

Newsletter

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1. Finance Act 2011 and supporting regulations

The legislative changes required to implement the Government's pensions tax reforms for both the removal of the effective requirement to purchase an annuity by age 75, and the restriction of pensions tax relief have now been finalised.

Section 65 and Schedule 16 to the [Finance Act 11](#) ('FA11') contains the changes relating to age 75, section 66 and Schedule 17 has the changes relating to the annual allowance and section 67 and Schedule 18 has the changes relating to the lifetime allowance.

In addition to the legislation in FA11, 8 sets of regulations and one Treasury Order have also been laid to support these pension tax reforms. These statutory instruments came into force on 11 August 2011.

They are as follows;

[SI 2011/1797 - The Registered Pension Schemes \(Provision of Information\) \(Amendment\) \(No.2\) Regulations 2011](#) – These regulations make a number of amendments to SI 2006/567 to reflect the changes made by FA11. They prescribe certain information requirements for scheme administrators of registered pension schemes and sponsoring employers of pension schemes in consequence of the reduction of the annual allowance with effect from tax year 2011-12 and the lifetime allowance from tax year 2012-13. The regulations also set out the information requirements for scheme administrators where they make a flexible drawdown payment and make further consequential amendments as a result of the age 75 changes.

[SI 2011/1793 - The Registered Pension Schemes \(Notice of Joint Liability for the Annual Allowance Charge\) Regulations 2011](#) – These regulations provide details of the information an individual must give in a notice to their scheme administrator if they wish the scheme administrator to meet their annual allowance charge in return for a consequential adjustment to their pension benefits.

[SI 2011/1792 - The Registered Pension Schemes \(Prescribed Requirements of Flexible Drawdown Declaration\) Regulations 2011](#) - These regulations set out the conditions which a scheme member, or their dependant, needs to meet for a declaration to be valid for the purposes of taking flexible drawdown.

[SI 2011/1791 - The Registered Pension Schemes \(Modification of Scheme Rules\) Regulations 2011](#) – These regulations provide that where a scheme administrator of a registered pension scheme satisfies an annual allowance charge on behalf of a member of the pension scheme from the member's pension benefits, any rules of the pension scheme which prevent such an adjustment to the member's pension benefits are modified to allow for such adjustments.

[SI 2011/1790 - The Registered Pension Schemes \(Transfer of Sums and Assets\) \(Amendment\) \(No. 2\) Regulations 2011](#) - These regulations make various consequential amendments to SI 2006/499 in respect of transfers from one pension arrangement to another to reflect changes made by FA11.

[SI 2011/1783 - The Registered Pension Schemes \(Relevant Income\) Regulations 2011](#) - These regulations set out payments which do not count as relevant income for the purposes of meeting the minimum income requirement under the flexible drawdown rules.

[SI 2011/1782 - The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) \(No.2\) Order 2011](#) - This instrument makes a number of consequential amendments to SI 2006/572, to reflect changes made by FA11.

[SI 2011/1752 - The Registered Pension Schemes \(Lifetime Allowance Transitional Protection\) Regulations 2011](#) – These regulations provide that an individual may give notice to HMRC that they intend to rely on fixed protection from April 2012. It sets out the steps the individual and HMRC have to take to enable an individual to rely on fixed protection and what happens if the notice is refused or if the individual no longer meets the conditions for fixed protection.

[SI 2011/1751 - The Registered Pension Schemes \(Miscellaneous Amendments\) Regulations 2011](#) – These regulations make a number of consequential amendments to the following existing regulations to reflect changes made by FA11;

- The Pension Benefits (Insurance Company Liable as Scheme Administrator) Regulations 2006 (SI 2006/136)
- The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 (SI 2006/574)
- The Registered Pension Schemes (Relevant Annuities) Regulations 2006 (SI 2006/129)
- The Registered Pension Schemes (Meaning of Pension Commencement Lump Sum) Regulations 2006 (SI 2006/135)
- The Registered Pension Schemes (Authorised Payments) Regulations (SI 2009/1171)
- The Registered Pension Schemes (Prescribed Manner of Determining Amount of Annuities) Regulations 2006 (SI 2006/568)
- The Registered Pension Schemes (Accounting and Assessment) Regulations 2005 (SI 2005/3454)
- The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (SI 2006/207)
- The Registered Pension Schemes (Authorised Payments) Regulations (SI 2009/1171)

In addition to the above regulations, the DWP have also made regulations, [SI 2011/1801 - The Occupational Pension Schemes \(Assignment, Forfeiture, Bankruptcy etc.\) \(Amendment\) Regulations 2011](#), which remove a legislative barrier which would otherwise prevent a consequential reduction to a scheme member's benefits for the purpose of paying an annual allowance tax charge on behalf of that member, either in accordance with the new statutory regime provided for in FA11, or on a voluntary basis.

In addition to these changes, sections 68 to 71 of FA11 concern changes relating to NEST and other qualifying schemes when automatic enrolment is introduced from 2012. Section 72 of FA11 ensures that the UK's network of tax treaties cannot be used by a UK resident to avoid UK tax on a foreign pension or lump sum.

This now means that all the legislation for UK registered pension schemes relating to the pension tax reforms is now in force.

We would also like to take this opportunity to thank all those that have contributed to the various consultations on the pension tax reforms over the last couple of years as well as commenting on the draft legislation. Your time and help in this has been very much appreciated.

2. Guidance and enquiries

The HMRC Registered Pension Schemes Manual ('RPSM') will be updated as soon as possible to reflect the changes in FA 2011 and the supporting regulations. We expect this to be about late September.

As you are no doubt aware, we have already published a lot of guidance, mostly aimed at individuals, relating to various aspects of the pensions tax reforms. If you have any questions relating to the changes you should read the guidance first. This guidance will be reviewed once RPSM has been updated.

[Age 75 guidance](#)

[Annual allowance guidance](#)

[Overseas pension schemes annual allowance guidance](#)

[Paying your annual allowance charge from your pension savings – Member guidance \(PDF 96K\)](#)

[Paying your annual allowance charge from your pension savings – Scheme administrator guidance \(PDF 54K\)](#)

[Lifetime Allowance guidance](#)

If after having looked at the legislation and the guidance, you still have any questions relating to the various changes you should contact our helpdesk on 0845 600 2622 or by email using a [web form](#).

Alternatively you can write to Pension Schemes Services at:

Pension Schemes Services
FitzRoy House

HMRC Pension Schemes Service
August 2011

Castle Meadow Road
Nottingham
NG2 1BD

3. Application for protection of your lifetime allowance – fixed protection (APSS227)

The [application for fixed protection form \(APSS227\) \(PDF 219K\)](#) and [associated notes \(PDF 67K\)](#) are now available on our website. Completed applications need to be received by us on or before 5 April 2012. The form cannot be filed online.

Individuals who choose to give up enhanced protection to benefit from fixed protection, must also ensure we receive their separate notice giving up enhanced protection no later than 5 April 2012.

Please note that certificates for fixed protection will not be issued to customers before 12 October 2011. Please do not contact us therefore until after 30 October 2011 if you have not received your certificate, as we will try and clear any backlog of applications received before 12 October by this date.

4. Reporting requirements for flexible drawdown payments (APSS315 form)

Scheme administrators have to report to HMRC any flexible drawdown payments made within each tax year. For flexible drawdown payments made in the tax years from 2012–2013 onwards, this must be done online via the Event Report and we are currently updating the online Event Report to include the facility to report flexible drawdown payments; however the IT changes will not be available until April 2012.

For flexible drawdown payments made in the tax year 2011-12 scheme administrators have therefore to submit the information to HMRC in writing. To make it easier for scheme administrators to do this, we have produced a form, [the APSS315 form \(PDF 151K\)](#), on which they can provide us with the information required by the legislation

This form can be used by scheme administrators to report the total value of all payments from a flexible drawdown pension arrangement made by the pension scheme to the named individual in the tax year 2011-12 only.

The completed form should reach us by 31 January 2013 unless the scheme has been wound up, in which case the form should reach us by no later than three months after the date of completion of the winding up if that is earlier.

The form cannot be filed online.

5. The pension benefit reforms and changes to Accounting for Tax

As part of the pension benefit reforms in FA11, a change of tax rate from 35% to 55% was introduced for the special lump sum death benefits charge (for deaths occurring from 6 April 2011 onwards) under section 206 Finance Act 2006 and a new income tax charge (the serious ill-health lump sum charge) at the rate of 55% was introduced under section 205A Finance Act 2006. This tax charge applies to lump sum payments made in cases of serious ill health to a member who has reached the age of 75.

Scheme administrators must account for each of these tax charges using the online Accounting for Tax ('AFT') form.

For the avoidance of doubt, where a serious ill-health lump sum is paid before the member has reached the age of 75 it remains not liable to income tax, but the amount of the lump sum counts towards the member's lifetime allowance.

We are currently updating the online AFT form to reflect the new serious ill health lump sum tax charge and the new rate of tax for the special lump sum death benefits charge; however the IT changes will not be available until April 2012.

In the interim, scheme administrators should use the existing question relating to the special lump sum death benefit charge to account for the tax due in respect of the special lump sum death benefit charge (for both the 35% rate and the 55% rate) and in respect of the serious ill health lump sum charge.

To help you identify the relevant question, the wording as it appears on the online system has been reproduced below.

“Section 206 – Special Lump Sum Death Benefits Charge”

If you need help understanding what should be entered in each field, then please refer to the online help by clicking the green question mark icons. Scheme administrators can also find more information about completing the AFT form in Chapter 9 of the [Guide to Using the Online Service for Scheme Administrators and Practitioners](#).