

EXPLANATORY MEMORANDUM TO
THE REGISTERED PENSION SCHEMES (MEANING OF PENSION
COMMENCEMENT LUMP SUM) (AMENDMENT) REGULATIONS 2007

2007 No. 3533

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

The Registered Pension Schemes (Meaning of Pension Commencement Lump Sum) Regulations 2006 (SI2006/135) override, in certain circumstances, the rules that must be satisfied for a lump sum to qualify as a pension commencement lump sum ("PCLS"). If a lump sum payment is not a PCLS or treated as such it may be subject to a tax charge on the basis that it is an unauthorised payment. SI 2006/135 has the effect of treating repayments of overpaid tax in respect of the life time allowance charge (which is refunded by HMRC to the pension scheme) as a PCLS and so not subject to a tax charge as an unauthorised payment. The rules relating to what is a PCLS were changed by Finance Act 2007 and this Regulation amends SI2006/135 to take into account these changes by ensuring the lump sum continues to qualify as a PCLS.

3. **Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]**

None

4. **Legislative Background**

4.1 Section 166 Finance Act 2004 allows for schemes to use a refund from HMRC of an overpayment of the lifetime allowance charge to pay benefits to the member affected as a PCLS provided the conditions of paragraphs 1 -3 of Schedule 29 are met.

4.2 Paragraph 11 of Schedule 20 Finance Act 2007 introduced three changes to the PCLS rules. The first permitted a lump sum to be paid after the member reached age 75 provided they became entitled to it before their 75 birthday. The second extended the period in which the lump sum must be paid from 3 months to 12 months from the date the member became entitled to it. The third permitted the lump sum to be paid up to 6 months before the member became entitled to the relevant pension.

4.3 As a consequence, changes were made to paragraph 1(1) of Schedule 29 which included omitting condition (e) and moving the test relating to age 75 to condition (a).

4.4 Paragraph 1(6) of Schedule 29 permits regulations to be made which treat as PCLS any payments into a pension scheme arising from a refund of any overpaid lifetime allowance charge. The regulations made under paragraph 1(6) of Schedule 29 are at

SI2006/135 and as a consequence changes to this Statutory Instrument were required as they referred to conditions (c) and (e) of paragraph 1(1) of Schedule 29.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The simplified tax regime for pension schemes was introduced in the Finance Act 2004 and came into effect on 6 April 2006. Under these new rules, a charge to income tax arises where benefits are crystallised and the amount crystallised either exceeds the lifetime allowance a member has available or if the member has no lifetime allowance available.

7.2 Circumstances were envisaged where, through intent or error, the amount of the member's available lifetime allowance is understated so giving rise to a charge where there would not have been one, or the amount of charge would have been smaller, if the correct amount of lifetime allowance had been taken into account.

7.3 HMRC will then refund the overpayment of tax on the lifetime allowance charge to the scheme administrator. These Regulations restore the scope of the 2006 Regulations to the position of that before the changes in Finance Act 2007 took effect. They allow the refunded overpayment of tax on the lifetime allowance charge to be treated as a PCLS.

7.4 They also extend the period in which all or part of the overpayment of tax paid to the member can be treated as a PCLS from 3 to 12 months in accordance with the additional time allowed by the changes introduced in Schedule 20 Finance Act 2007.

8. Impact

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. On 21 March 2007 HM Revenue & Customs published a regulatory impact assessment in respect of the provisions of Schedule 20 of the Finance Act 2007 (Pension Schemes etc: miscellaneous) and the subordinate legislation that was expected to be made under it. The assessment is available on HM Revenue & Customs website at <http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf> or (for hard copies) by writing to the Ministerial Correspondence Unit, 2nd Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

9. Contact

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