STATUTORY INSTRUMENTS

2012 No. 1881

INCOME TAX

The Registered Pension Schemes (Authorised Payments) (Amendment) (No.2) Regulations 2012

Made - - - -	*17th July 2012*
Laid before the House of Commons	*18th July 2012*
Coming into force - -	*8th August 2012*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations, in exercise of the powers conferred by section 164(1)(f) and (2) of the Finance Act 2004(**a**), and now exercisable by them(**b**):

Citation and commencement

1. These Regulations may be cited as the Registered Pension Schemes (Authorised Payments) (Amendment) (No.2) Regulations 2012 and will come into force on 8th August 2012.

Amendments to the Registered Pension Schemes (Authorised Payments) Regulations 2009

2. The Registered Pension Schemes (Authorised Payments) Regulations 2009(**c**) are amended as follows.

3. In regulation 1(2) (citation, commencement and effect) omit the word "and" before sub-paragraph (b) and after that sub-paragraph insert—

"; and

(c) for payments of a description within Part 5, in relation to payments made on or after 8th August 2012.".

4. After regulation 5 (prescribed payments and taxation) insert—

"**5A.** A payment by a registered pension scheme that is described in Part 5 of these Regulations—

(a) is a payment of a prescribed description for the purposes of section 164(1)(f) of the Finance Act 2004; and

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(**a**) 2004 c. 12. Section 164 was amended by paragraphs 1 and 6 of Schedule 23 to the Finance Act 2006 (c. 25), paragraphs 1 and 2 of Schedule 29 to the Finance Act 2008 (c. 9), section 75(2) of the Finance Act 2009 (c. 10) and paragraphs 62 and 63 of Schedule 16 to the Finance Act 2011 (c. 11).

(**b**) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**c**) S.I. 2009/1171 to which there are amendments not relevant to these Regulations.

(b) shall be treated as a short service refund lump sum for the purposes of Part 9 of ITEPA 2003(**a**).".

5. After regulation 19 (commencement lump sums paid after death) insert—

"PART 5

Miscellaneous lump sums

Part refund payments relating to short service

20.—(1) A payment of a lump sum by an occupational pension scheme if—

(a) the member's pensionable service was terminated before normal pension age but the member is not entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (basic principle as to short service benefit)(**b**);

(b) there has been no previous benefit crystallisation event in relation to the member and the pension scheme;

(c) it is paid when the member has not reached the age of 75;

(d) it does not exceed an amount equal to the aggregate of the member's contributions under the pension scheme;

(e) the payment extinguishes the member's entitlement to benefits under the scheme except to the extent that the entitlement is prohibited from being extinguished by rules of the pension scheme described in paragraph (2)(a); and

(f) at the time that the lump sum is paid the condition in paragraph (2) is satisfied.

(2) The condition in this paragraph is satisfied if—

(a) rules of the pension scheme ("the prohibition rules") have the effect of prohibiting a member's entitlement to benefits under the scheme from being extinguished by the payment of a lump sum;

(b) at the time that the prohibition rules took effect a provision ("the relevant provision") made by or under any enactment—

(i) was in force; and

(ii) had the effect of prohibiting a member's entitlement to benefits under the scheme from being extinguished by the payment of a lump sum; and

(c) the relevant provision has been repealed or revoked or has otherwise ceased to apply.

(3) A payment mentioned in paragraph (1) shall be subject to the charge specified in section 205 of the Finance Act 2004 (short service refund lump sum charge) and shall accordingly be treated as a short service refund lump sum for the purposes of the application of that section.

(4) In this regulation "pensionable service", "normal pension age" and "short service benefit" have the same meaning as in the Pension Schemes Act 1993 (see section 181(1) of that Act).".

Dave Hartnett
Stephen Banyard
17th July 2012 Two of the Commissioners for Her Majesty's Revenue and Customs

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(**a**) "ITEPA 2003" is defined by section 280 of the Finance Act 2004 as the Income Tax (Earnings and Pensions) Act 2003 (c. 1). Part 9 of that Act was amended by paragraphs 1 and 11 of Schedule 31 to the Finance Act 2004.
(**b**) 1993 c. 48. Section 71 was amended by section 263(1) of the Pensions Act 2004 (c. 35).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Registered Pension Schemes (Authorised Payments) Regulations 2009 ("the 2009 Regulations").

Regulation 1 provides for citation and commencement and regulations 2 and 3 provide for the date from which the amendments will take effect.

Regulations 2, 4 and 5 provide that a payment of a lump sum by an occupational pension scheme will be an authorised payment for the purposes of the Finance Act 2004 ("the 2004 Act") if conditions specified in new regulation 20 of the 2009 Regulations are met.

The lump sum payment will be subject to the short service refund lump sum charge in section 205 of the 2004 Act (see new regulation 20(3)). It will be treated as if it were a short service refund lump sum for the purposes of provisions about the taxation of pensions in Part 9 of the Income Tax (Earnings and Pensions) Act 2003 (see the amendment made by regulation 4 of these Regulations).

New regulation 20(1) and (2) specifies that, for the payment to be an authorised payment, rules of the scheme ("the prohibition rules") must have the effect that only part of the benefits of the scheme can be discharged by the payment of a lump sum. But the prohibition rules must have been made when there was a provision in primary or secondary legislation which had the same effect as the prohibition rules (i.e. the legislation stopped the benefits being extinguished by payment of a lump sum). Further, that legislative provision must have ceased to apply (without the prohibition rules also having been removed).

New regulation 20(1) specifies some other conditions that must be met before the payment is an authorised payment. Those are the same or similar conditions that apply for the purposes of the short service refund lump sum rule (see paragraph 5 of Schedule 29 to the 2004 Act).

A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

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