

EXPLANATORY MEMORANDUM TO
THE PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) ORDER 2013

2013 No. 1114

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

2. Purpose of the instrument

2.1 This instrument: (i) provides a definition of CSLA (current standard lifetime allowance) in the formula for calculating the maximum amount that can be paid as a tax free lump sum from a registered pension scheme in certain specified circumstances; (ii) repeals incorrect return penalty legislation relating to UK registered pension schemes that is now obsolete; and (iii) reinstates the power for HMRC to de-register pension schemes in certain circumstances.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 The change made by this instrument regarding the definition of CSLA has retrospective effect from 6 April 2012 using the power in section 282(A1) of the Finance Act 2004 ('FA 2004').

4. Legislative Context

CSLA (Article 3 of the Order)

4.1 This instrument amends Schedule 36 to the Finance Act 2004, which allows lump sums exceeding 25% of a member's total rights in a pension scheme to be paid out as a tax free lump sum in certain circumstances. This sum is known as a 'scheme specific lump sum'.

4.2 Paragraphs 8 and 11 of Schedule 18 to the Finance Act 2011 ('FA 2011') amended the protections for scheme specific lump sums in Schedule 36 to FA 2004 to ensure that the permitted maximum that could be paid was not reduced when the lifetime allowance ('LTA') was reduced by FA 2011. The LTA is one of the main mechanisms for limiting tax relief for pension savings. Those amendments deleted the definition of CSLA from the formula to calculate the permitted maximum that can be paid as a scheme specific lump sum.

4.3 This instrument re-establishes the definition of CSLA in the formula to calculate the maximum amount that can be paid as a scheme specific lump sum.

Repeal of obsolete penalty legislation (Articles 4-8 of the Order)

4.4 S254 FA 2004 prescribes that the scheme administrator is responsible for making

the accounting for tax (AFT) return which is a return of certain tax charges that the scheme administrator is responsible for paying. This section also explains that the scheme administrator is responsible for ensuring the return is correct and complete.

- 4.5 S260 FA 2004 dealt with penalties in connection with the AFT. Subsections (1) to (5) were repealed by FA 2009, schedules 55 and 56. S260 subsections (6) and (7) were however left in place. S260(6) provides for a scheme administrator to be liable to a penalty if he fraudulently or negligently makes an incorrect return under S254 FA 2004. S260(7) provides that if a pension scheme is de-registered, S260 applies to the person(s) who was the scheme administrator immediately before the scheme's registration was withdrawn.
- 4.6 Schedule 24 FA 2007 also provides for penalties for the careless or deliberate making of incorrect returns under S254 FA 2004 by including these returns in the table at paragraph 1(4). Therefore currently statute potentially provides for two penalties to apply for the same default. This instrument removes S260 in its entirety from FA 2004.
- 4.7 The powers in S122 (4) FA 2008 have been used to make these changes because they relate specifically to errors in returns.

Reinstating a power to de-register (Article 2 of the Order)

- 4.8 Section 158(1)(c) FA 2004 permits HMRC to withdraw registration from a registered pension scheme where the scheme administrator has failed to provide information required under a notice issued under Part 4 of FA 2004. The power to issue such notices requiring information used to be given by S252 FA 2004. However this was repealed by SI 2009/3054 and the powers to issue information notices to scheme administrators about the registered pension scheme are now contained in Schedule 36 to FA 2008. Section 158(1)(c) and 158(5) FA 2004 however have not been amended to reflect this change from Part 4 FA 2004 to Schedule 36 to FA 2008. This oversight resulted in a loss of one of HMRC's de-registration powers. This instrument will reinstate these powers.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Commissioners for Her Majesty's Revenue and Customs have made the following statement regarding Human Rights:

In our view the provisions of the Pension Schemes (Miscellaneous Amendments) Order 2013 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

CSLA (Article 3 of the Order)

7.1 In FA 2011 the LTA was reduced from £1.8m to £1.5m for tax year 2012-13 onwards. At the same time a number of other changes were made to FA 2004, one of which was to ensure that the maximum that could be paid tax free as a scheme specific lump sum was not reduced when the LTA was reduced. However the definition of CSLA, which is used in the formula for calculating the maximum that could be paid, was deleted from FA 2004.

7.2 As there is no longer a definition of CSLA for this formula, there could be some uncertainty of how to calculate the maximum that can be paid as a scheme specific lump sum. This instrument re-establishes the definition of CSLA to ensure the legislation works as intended.

Repeal of obsolete penalty legislation (Articles 4-8 of the Order)

7.3 The registered pension scheme administrator is responsible for making the AFT return which is a return of certain tax charges that the scheme administrator is responsible for paying. The scheme administrator is also responsible for ensuring the return is correct and complete. If the scheme administrator fraudulently or negligently makes an incorrect AFT return they become liable to a penalty.

7.4| In addition HMRC may serve a notice on a scheme administrator to obtain information relating to the scheme. If the scheme administrator fails to provide the information requested in the notice HMRC has the power to de-register the pension scheme in certain circumstances.

7.5 A comprehensive review of HMRC powers was undertaken following the merger of Inland Revenue and HM Customs & Excise, including powers for imposing penalties and powers for obtaining information. The review has resulted in legislation to modernise and align HMRC's powers across the taxes.

7.6 The new penalties legislation has been in operation since 2009 and applies to the AFT return. As a result of the review of powers, the previous AFT penalties in FA 2004 were repealed although some elements were left in place. This was an oversight at the time which means that currently HMRC has two penalty powers for the same. This instrument removes the old redundant legislation in FA 2004.

Reinstating a power to de-register (Article 2 of the Order)

7.7 In addition, switching from the previous information notice powers in FA 2004 to the new powers resulted in the loss of one of HMRC's de-registration powers. This is because the reference to information notices in the de-registration legislation still refers to notices under FA 2004, whereas for information required by notice, HMRC now use the

new information and inspection powers legislated in FA 2008. This was an oversight at the time and this instrument repairs that oversight.

- Consolidation

7.8 The amendments made by this instrument to other instruments are minor, and HMRC has no current plans to consolidate those instruments.

8. Consultation outcome

8.1 The nature of this instrument means that consultation is not required.

9. Guidance

9.1 The nature of this instrument means that guidance is not required.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 A Tax Information and Impact Note covering the change provided for by Article 3 was published on 9 December 2010 alongside the draft legislation for Finance Bill 2011 which became Schedule 18 to FA 2011 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to Article 3.

10.4 A Tax Information and Impact Note has not been prepared for the remaining Articles in the instrument as they contain no substantive changes to tax policy.

11. Regulating small business

11.1 The legislation applies to small business but does not impose any additional burdens.

12. Monitoring & review

12.1 The nature of this instrument means that it does not require to be monitored or evaluated separately.

13. Contact

CSLA - Paul Cottis at Her Majesty's Revenue and Customs Tel: 03000 564209 or email: pensions.policy@hmrc.gsi.gov.uk, can answer any queries regarding Article 3.

Other – Nick Jones at Her Majesty’s Revenue and Customs Tel: 020 7147 0403 or email: pensions.policy@hmrc.gsi.gov.uk, can answer any queries regarding the other Articles of the instrument.