
STATUTORY INSTRUMENTS

2018 No. 373

INCOME TAX

The Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2018

<i>Made</i>	- - - -	<i>14th March 2018</i>
<i>Laid before the House of Commons</i>	- - - -	<i>15th March 2018</i>
<i>Coming into force</i>	- -	<i>6th April 2018</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 282(A1) and (A2), paragraphs 1(6F), 3(5A), (6) and (8), 4(4), (5), (6) and (7), 7 and 7A of Schedule 34 to the Finance Act 2004⁽¹⁾ and now exercisable by them⁽²⁾.

Citation, commencement and effect

1. These Regulations may be cited as the Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2018 and come into force on 6th April 2018.
2. Regulations 5, 6, 7, 9 and 10 have effect from 9th March 2017.
3. Regulation 8 has effect from 6th April 2017.

Amendment of the Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006

4. The Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006⁽³⁾ are amended as follows.
5. In regulation 1(2) (citation, commencement and interpretation) (after the definition of “relevant non-UK scheme” insert—

-
- (1) [2004 c. 12](#). Sections 282(A1) and (A2) were inserted by the Finance Act [2009 \(c. 10\)](#). Paragraphs 1(6F), 3(5A) and (8), 4(5), (6), and (7) were inserted by Schedule 4 to the Finance Act [2017 \(c. 10\)](#). Paragraphs 3(6) and 4(4) were amended by Schedule 4 to the Finance Act 2017. Paragraph 7 was amended by Schedule 4 to the Finance Act 2017 and Schedule 1 to the Taxation of Pensions Act [2014 \(c. 30\)](#). Paragraph 7A was inserted by Schedule 21 to the Finance Act [2006 \(c. 25\)](#).
- (2) 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 insofar as it is appropriate in consequence of section 5, a reference in an enactment, however expressed, to the Commissioners of Inland Revenue is to be treated as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (3) [S.I. 2006/207](#), relevant amending instrument is [S.I. 2006/1960](#).

““Ring-fenced transfer fund” and “ring-fenced taxable asset transfer fund” have the meaning given in regulations 3B and 3C respectively.”.

6. After regulation 3A(4) (computation of a member’s taxable asset transfer fund) insert—

“Computation of the member’s ring-fenced transfer fund

3B. The amount of a member’s ring-fenced transfer fund (“RFTF”) under a RNUKS(5) is the aggregate of the sums and market value of the assets transferred as a result of the original relevant transfer(6) or subsequent relevant transfer(7) as has been transferred to the RNUKS without being subject to the unauthorised payments charge(8).

Computation of the member’s ring-fenced taxable asset transfer fund

3C. The amount of the member’s ring-fenced taxable asset transfer fund (“RFTATF”) under a RFTF in a RNUKS is the sum of—

- (a) the aggregate of the sums and market value of the assets transferred as a result of an original relevant transfer from a registered pension scheme to that RNUKS, and
- (b) so much of the member’s RFTATF under any other RNUKS as has been transferred to that RNUKS without being subject to the unauthorised payments charge.”.

7. In regulation 4(9) (attributing payments to particular funds under a relevant non-UK scheme)

- (a) in paragraph (1) after “member” insert “made before 6th April 2017”;
- (b) after paragraph (3) insert—

“(3A) If both the member’s UK tax-relieved fund and RTF are nil, or have been reduced to nil, the following Rules apply (with an earlier Rule applying in preference to a later Rule), subject to the provisions in paragraph (3B).

Rule 1

Where an unauthorised payment is treated as made by the scheme to the transfer member by virtue of section 174A(10)—

- (a) the payment shall be treated as made out of the member’s RFTF and RFTATF, but
- (b) the interest in taxable property, in respect of which the unauthorised payment is treated as made, shall represent the payment and form part of the member’s RFTF and RFTATF (an “appropriated asset”), up to an amount equal to the amount of that payment.

Rule 2

Accordingly, if a scheme transfers that appropriated asset (or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly), or

(4) Regulation 3A was inserted by [S. I. 2006/1960](#).
 (5) “RNUKS” has the meaning given in paragraph 1(5) of Schedule 34 to the Finance Act 2004 ([c. 12](#)).
 (6) “Original relevant transfer” has the meaning given in paragraph 1(6B) of Schedule 34 to the Finance Act 2004. Paragraph 1(6B) was inserted by paragraph 2(2) of part 1 of Schedule 4 to the Finance Act 2017 ([c. 10](#)).
 (7) “Subsequent relevant transfer” has the meaning given in paragraph 1(6D) of Schedule 34 to the Finance Act 2004. Paragraph 1(6D) was inserted by paragraph 2(2) of part 1 of Schedule 4 to the Finance Act 2017 ([c. 10](#)).
 (8) “Unauthorised payments charge” has the meaning given in section 208 of the Finance Act 2004, as amended by Schedule 46(4) to the Finance Act 2013 ([c. 29](#)), Schedule 2(2) to the Finance Act 2009 ([c. 10](#)) and Schedule 23 to the Finance Act 2006 ([c. 25](#)).
 (9) Regulation 4 was amended by [S.I. 2006/1960](#).
 (10) Section 174A of the Finance Act 2004 was inserted by paragraphs 2 and 5 of Schedule 21 to the Finance Act 2006.

part of it, to another pension scheme, that transfer shall be treated as a transfer of the whole or part, as the case may be, of the member's RFTF and RFTATF (limited to the amount of the unauthorised payment) to that other scheme, falling (if appropriate) within regulation 3C(b).

Rule 3

If a scheme disposes of (other than to another pension scheme) an appropriated asset (or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly), or part of it, any other property which directly or indirectly represents proceeds of either of those interests (limited to the amount of the unauthorised payment) shall form part of the member's RFTF and RFTATF.

Rule 4

This rule applies to payments made by the scheme to or in respect of the member, other than—

- (a) a transfer of an interest in taxable property or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly, and
- (b) payments treated as made by virtue of section 174A.

So far as the member's RFTF and RFTATF are not represented by appropriated assets—

- (a) where the member has both an RFTF and RFTATF, and the amount of their RFTF exceeds the amount of his RFTATF, such payments shall, to the extent of that excess, be treated as made out of their RFTF (but not their RFTATF) and as reducing the RFTF, and subject thereto
- (b) such payments are made out of the member's RFTF and RFTATF in priority to any other fund under that scheme, and reduce (but not below nil) the amount of the RFTF and RFTATF.

(3B) Where a member has more than one RFTF under the RNUKS, paragraph (3A) applies in order of priority from the RFTF with the earliest key date⁽¹¹⁾ to the RFTF with the latest key date."

- (c) in paragraph (4)⁽¹²⁾ for "paragraph (3)" substitute "paragraphs (3) and (3A)".

8. After regulation 4 (attributing payments to particular funds under a relevant non-UK scheme) insert—

"Fund depletion

4ZA.—(1) This regulation applies to determine when a member's UK tax-relieved fund, RTF, taxable asset transfer fund ("TATF"), RFTF and RFTATF will be reduced.

(2) In this regulation, and in regulations 4ZB to 4ZF, for the purposes of determining if a payment is of a particular type, a RNUKS is to be treated as a registered pension scheme.

(3) The funds referred to in paragraph (1) will be reduced when—

- (a) the following payments are made (or treated as made under Part 4 of the Act) on or after 6th April 2017 to or in respect of a member—
 - (i) an unauthorised payment,
 - (ii) a recognised transfer,

⁽¹¹⁾ "Key date" has the meaning given in paragraph 1(6C) of Schedule 34 to the Finance Act 2004 (c. 12). Paragraph 1(6C) was inserted by Schedule 4 to the Finance Act 2017 (c. 10).

⁽¹²⁾ Paragraph 4 was inserted by S.I. 2006/1960.

- (iii) the purchase of a lifetime annuity where the member has reached normal minimum pension age or meets the ill-health condition,
- (iv) the purchase of a lifetime annuity where the member has not reached normal minimum pension age and does not meet the ill-health condition and the contract does not provide for payment, and is not able to be amended to provide for payment before normal minimum pension age (unless the ill-health condition is met),
- (v) the purchase of a dependants' or nominees' annuity,
- (vi) a payment pursuant to a pension sharing order or provision,
- (vii) a defined benefits lump sum death benefit,
- (viii) an uncrystallised funds lump sum death benefit,
- (ix) so much of a charity lump sum death benefit paid from a relevant uncrystallised fund as defined in paragraph 15(2) of Schedule 29(13),
- (x) a payment that is an authorised lump sum payment under section 166,
- (xi) an authorised lump sum under regulations 11, 11A or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009(14),
- (xii) a tax liability of the scheme manager, and
- (b) the following crystallisation events occur on or after 6th April 2017—
 - (i) an individual, who has reached normal minimum pension age or meets the ill-health condition, designates sums or assets held for the purposes of a money purchase arrangement as available for payment of a drawdown pension to that individual,
 - (ii) the designation of sums or assets as available for the payment of dependants' drawdown pension or nominees' drawdown pension following the death of the member,
 - (iii) an individual, who has reached normal minimum pension age or meets the ill-health condition, becomes entitled to a scheme pension the member's funds will be reduced on the first date of payment of that scheme pension,
 - (iv) an individual becoming entitled to a dependants' scheme pension following the death of a member.

Payment and crystallisation valuation

4ZB.—(1) The member's funds will be reduced by the amount of the payment set out in regulation 4ZA(3)(a), subject to paragraphs (2) to (4).

(2) Where the payment is the purchase of a dependants' or nominees' annuity, the amount of the payment that reduces the member's funds is the amount of such of the sums and market value of such of the assets applied to purchase the annuity that are unused uncrystallised funds as defined in paragraphs 27E(4) and (5) of Schedule 28(15).

(3) Where the payment is a—

- (a) trivial commutation lump sum,
- (b) winding-up lump sum, or

(13) Paragraph 15(2) was amended by Schedule 4 to the Finance Act 2015 (c. 11) and Schedule 16 to the Finance Act 2011 (c. 11).

(14) S.I. 2009/1171, relevantly amended by the Finance Act 2014 (c. 26); Taxation of Pensions Act 2014 (c. 30); S.I. 2012/522, and S.I. 2011/1751.

(15) Paragraph 27E was inserted by the Taxation of Pensions Act 2014, and amended by the Finance Act 2015.

- (c) lump sum authorised under regulations 11, 11A or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009,

the amount of the payment that reduces the member's funds is so much of that lump sum as was provided from uncrystallised rights under the scheme.

(4) Where the payment is made pursuant to a pension sharing order or provision, the amount of the payment that reduces the member's funds is so much of the pension debit that derives from uncrystallised rights as defined by section 212(16).

(5) For a crystallisation event described in regulation 4ZA(3)(b)(i), the member's funds are reduced by the aggregate of the amount of the sums and market value of the assets so designated.

(6) For a crystallisation event described in regulation 4ZA(3)(b)(ii), the member's funds are reduced by the amount of newly-designated dependant funds or newly-designated nominee funds that are unused uncrystallised funds (as defined in paragraphs 27E(4) and (5) of Schedule 28).

(7) Where an individual becomes entitled to a scheme pension the amount of the reduction is—

20xP

where P is the amount of the pension which will be payable to the individual in the period of 12 months beginning with the day on which the individual becomes entitled to it (assuming it remains payable throughout that period at the rate at which it is payable on that day).

(8) Where the individual becomes entitled to a dependants' scheme pension, subject to paragraphs (9) and (10), the amount of the reduction is the aggregate of—

- (a) the amount of such of the sums held for the purposes of the pension scheme; and
- (b) the market value of such of the assets held for the purposes of the pension scheme

as are applied in (or in connection with) the purchase or provision of a dependants' scheme pension.

(9) If the dependants' scheme pension is related to the member's scheme pension (in accordance with paragraph 3(7C) of Schedule 29(17)) then the amount of the deduction is nil.

(10) If the dependants' scheme pension is funded (in whole or in part) by the application of sums or assets representing the whole or part of—

- (a) the member's drawdown pension fund,
- (b) the member's flexi-access drawdown fund,
- (c) the dependant's drawdown fund, or
- (d) the dependant's flexi-access drawdown fund

the aggregate of the amount of those sums and the market value of those assets is to be deducted from the amount found at paragraph (8).

Order of attributing payments

4ZC.—(1) This regulation applies to determine which part of a RNUKS a payment to, or in respect of, a member, or a crystallisation event referred to in regulation 4ZA(3)(b) is referable.

(16) Section 212 was amended by the Taxation of Pensions Act 2014 (c. 30), the Finance Act 2011 (c. 11) and the Finance Act 2006 (c. 25).

(17) Paragraph 3(7C) was inserted by the Finance Act 2006 (c. 25).