
D R A F T S T A T U T O R Y I N S T R U M E N T S

20XX No. 000

INCOME TAX

The Finance Act 2004 (Registered Pension Schemes and Annual Allowance Charge) (Amendment) Order 20XX

Made - - - - - ***

Coming into force - - - - - ***

The Treasury make the following Order in exercise of the powers conferred by section 238A(1), (2) and (4) of the Finance Act 2004(**a**) and section 282(A1) of that Act(**b**):

[A draft of this instrument has been laid before the House of Commons in accordance with section 282(1A) of that Act and approved by a resolution of that House.]

Citation, commencement and effect

1. This Order may be cited as the Finance Act 2004 (Registered Pension Schemes and Annual Allowance Charge) (Amendment) Order 20XX and comes into force on [].

2. The following amendments have effect in relation to pension input periods ending in tax year 2011-12 and subsequent years—

- (a) article 11;
- (b) paragraphs (a) to (d) of article 12 (but see article 3);
- (c) article 14; and
- (d) paragraphs (a) to (d) of article 15 (but see article 3).

3.—(1) The amendments made by paragraphs (a) and (b) of article 12, have no effect in relation to any transfer of sums or assets made before the day on which this Order comes into force if any person’s liability to tax would be higher as a result of—

- (a) the application of those amendments in relation to that transfer, and
- (b) any application in relation to that transfer of the amendments made by article 12(c) and (d),

than it would have been if none of those amendments had effect.

(2) The insertion by article 12(e) of subsection (6D) of section 232 of the Finance Act 2004 (cash balance arrangements: adjustment of closing value) (“the Act”) has effect in relation to a transfer of sums or assets that occurs on and after the date on which this Order comes into force.

(a) 2004 c. 12. Section 238A was inserted by paragraph 17 of Schedule 17 to the Finance Act 2011 (c. 11).

(b) Section 282(A1) was inserted by section 75(1) of the Finance Act 2009 (c. 10).

(3) The amendments made by paragraphs (a) and (b) of article 15 have no effect in relation to any transfer of sums or assets made before the day on which this Order comes into force if any person's liability to tax would be higher as a result of—

- (a) the application of those amendments in relation to that transfer, and
- (b) any application in relation to that transfer of the amendments made by article 15(c) and (d),

than it would have been if none of those amendments had effect.

(4) The insertion by article 15(e) of subsection (5D) of section 236 of the Act (defined benefits arrangements: adjustment of closing value) has effect in relation to a transfer of sums or assets that occurs on and after the date on which this Order comes into force.

4. The amendment made by article 12(f) has effect in relation to benefit crystallisation events that occur on and after the date on which this Order comes into force.

5. The amendments made by articles 12(g) and 15(f) have effect in relation to liability to the annual allowance charge arising on and after the date on which this Order comes into force.

6. The amendment made by article 13 has effect in relation to payments of a refund of excess contributions lump sum made in pension input periods ending in tax year 2014-15 and subsequent tax years.

7. The amendments made by article 16(a) have effect in relation to notices that are given under section 237B of the Act after the period of 6 months beginning with the date that this Order comes into force.

8. The amendments made by article 16(b) have effect in relation to transfers of sums or assets that take place on and after the date on which this Order comes into force.

Amendments to the Finance Act 2004

9. Part 4 of the Finance Act 2004 (pension schemes etc) is amended as follows.

Carry forward of unused allowance

10. After section 228A (carry forward of unused allowance) insert—

“228B Carry forward: certain periods treated as pension input periods

(1) This section applies where the first pension input period for a relevant arrangement relating to an individual ends in the tax year 2011-12, 2012-13 or 2013-14.

(2) A period is a “carry forward period” for the purposes of this section if it—

- (a) is one of the 3 consecutive periods of 12 months immediately before the commencement date of the first pension input period, and
- (b) is a period in which the arrangement was in existence at any time.

(3) Any amount that would, if a carry forward period were a pension input period of the arrangement, have been unused annual allowance available to the individual for the tax year 2011-12, 2012-13 or 2013-14 is to be treated as unused annual allowance available to the individual for that tax year.

(4) In this section “relevant arrangement” means—

- (a) a cash balance arrangement,
- (b) a defined benefits arrangement, or
- (c) a hybrid arrangement the only benefits under which may be cash balance benefits or defined benefits.”.

Amendments to section 230

11. In section 230 (cash balance arrangements)—

- (a) for subsection (4)(a) substitute—

“(4) The opening value of the individual’s rights under the arrangement—

- (a) where the pension input period is the first pension input period of the arrangement, is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits immediately before that pension input period (or is nil if no such amount would be available);
- (b) in any other case, is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of the immediately preceding pension input period.”;

- (b) for subsection (5B)(b) substitute—

“(5B) The pension input amount in respect of the cash balance arrangement is nil where subsection (5BA) or (5BB) applies and the value of the relevant rights of the individual under the arrangement does not increase during the pension input period by more than—

- (a) the relevant percentage, plus
- (b) the relevant statutory increase percentage.

(5BA) This subsection applies where the individual—

- (a) is, throughout the pension input period, a deferred member of the pension scheme that the arrangement is under,
- (b) is such a deferred member for part of the pension input period and a pensioner member for the rest of it, or
- (c) would meet the condition in paragraph (a) or (b) if the arrangement were the only arrangement under the pension scheme relating to that individual.

(5BB) This subsection applies where—

- (a) during the pension input period there is a recognised transfer from the pension scheme of all the sums or assets held for the purposes of, or representing accrued rights under, the arrangement in connection with the individual,
- (b) the individual is a deferred member of the pension scheme from the beginning of the pension input period until the transfer (or would be if the arrangement were the only arrangement under the pension scheme relating to that individual), and
- (c) rights do not accrue under the arrangement to or in respect of the individual during so much of the pension input period as falls after the transfer.

(5BC) In determining for the purposes of this section whether or not a member of a pension scheme is a deferred member, arrangements made under the pension scheme for the accrual of benefits to or in respect of that member (see the definition of “active member” in section 151(2)) are to be disregarded if they are arrangements for the accrual of benefits by means of a recognised transfer to the cash balance arrangement

(5BD) The reference in subsection (5BC) to “a recognised transfer to the cash balance arrangement” is to a recognised transfer under which the sums or assets transferred are to become held for the purposes of, or to represent rights under, the cash balance arrangement”; and

- (c) in subsection (5C)—

(a) Subsection (4) was amended by paragraph 7 of Schedule 17 to the Finance Act 2011 (c. 11).

(b) Subsections (5B) and (5C) were inserted by paragraph 7 of Schedule 17 to the Finance Act 2011.

- (i) for the definition of “the relevant percentage” substitute—
- ““the relevant percentage” means—
- (a) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an annual rate which is an RPI-related rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 6 April 2012, that rate,
 - (b) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an annual rate, other than an RPI-related rate, specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 14 October 2010, that rate, and
 - (c) in a case not falling within paragraph (a) or (b), the percentage by which the consumer prices index for a month falling within the pension input period and nominated by the scheme administrator is higher than it was for the same month in the previous period of 12 months (or nil per cent if it is not higher);”;
- (ii) after the definition of “the relevant rights of the individual” insert—
- ““the relevant statutory increase percentage” in relation to a pension input period means the percentage increase in the value of the individual’s rights under the arrangement during the pension input period so far as it is attributable solely to one or more of the following—
- (a) an increase in accordance with section 15 of the Pension Schemes Act 1993^(a) or section 11 of the Pension Schemes (Northern Ireland) Act 1993^(b)(increase of guaranteed minimum where commencement of guaranteed minimum pension postponed);
 - (b) a revaluation in accordance with section 16^(c)of the Pension Schemes Act 1993 or section 12^(d) of the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of earning factors);
 - (c) a revaluation in accordance with Chapter 2 of Part 4 of the Pension Schemes Act 1993^(e) or the Pension Schemes (Northern Ireland) Act 1993^(f) (early leavers: revaluation of accrued benefits);
 - (d) a revaluation in accordance with Chapter 3 of Part 4 of the Pension Schemes Act 1993^(g) or the Pension Schemes (Northern Ireland) Act 1993^(h) (early leavers: protection of increases in guaranteed minimum pensions);
 - (e) the application of section 67 of the Equality Act 2010^(a) (sex equality rule for occupational pension schemes).

(a) 1993 c. 48.

(b) 1993 c. 49.

(c) Section 16 was amended by paragraph 28 of Schedule 5 to the Pensions Act 1995 (c. 26) and by paragraph 4 of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c. 30).

(d) Section 12 was amended by paragraph 21 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213), and by paragraph 3 of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147).

(e) Chapter 2 was amended by paragraph 62 of Schedule 5 and Part 3 of Schedule 7 to the Pensions Act 1995, by paragraphs 28, 31 and 32 of Schedule 12 to the Welfare Reform and Pensions Act 1999, by section 281 of the Pensions Act 2004 (c. 35), by section 19 of the Pensions Act 2011 (c. 19) and by paragraphs 18 and 25 of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 (c. 30).

(f) Chapter 2 was amended by section 20 of the Pensions Act (Northern Ireland) 2012 (c. 3), by paragraph 52 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213), by paragraphs 20 and 21 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147), by article 258 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255) and by paragraph 13 of Schedule 1 to the Civil Partnership (Benefits and Payments) (Consequential, etc. Provisions) Order (Northern Ireland) 2005 (S.I. 2005/434).

(g) Chapter 3 was amended by paragraph 28 of Schedule 4 to the Pensions Act 2007 (c. 22) and paragraphs 18 to 21 of Schedule 1 to the Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050).

(h) Chapter 3 was amended by paragraph 28 of Schedule 4 to the Pensions Act (Northern Ireland) 2008 (c. 1), and by paragraphs 18 to 21 of Schedule 1 to the Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order (Northern Ireland) 2005 (S.I. 2005/433).

“RPI-related rate” (in the definition of “the relevant percentage”) means—

- (a) a rate produced solely by movement in the retail prices index, or
- (b) a rate which (however expressed) is the lower of such a rate and a percentage figure;”.

Amendments to section 232

12. In section 232 (cash balance arrangements: adjustments of closing value)—

(a) in subsection (4)(b)—

- (i) for the words from “If” to “by reason of” substitute “In subsection (4A) “relevant outward transfer” means”; and
- (ii) omit “the amount of the reduction is to be added”;

(b) after subsection (4) insert—

“(4A) If there is a relevant outward transfer during the pension input period, then—

- (a) if condition A is met, the amount of the reduction specified in paragraph (b) of that condition is to be added;
- (b) if condition A is not met but the rights of the individual under the arrangement have been reduced by reason of the relevant outward transfer, the amount of that reduction is to be added.

Condition A is that—

- (a) the relevant outward transfer takes place within a block transfer,
- (b) the rights of the individual under the arrangement have been reduced, and the rights of the individual under the pension scheme mentioned in subsection (4) have been increased, in connection with the transfer, and
- (c) the amount of that reduction is equal (or virtually equal) to the amount of that increase.”;

(c) in subsection (6)(c)—

- (i) for the words from “If” to “by reason of” substitute “In subsection (6A) “relevant inward transfer” means”; and
- (ii) omit “, the amount of the reduction is to be subtracted”;

(d) after subsection (6) insert—

“(6A) If there is a relevant inward transfer during the pension input period, then—

- (a) if condition B is met, the amount of the increase specified in paragraph (b) of that condition is to be subtracted;
- (b) if condition B is not met but the rights of the individual under the arrangement have been increased by reason of the relevant inward transfer, the amount of that increase is to be subtracted.

Condition B is that—

- (a) the relevant inward transfer takes place within a block transfer,
- (b) the rights of the individual under the arrangement have been increased, and the rights of the individual under the pension scheme mentioned in subsection (6) have been reduced, in connection with the transfer, and
- (c) the amount of that increase is equal (or virtually equal) to the amount of that reduction.

(6B) For the purposes of subsections (4A) and (6A)—

(a) 2010 c. 15.

(b) Subsection (4) was amended by paragraph 9 of Schedule 17 to the Finance Act 2011 (c. 11).

(c) Subsection (6) was amended by paragraph 9 of Schedule 17 to the Finance Act 2011.

- (a) normal actuarial practice must be used when determining and comparing the amount of the reduction, and the amount of the increase, in rights,
 - (b) the amount of a reduction or increase in rights under the arrangement is the difference between the amount of those rights under the arrangement immediately before and immediately after the transfer, and
 - (c) the amount of an increase or reduction in rights under a pension scheme is the difference between the amount of those rights under the pension scheme immediately before and immediately after the transfer.
- (6C) In subsections (4A) and (6A)—
- (a) “block transfer” means a transfer which involves the transfer in a single transaction of all the sums or assets held for the purposes of, or representing accrued rights under, the arrangements under the pension scheme from which the transfer is made which relate to the individual and at least one other member of that pension scheme, and
 - (b) a reduction or increase in the rights of the individual is “in connection with” a transfer of sums or assets if it is directly or indirectly in consequence of the transfer.”
- (e) after subsection (6C) (as inserted by sub-paragraph (d)) insert—
- “(6D) For the purposes of subsections (4A) and (6A), the rights of the individual under the arrangement have been reduced or increased, as the case may be, “by reason of” a transfer of sums or assets only where that reduction or increase is solely attributable to the value of those sums or assets.”;
- (f) in subsection (8B)(a) omit paragraphs (a) and (b); and
- (g) in subsection (8D) for “in a case where” to the end substitute—
- “in a case where—
- (a) the individual becomes actually entitled to all of the individual’s benefits under the pension scheme or benefit crystallisation event 5, 5A or 5B occurs in relation to the individual and the pension scheme, and
 - (b) the adjustment takes place after the individual becomes so entitled or the benefit crystallisation event occurs.”.

Amendments to section 233

13. In section 233 (other money purchase arrangements)(b) after subsection (3) insert—

“(4) References to “contributions” in subsection (1) do not include any amount which is a refund of excess contributions lump sum (see paragraph 6 of Schedule 29)(c).”.

Amendments to section 234

14. In section 234(d) (defined benefits arrangements)—

(a) in subsection (4), for the words from “where—” to the end substitute—

“where—

PB is—

(a) if the pension input period is the first pension input period of the arrangement, the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became

(a) Subsections (8B) and (8D) were inserted by paragraph 9 of Schedule 17 to the Finance Act 2011 (c. 11).
 (b) Section 233 was amended by section 52 of the Finance Act 2013 (c. 29).
 (c) Paragraph 6 was amended by paragraph 28 of Schedule 23 to the Finance Act 2006 (c. 25).
 (d) Subsection 4 was amended by paragraph 10 of Schedule 17 to the Finance Act 2011.

entitled to payment of it immediately before that pension input period (or is nil if no such annual rate would be so payable), or

- (b) in any other case, the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of the immediately preceding pension input period, and

LSB is—

- (a) if the pension input period is the first pension input period of the arrangement, the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it immediately before that pension input period (or is nil if there is no such lump sum to which the individual would be so entitled), or
- (b) in any other case, the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at the end of the immediately preceding pension input period.”;

- (b) for subsection (5B)(a) substitute—

“(5B) The pension input amount in respect of the arrangement is nil where—

- (a) subsection (5BA) or (5BB) applies and the value of the relevant rights of the individual under the arrangement does not increase during the pension input period by more than—
 - (i) the relevant percentage, plus
 - (ii) the relevant statutory increase percentage, or
- (b) subsection (5BC) applies.

“(5BA) This subsection applies where the individual—

- (a) is, throughout the pension input period, a deferred member of the pension scheme that the arrangement is under,
- (b) is such a deferred member for part of the pension input period and a pensioner member for the rest of it, or
- (c) would meet the condition in paragraph (a) or (b) if the arrangement were the only arrangement under the pension scheme relating to the individual.

(5BB) This subsection applies where—

- (a) during the pension input period there is a recognised transfer (“the transfer”) from the pension scheme of all the sums or assets held for the purposes of, or representing accrued rights under, the arrangement in connection with the individual,
- (b) the individual is a deferred member of the pension scheme from the beginning of the pension input period until the transfer (or would be if the arrangement were the only arrangement under the pension scheme relating to that individual), and
- (c) rights do not accrue under the arrangement to or in respect of the individual during so much of the pension input period as falls after the transfer.

(5BC) This subsection applies where—

- (a) the arrangement (“the annuity arrangement”) is a defined benefits arrangement under an annuity contract which is treated as a registered pension scheme under section 153(8)(b),

(a) Subsections (5B) and (5C) were inserted by paragraph 10 of Schedule 17 to the Finance Act 2011.

(b) Section 153(8) was inserted by paragraph 2 of Schedule 10 to the Finance Act 2005 (c. 7).

- (b) throughout the pension input period the annuity arrangement (or a predecessor arrangement) includes provision for the relevant rights of the individual to increase at an annual rate (“the annuity rate”) which—
 - (i) was specified in the contract (or in the rules of a predecessor registered pension scheme) on 14 October 2010, or
 - (ii) is the CPI percentage or the RPI percentage, whichever is the greater, and
- (c) the value of the relevant rights of the individual does not increase during the pension input period at an annual rate greater than the annuity rate or the relevant statutory increase percentage, whichever is the greater.

(5BD) In determining for the purposes of this section whether or not a member of a pension scheme is a deferred member, arrangements made under the pension scheme for the accrual of benefits to or in respect of that member (see the definition of “active member” in section 151(2)) are to be disregarded if they are arrangements for the accrual of benefits by means of recognised transfer to the defined benefits arrangement.

(5BE) The reference in subsection (5BD) to “a recognised transfer to the defined benefits arrangement” is to a recognised transfer under which the sums or assets transferred are to become held for the purposes of, or to represent rights under, the defined benefits arrangement.”; and

- (c) in subsection (5C)—
 - (i) before the definition of “guaranteed minimum pension” insert—
 - ““CPI percentage” means the percentage mentioned in paragraph (b) of the definition of “the relevant percentage” (see below);”;
 - (ii) for the definition of “the relevant percentage” substitute —
 - ““the relevant percentage” means—
 - (a) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an RPI-related rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 6 April 2012, that rate,
 - (b) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at a rate, other than an RPI-related rate, specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 14 October 2010, that rate, and
 - (c) in a case not falling within paragraph (a) or (b), the percentage by which the consumer prices index for a month falling within the pension input period and nominated by the scheme administrator is higher than it was for the same month in the previous period of 12 months (or nil per cent if it is not higher);”;
 - (iii) after the definition of “the relevant rights of the individual” insert—
 - ““the relevant statutory increase percentage” in relation to a pension input period means the percentage increase in the value of the individual’s rights under the arrangement during the pension input period so far as it is attributable solely to one or more of the following—
 - (a) an increase in accordance with section 15 of the Pension Schemes Act 1993 or section 11 of the Pension Schemes (Northern Ireland) Act 1993 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed);
 - (b) a revaluation in accordance with section 16 of the Pension Schemes Act 1993 or section 12 of the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of earning factors);

- (c) a revaluation in accordance with Chapter 2 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of accrued benefits);
- (d) a revaluation in accordance with Chapter 3 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: protection of increases in guaranteed minimum pensions);
- (e) the application of section 67 of the Equality Act 2010 (sex equality rule for occupational pension schemes).

“RPI percentage” means the percentage by which the retail prices index for a month falling within the pension input period and nominated by the scheme administrator is higher than it was for the same month in the previous period of 12 months (or nil per cent if it is not higher);

“RPI-related rate” (in the definition of “the relevant percentage”) means—

- (c) a rate produced solely by movement in the retail prices index, or
- (d) a rate which (however expressed) is the lower of such a rate and a percentage figure;”.

Amendments to section 236

15. In section 236 (defined benefits arrangements: adjustments of closing value)(a)—

- (a) in subsection (4)(b)—
 - (i) for the words from “If” to “by reason of” substitute “In subsection (4A) “relevant outward transfer means”; and
 - (ii) omit “the amount of the reduction is to be added to PE or LSE”;

- (b) after subsection (4) insert—

“(4A) If there is a relevant outward transfer during the pension input period, then—

- (a) if condition A is met, the amount of the reduction specified in paragraph (b) of that condition is to be added to PE or LSE, so far as that amount is made up of (either or both of) a reduction in the annual rate of the pension to which the individual would be entitled under the arrangement or a reduction in the amount of the lump sum to which the individual would be entitled under the arrangement;
- (b) if condition A is not met but the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been reduced by reason of a relevant outward transfer, the amount of that reduction is to be added to PE or LSE.

Condition A is that—

- (a) the relevant outward transfer takes place within a block transfer,
 - (b) the value of the benefits to be paid to or in respect of the individual under the arrangement has been reduced and the value of the benefits to be paid to or in respect of the individual under the pension scheme mentioned in subsection (4) has been increased, in connection with the transfer,
 - (c) the amount of that reduction is equal (or virtually equal) to the amount of that increase, and
 - (d) the transfer is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax”;
- (c) In subsection (5)—

(a) Section 236 was amended by paragraph 12 of Schedule 17 to the Finance Act 2011 (c. 11).

(b) Subsections (4) and (5) were inserted by paragraph 12 of Schedule 17 to the Finance Act 2011.

- (i) for the words from “If” to “by reason of” substitute “In subsection (5A) “relevant inward transfer means”; and
- (ii) omit “the amount of the increase is to be subtracted from PE or LSE”;
- (d) after subsection (5) insert—

“(5A) If there is a relevant inward transfer during the pension input period, then—

- (a) if condition B is met, the amount of the increase mentioned in paragraph (b) of that condition is to be subtracted from PE or LSE, so far as that amount is made up of (either or both of) an increase in the annual rate of pension to which the individual would be entitled under the arrangement or an increase in the amount of the lump sum to which the individual would be entitled under the arrangement;
- (b) if condition B is not met but the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been increased by reason of the relevant inward transfer, the amount of the increase is to be subtracted from PE or LSE.

Condition B is that-

- (a) the relevant inward transfer took place within a block transfer,
- (b) the value of the benefits to be paid to or in respect of the individual under the arrangement has been increased, and the value of the benefits to be paid to or in respect of the individual under the pension scheme mentioned in subsection (5) has been reduced, in connection with the transfer,
- (c) the amount of that increase is equal (or virtually equal) to the amount of that reduction, and
- (d) the transfer is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.

(5B) For the purposes of subsections (4A) and (5A)—

- (a) normal actuarial practice must be used when determining and comparing the amount of a reduction, and the amount of an increase, in the benefits to be paid to or in respect of the individual,
- (b) the amount of a reduction or increase in the value of benefits to be paid to or in respect of the individual under the arrangement is the difference between the value of those benefits under that arrangement immediately before the transfer and immediately after the transfer, and
- (c) the amount of an increase or reduction in the value of benefits to be paid to or in respect of an individual under a pension scheme is the difference between the value of those benefits under that pension scheme immediately before and immediately after the transfer.

(5C) In subsections (4A) and (5A)—

- (a) “block transfer” means a transfer which involves the transfer in a single transaction of all the sums or assets held for the purposes of, or representing accrued rights under, the arrangements under the pension scheme from which the transfer is made which relate to the individual and at least one other member of that pension scheme, and
- (b) a reduction or increase, as the case may be, in the benefits to be paid to or in respect of the transfer is “in connection with” a transfer of sums or assets if it is directly or indirectly in consequence of that transfer.”

(e) after subsection (5C) (as inserted by sub-paragraph (d)) insert—

“(5D) For the purposes of subsections (4A) and (5A), the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been reduced or increased, as the case may be, “by reason of” a transfer of sums or assets only where that reduction or increase is attributable solely to the value of those sums or assets.”; and

- (f) in subsection (8D) for “in a case where” to the end substitute—
 “in a case where—
- (a) the individual becomes actually entitled to all of the individual’s benefits under the pension scheme or benefit crystallisation event 5, 5A or 5B occurs in relation to the individual and the pension scheme, and
 - (b) the adjustment takes place after the individual becomes so entitled or the benefit crystallisation event occurs.”.

Amendments to section 237B

16. In section 237B (liability of scheme administrator)(a)—

- (a) in subsection (6)—
 - (i) for “In a case in which” substitute “A notice may not be given after”;
 - (ii) omit “in the tax year” (twice); and
 - (iii) omit “, the notice must be given” to the end; and
- (b) in subsection (9) for “the pension scheme” substitute—
 “arrangements relating to the individual under the pension scheme”.

	<i>name</i>
	<i>name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to provisions about the annual allowance charge contained in Part 4 of the Finance Act 2004 (c. 12) (“the Act”).

Articles 1 to 8 provide for when this Order comes into force and times for which provisions of this Order have effect. The amendments mentioned in articles 2 and 6 have effect for times before this Order is made. Those amendments provide for reductions in what would otherwise be the annual allowance charge. But this is subject to article 3.

The amendments mentioned in article 3 insert a new definition; this does not have effect for any past time. Articles 4, 5, 7 and 8 ensure that the amendments mentioned in those articles have effect, in relation to the events mentioned in those articles, on or after the date on which this Order comes into force. They are not therefore able to increase tax for times before this Order is made.

Section 282(A1) of the Act provides that an Order made under Part 4 of the Act (which includes section 238A) may include provision having effect in relation to times before the Order is made, if that provision does not increase any person’s liability to tax.

Article 10 makes provision for unused annual allowance to be treated as available from previous years for a first pension input period that ends in tax year 2011-12, 2012-13 or 2013-14. This article applies in relation to a defined benefits, cash balance or hybrid arrangement.

Articles 11 and 14 make amendments in relation to the calculation of the “pension input amount” for a cash balance or defined benefits arrangement. This is the relevant increase in value of the individual’s rights under the arrangement during the “pension input period” (see section 238 of the

(a) Section 237B was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 (c. 11) and amended by paragraphs 119 and 129 of Schedule 46 to the Finance Act 2013 (c. 29).

Act). When calculating the pension input amount for the first pension input period for a cash balance or defined benefits arrangement, the opening balance for that period reflects the value of the benefits in the arrangement before that period (articles 11(a) and 14(a)). The pension input amount is nil where there is a transfer from the arrangement of all the final sums or assets of a member who has been a deferred member throughout the period (articles 11 (a) and (b) and 14(a) and (b)). A deferred member will not become an active member for these purposes only because funds are transferred into that member's arrangement.

The pension input amount is also nil where there is an increase in a defined benefits arrangement under an annuity contract at the rates specified in this Order (article 11(a) and (b)). An increase which is solely attributable to specified statutory provisions does not prevent the pension input amount being nil (articles 11(c) and 14(c)).

Articles 12(a) to (d) and 15(a) to (d) make amendments which provide for the amount to be added to the pension input amount in the transferring scheme ("TS"), and subtracted in the receiving scheme ("RS"), when there is a block transfer of sums or assets between the schemes. The articles apply where the amount of reduction ("AR") in the individual's benefits in TS is equal (or virtually equal) to the amount of increase ("AI") in the individual's benefits in RS, in connection with the transfer. The value of AR is taken immediately before, and the value of AI immediately after, the transfer. In such a case there is no requirement for all the benefits to be transferred, as long as the change in the values of AR and AI is a consequence of the transfer.

In the case of a cash balance arrangement the amounts to be added and subtracted are the amounts, respectively, of the reduction and increase in rights, in connection with the transfer. In the case of a defined benefits arrangement, the amounts to be added and subtracted are, respectively, the reduction in TS, and the increase in RS, in the rate of pension, or the amount of lump sum; but only where that reduction is reflected in AR, and that increase is reflected in AI. The addition to the closing balance for the pension input amount in TS, and the subtraction in RS, may therefore be in a different amount to the value that is actually transferred between schemes as part of a block transfer. But for other transfers, articles 12(e) and 15(e) ensure that the reduction and increase in benefits in TS and RS must be solely attributable to the value of the sums or assets transferred (see inserted sections 232(6E) and 236(5G)).

Article 12(f) makes amendments in relation to a cash balance arrangement in respect of the amount to be added to the closing balance for the pension input amount, where the individual becomes entitled to a pension because of relevant benefit crystallisation events ("BCE") (see section 216 of the Act). The amount to be added is the resulting reduction in the individual's rights under the scheme. Articles 12(g) and 15(f) make amendments relating to an adjustment to the individual's rights under a cash balance or defined benefits arrangement when the scheme has paid the individual's annual allowance liability. That provision ensures that an amount must be added to the closing balance for the pension input amount, to compensate for any such scheme payment, in a case where the individual has taken all their benefits or where there is a BCE 5, 5A and 5B (which concern entitlements to benefits at the age of 75).

Article 13 amends section 233 of the Act in relation to a refund of an excess contributions lump sum (see paragraph 6 of Schedule 29 to the Act). The provision ensures that the receipt of an excess contributions lump sum under a money purchase arrangement other than a cash balance arrangement does not affect the pension input amount under that arrangement.

Article 16(a) makes amendments which provide that an individual may not give a notice requiring the scheme to pay an annual allowance charge after the individual takes all their benefits or BCE 5, 5A or 5B occurs. Article 16(b) ensures that whenever there is a transfer to another scheme of all the sums or assets relating to an individual, the individual can give notice to that other scheme to pay the annual allowance charge.

A Tax Information and Impact Note ("TIIN") covering this instrument was published on 3 March 2011. It remains an accurate summary of the impacts that apply to this instrument and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

