permitted maximum", "retained benefits", "retained death benefits" and "retirement benefits scheme". Article 5(3) and (4). In article 7(3)(a) "and" at the end. In article 7(5) the words from "and the benefits" onwards. Article 8(3). Article 11. Article 12. Schedules 1 and 2.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the European Parliamentary (United Kingdom Representatives) Pensions (Consolidation and Amendment) Order 1994 (S.I. 1994/1662) ("the Principal Order") and the European Parliamentary (United Kingdom Representatives) Pensions (Additional Voluntary Contributions) Order 1995 (S.I. 1995/739) ("the AVC Order"), both of which were made under the European Parliament (Pay and Pensions) Act 1979 (c.50) and set out pension schemes applying to United Kingdom Representatives to the European Parliament. Many of the amendments reflect changes that are consequential on the replacement on 6th April 2006 of the tax regime applying in respect of pensions under Part 14 of the Income and Corporation Taxes Act 1988 (c.1) by Part 4 of the Finance Act 2004 (c.12) ("Part 4").

Article 1 provides for citation, commencement and interpretation. The Order comes into force on 6th April 2006.

Articles 2 to 15 amend the Principal Order.

Article 2 amends article 2 of, and Schedule 2 to, that Order, so as to update the definition of "the index" and make the definition of "permitted maximum" independent of the section 590C of the Income and Corporation Taxes Act 1988 (which is repealed by the Finance Act 2004) without changing its meaning. (Limits on contributions and benefits are expressed by reference to the permitted maximum.) It also inserts a definition of the pension value of retained benefits which is relevant to the maximum pension that can be paid to participants. It also amends that Schedule so that additional voluntary contributions are not taken into account in determining maximum contributions, and benefits purchased as a result of such contributions are not taken into account in determining maximum benefits.

Article 3 amends Schedule 7 to that Order so that the total contributions to buy added years, whether periodical or by way of lump sum, must not exceed 10 per cent of the participant's salary in the tax year.

Article 4 amends article 7 of the Principal Order so that pensions are payable despite a person being a candidate in an election and so that pensions are reduced to nil during further service as a Representative, rather than becoming non-payable, which is not permitted under the pension rules in section 165 of the Finance Act 2004.

Article 5 amends article 8 of the Principal Order which enables pensions to be commuted for lump sums, so as to apply the limits imposed by the Finance Act 2004 on pension commencement lump sums. Existing limits for participants who became participants before 6th April 2006 continue to apply as respects service before 6th April 2006 so far as permitted under Schedule 29 to that Act, as modified by the transitional provisions in Schedule 36 to that Act.

Articles 6 to 8 make provision relating to death benefits under the Principal Order. Article 6 restricts the amount of pensions payable under articles 11A to 15A so that they qualify as dependants' scheme pensions for Part 4 and amends the definition of "child" for the purposes of children's pensions so as to correspond with the Part 4 pension rules. Article 7 amends article 16 to comply with the Part 4 requirements so that death in service lump sums can only be paid to participants who have reached the age of 75 if they are pensioners on 6th April 2006, and removes the discretion to pay lump sums on the death of pensioners. Article 8 replaces Schedule 6 to the Principal Order so that in most cases where a lump sum was payable because a pensioner had died before he had received five years' pension, instead, one or more pensions are payable to the pensioner's dependants or personal representatives for the reminder of the five year period that are equal to the participant's own pension. (In such cases the dependants' pensions under articles 11A to 15A are suspended.) The right to a lump sum only continues under the new paragraphs 3 and 4 of Schedule 6 where the participant had no dependants and, unless he was a pensioner on 6th April 2006, he had not reached the age of 75.

Article 9 amends article 11 of the Principal Order (ill-health pensions) so as to mirror requirements imposed by Part 4 about cessation of occupation and medical evidence about incapacity.

Article 10 inserts two new articles (29A and 29B) into that Order providing for the scheme administrator to pay the lifetime allowance charge on behalf of participants in some circumstances, and for benefits to be reduced where the scheme administrator has done so without the participant having made a payment to cover the tax. It also inserts a new article 29C providing for the payment of the short service refund lump sum charge and the special lump sum death benefits charge under sections 205 and 206 of that Act to be deducted from payments liable to those charges.

Article 11 substitutes articles 19 to 24E (which are set out in the Schedule to this Order) to reflect changes in the law relating to transfers out as set out in Chapter 4 of Part 4 of the Pension Schemes Act 1993, to update certain references in consequence of Part 4 of the Finance Act 2004, and to refer to the public sector transfer arrangements. It also restricts the time within which certain transfers from other pension schemes can be accepted.

Article 12 makes amendments to article 25 of the Order relating to refunds of contributions so as to align the requirements with those for short service refund lump sums, which are authorised payments for the purposes of Part 4.

Article 13 amends article 28 of the Principal Order in relation to restrictions on the application of pensions.

Article 14 amends the Principal Order to introduce new articles 31A to 31E which relate to individuals to whom paragraph 12 of Schedule 36 to the Finance Act 2004 applies (enhanced protection). These “protected individuals” are given the right to cease making contributions, to surrender certain rights so as to obtain enhanced protection, or to surrender rights to which they have a prospective entitlement so as to avoid relevant benefit accrual.

Article 15 amends the Principal Order so as to introduce two new articles 31F and 31G, which enable people who become a participant for a second or subsequent time on or after 6th April 2006 to opt for their service when they do so to be treated separately from earlier service. The result of this will often be that the rights in respect of old service will be less valuable than if the service had been aggregated, and accordingly the option may benefit a person whose rights would otherwise breach limits above which tax charges apply under Part 4.

Articles 16 to 21 amend the AVC Order.

Article 16 amends the AVC Order so as to remove restrictions on amounts of contributions and the benefits attributable to them, which do not need to apply once Part 4 is in force, and to restrict the kinds of transfers in that may be accepted by the AVC scheme under article 5.

Article 17 amends article 4(1) so as to prevent participants in the scheme who are over 75 from joining the AVC scheme.

Article 18 amends articles 7 to 9 of the AVC Order, which relate to the provision of benefits under the AVC scheme. The amendments enable any benefits to be paid that are authorised for registered schemes under Part 4. They then amend the existing provisions about the benefits so as to achieve conformity with that Part. They also add a specific provision for lump sums to be taken at retirement or at a later time up to the participant’s 75th birthday, subject to the limits imposed by Part 4 on pension commencement lump sums. In addition, it is made clear that the amounts that can be taken as benefits or transferred out include the realisable value of amounts transferred in under article 5.

Article 19 amends article 10 of that Order (leaving the AVC scheme) so as to enable transfers out to be applied in any way permitted under Chapter 4 of Part 4 of the Pension Schemes Act 1993 and to bring payments by way of return of contributions within the requirements for short service refund lump sums, which are authorised payments for the purposes of Part 4 of the Finance Act 2004.

Article 20 substitutes two new articles for article 14 of that Order providing for the Managers to pay the lifetime allowance charge on behalf of contributors in some circumstances, and for benefits to be reduced where they have done so without the contributor having made a payment to them to cover the tax.

Article 21 makes various further minor amendments of that Order that are consequential on Part 4 and the changes made by that Order.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

STATUTORY INSTRUMENTS

2006 No. 919

PENSIONS

The European Parliamentary (United Kingdom Representatives) Pensions (Amendment) Order 2006

ISBN 0-11-074402-0

£4.50

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.

E0495 3/2006 160495T 19585

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