

2006 No. 573

SOCIAL SECURITY

The Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) Order 2006

Made - - - - 9th March 2006

Laid before the House of Commons 10th March 2006

Coming into force - 6th April 2006

The Treasury, in exercise of the powers conferred by section 283(2) of the Finance Act 2004(a), make the following Order:

General

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) Order 2006, and shall come into force on 6th April 2006.

(2) In this Order, references to provisions of Schedule 36 are references to provisions of Schedule 36 to the Finance Act 2004.

(3) In this Order—

“normal minimum pension age” has the meaning given in section 279(1) of the Finance Act 2004, and

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981(b).

The original pension scheme condition

2.—(1) For the purposes of this Order the original pension scheme condition is met if conditions A and B are met.

(2) Condition A is that on 10th December 2003 a pension scheme (“the original pension scheme”) was either an approved scheme for the purposes of Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988(c) (see section 612(1) of that Act) or was a relevant statutory scheme for the purposes of that Chapter (see section 611A of that Act(d)).

(3) Condition B is that the original pension scheme was a scheme whose rules included provision conferring a right to retire before the normal minimum pension age on some or all of the persons who were then members of the scheme.

(a) 2004 c. 12.

(b) S.I. 1981/1794, to which there are amendments not relevant to this Order.

(c) 1988 c. 1. The provisions of Chapter 1 of Part 14 have been repealed with effect from 6th April 2006 by Part 3 of Schedule 42 to the Finance Act 2004.

(d) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26), and amended by paragraph 5 of Schedule 5 to the Finance Act 1999 (c. 16). Section 611A has been repealed with effect from 6th April 2006 by Part 3 of Schedule 42 to the Finance Act 2004.

The employee condition

3.—(1) For the purposes of this Order the employee condition is met if either condition A or condition B is met.

(2) Condition A is that, on 10th December 2003, a person (“the employee”) was a person who had the right, under the original pension scheme, to retire before the normal minimum pension age.

(3) Condition B is that the employee would have been a person who, on 10th December 2003, had the right, under the original pension scheme, to retire before the normal minimum pension age had the employee been a member of the scheme on that date.

Transfers during period beginning with 10th December 2003 and ending with 5th April 2006

Conditions for application of article 8

4. Article 8 applies if the following conditions are met—

- (a) the original pension scheme condition (see article 2);
- (b) the employee condition (see article 3);
- (c) the transfer condition, either as it applies in the case of one transfer (see article 5), or as it applies in the case of two or more transfers (see article 6); and
- (d) the new pension scheme condition (see article 7).

The transfer condition as it applies in the case of one transfer

5.—(1) The transfer condition, as it applies in the case of one transfer, is met if conditions A to G are met.

(2) Condition A is that, during the period beginning with 10th December 2003 and ending with 5th April 2006, there was one transfer of an undertaking, or part of an undertaking.

(3) Condition B is that the TUPE Regulations applied to the transfer.

(4) Condition C is that by virtue of the transfer, the employee ceased to be employed by the transferor and became employed by the transferee.

(5) Condition D is that the transferor was the employer in relation to the original pension scheme.

(6) Condition E is that at the time immediately before the employee became employed by the transferee, the employee was a member of the original pension scheme.

(7) Condition F is that from the time when the employee became employed by the transferee, the employee—

- (a) was a member of a pension scheme in relation to which the transferee was the employer, or
- (b) was a member of one other pension scheme (“the new pension scheme”) in relation to which the transferee was the employer.

(8) Condition G is that, as a result of the transfer, all the sums held for the purposes of, or representing the employee’s accrued rights under, the original pension scheme have become held for the purposes of, or represented rights under, the new pension scheme.

(9) In paragraph (2) the reference to an undertaking or part of an undertaking has the same meaning as in the TUPE Regulations.

The transfer condition as it applies in the case of two or more transfers

6.—(1) The transfer condition, as it applies in the case of two or more transfers, is met if conditions A to H are met.

(2) Condition A is that, during the period beginning with 10th December 2003 and ending with 5th April 2006, there were two or more transfers of an undertaking, or part of an undertaking.

(3) Condition B is that the TUPE Regulations applied to each transfer.

(4) Condition C is that by virtue of each transfer, the employee ceased to be employed by the transferor and became employed by the transferee.

(5) Condition D is that the transferor—

- (a) in the case of the first transfer, was the employer in relation to the original pension scheme, and
- (b) in the case of each subsequent transfer, was the employer in relation to the pension scheme of which the employee was a member immediately before the transfer.

(6) Condition E is that the employee—

- (a) in the case of the first transfer, was a member of the original pension scheme at the time immediately before the employee became employed by the transferee, and
- (b) in the case of each subsequent transfer, was a member of a pension scheme in relation to which the transferor was the employer at the time immediately before the employee became employed by the transferee.

(7) Condition F is that in the case of a transfer other than the final transfer, and from the time when he became employed by the transferee, the employee was a member of a pension scheme in relation to which the transferee was the employer.

(8) Condition G is that in the case of the final transfer, and from the time when he became employed by the transferee, the employee—

- (a) was a member of a pension scheme in relation to which the transferee was the employer, or
- (b) was a member of one other pension scheme (“the new pension scheme”) in relation to which the transferee was the employer.

(9) Condition H is that, as a result of the transfers, all the sums held for the purposes of, or representing the employee’s accrued rights under, the original pension scheme have become held for the purposes of, or represented rights under, the new pension scheme.

(10) In paragraph (2) the reference to an undertaking or part of an undertaking has the same meaning as in the TUPE Regulations.

The new pension scheme condition

7.—(1) The new pension scheme condition is met if conditions A and B are met.

(2) Condition A is that the new pension scheme was a scheme whose rules, at the time of the transfer (where article 5 applies), or at the time of the final transfer (where article 6 applies), included provision conferring a right on some or all of the persons who were then members of that scheme to retire before the normal minimum pension age.

(3) Condition B is that, on 6th April 2006, the new pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1) of Schedule 36 (deemed registration of existing schemes) (and, accordingly, is treated as having become a registered pension scheme).

Rights to take benefit before normal minimum pension age

8.—(1) For the purposes of paragraph 22 of Schedule 36(a) (rights to take benefit before normal minimum pension age), and in relation to the employee, the new pension scheme is a protected pension scheme.

(2) The employee has the right to retire at the age specified in paragraph (3) or (4), whichever is the greater.

(3) The age specified in this paragraph is the age at which—

- (a) immediately before the transfer, the employee had the right to retire under the original pension scheme (in a case where article 5 applies), or
- (b) immediately before the final transfer, the employee had the right to retire under the original pension scheme (in a case where article 6 applies).

(4) The age specified in this paragraph is the age at which, on 6th April 2006, the employee has the right to retire under the new pension scheme.

Reorganisations during period beginning with 10th December 2003 and ending with 5th April 2006

Conditions for application of article 12

9. Article 12 applies if the following conditions are met—

- (a) the original pension scheme condition (see article 2);
- (b) the employee condition (see article 3);
- (c) the reorganisation condition (see article 10); and
- (d) the new pension scheme condition (see article 11).

The reorganisation condition

10.—(1) The reorganisation condition is met if conditions A to C are met.

►¹(2) Condition A is that, during the period beginning with 10th December 2003 and ending with 5th April 2006—

- (a) there was a transfer in a single transaction of all the sums and assets held for the purposes of, or representing the employee's accrued rights under, the original pension scheme to another pension scheme ("the new pension scheme").
- (b) there was a transfer in a single transaction of all the sums and assets held for the purposes of, or representing the employee's accrued, non contracted-out rights under the original pension scheme to the new pension scheme, or
- (c) there were transfer of sums and assets held for the purposes of, or representing the employee's accrued rights under, the original pension scheme to the new pension scheme, and those transfers were made—
 - (i) in two separate transactions, and
 - (ii) in circumstances where paragraph (2A) applies.

¹Art. 10(2) substituted by art. 3(2) of S.I. 2010/529 as from 24.3.10.

(a) Paragraph 22 of Schedule 36 was amended by sub-paragraphs (4) to (7) of paragraph 54 and sub-paragraphs (2) to (4) of paragraph 55 of Schedule 10 to the Finance Act 2005 (c. 7) with effect from 6th April 2006.

(2A) This paragraph applies in circumstances where—

- (a) the employee's accrued rights under the original pension scheme included contracted-out rights¹
- (b) all the sums and assets held for the purposes of, or representing accrued, non contracted-out rights under the original pension scheme were transferred to the new pensions schemes in a single transaction; and
- (c) the sums and assets held for the purposes of, or representing contracted-out rights under the original pension scheme were transferred in a single transaction to—
 - (i) the new pension scheme referred to in sub-paragraph (b) of this paragraph, or
 - (ii) another pension scheme that satisfies the new pension scheme condition (see article 11).◀

(3) Condition B is that, immediately before the transfer mentioned in paragraph (2), the employee was an active member or a deferred member of the original pension scheme.

(4) Condition C is that, immediately before and after the transfer mentioned in paragraph (2), the employee was—

- (a) employed by a sponsoring employer of the new pension scheme, ¹◀
- (b) a former employee of a sponsoring employer of the new pension scheme ¹, or◀
- ¹(c) a former employee of a former sponsoring employer of the original pension scheme in a case where the relevant sums and assets are transferred at the same time as the relevant sums and assets held for another employee or former employee who falls within sub-paragraphs (a) or (b).◀

¹Words omitted & inserted in para. (4), para. (4)(c) added & defns. of "appropriate personal pension scheme" & "contracted-out rights" inserted in para. (5) by art. 3(3) & (4) of S.I. 2010/529 as from 24.3.10.

(5) In this article—

"active member" has the meaning given by section 151(2) of the Finance Act 2004,

¹"appropriate personal pension scheme" means a scheme in respect of which an appropriate scheme certificate is in force under section 7 of the Pension Schemes Act 1993(a),

"contracted-out rights" means rights under or derived from an occupational pension scheme or an appropriate personal pension scheme which fell within the following categories—

- (a) entitlement to payment of, or accrued rights to, guaranteed minimum pensions;
- (b) protected rights; or
- (c) section 9(2B) rights.◀

"deferred member" has the meaning given by section 151(4) of that Act, ²◀

²"guaranteed minimum pensions" has the meaning given by section 8 of the Pension Schemes Act 1993,

"occupational pension scheme" has the meaning given by section 1(1) of the Pension Schemes Act 1993,

"protected rights" has the meaning given by section 10 of the Pension Schemes Act 1993,

"relevant sums and assets", in relation to an employee or former employee, are the sums and assets held for the purposes of, or representing the accrued rights of the employee or former employee (as the case may be) under, the original pension scheme, and

"section 9(2B) rights" has the meaning given by regulation 1(2) of the Protected Rights (Transfer Payment) Regulations 1996(b).◀

"sponsoring employer" has the meaning given by section 150(6) of that Act.

²Words omitted in defn. of "deferred member" & defns. of "guaranteed minimum pensions", "occupational pension scheme", "protected rights", "relevant sums & assets" & "section 9(2B) rights" inserted by art. 3(4) (b) of S.I. 2010/529 as from 24.3.10.

(a) 1993 c. 48.

(b) S.I. 1996/1461.

The new pension scheme condition

- 11.—(1) The new pension scheme condition is met if conditions A and B are met.
- (2) Condition A is that the new pension scheme was a scheme whose rules, at the time of the transfer, included provision conferring a right on some or all of the persons who were then members of that scheme to retire before the normal minimum pension age.
- (3) Condition B is that, on 6th April 2006, the new pension scheme was within either of paragraphs (a) or (c) of paragraph 1(1) of Schedule 36 (deemed registration of existing schemes) (and, accordingly, is treated as having become a registered pension scheme).

Rights to take benefit before normal minimum pension age

12. The employee has the right to retire—
- (a) at the age at which, immediately before the transfer mentioned in article 10(2), the employee had the right to retire under the original pension scheme, or
 - (b) at the age at which, on 6th April 2006, the employee has the right to retire under the new pension scheme,

whichever is the greater.

Winding up of original pension scheme

Conditions for application of article 16

13. Article 16 applies if the following conditions are met—
- (a) the winding up condition (see article 14); and
 - (b) the annuity purchase condition (see article 15).

The winding up condition

¹Words in art. 14(1) inserted, sub-paras. (a)-(c) omitted & art. 14(1A) added by art. 4(2) & (3) of S.I. 2010/529 as from 24.3.10.

- 14.—(1) The winding up condition is met if ¹the first or second condition is met—
- (a)–(c) ¹◀
- ¹(1A) The first condition is met if—
- (a) a pension scheme (“the original pension scheme”) is being wound up.
 - (b) the original pension scheme is within any of paragraphs (a) to (d) of paragraph 1(1) of Schedule 36 (deemed registration of existing schemes), and
 - (c) condition A, B or C is met as set out in paragraphs (2), (3) and (4),
- (1B) The second condition is met if—
- (a) a registered pension scheme which is not within any of the paragraphs 1(1)(a) to (d) of paragraph 1(1) of Schedule 36 is being wound up, and
 - (b) immediately before the commencement of the winding up, an individual member of that registered pension scheme has rights which are protected under paragraph 22 or 31(a) of Schedule 36 (or under both of those paragraphs).◀
- (2) Condition A is that—
- (a) the winding up commences before 6th April 2006, and

(a) Paragraphs 22 and 31 of Schedule 36 to the Finance Act 2004 (c. 12) were amended by paragraph 55 of Schedule 10 to the Finance Act 2005 (c. 7) with effect from 6th April 2006.

(b) immediately before the commencement of the winding up, an individual member of the original pension scheme would have had rights which were protected under paragraph 22 or 31 of Schedule 36 (or under both those paragraphs) if the winding up had commenced on or after 6th April 2006.

(3) Condition B is that—

- (a) the winding up commences before 6th April 2006,
- (b) an individual becomes a member of the original pension scheme after the commencement of the winding up but before 6th April 2006, and
- (c) on becoming a member of the original pension scheme, the individual would have had rights which were protected under paragraph 22 or 31 of Schedule 36 (or under both those paragraphs) if the winding up had commenced on or after 6th April 2006.

(4) Condition C is that—

- (a) the winding up commences on or after 6th April 2006, and
- (b) immediately before the commencement of the winding up, an individual member of the original pension scheme has rights which are protected under paragraph 22 or 31(a) of Schedule 36 (or under both those paragraphs).

The annuity purchase condition

¹15.—(1) The annuity purchase condition is met if—

- (a) condition A is met in the case of an annuity policy that has been assigned, or
- (b) conditions A to C are met in the case of an annuity policy that has been purchased.

¹Art. 15 substituted by art. 5(1) of S.I. 2010/529 as from 24.3.10.

(2) Condition A is that all the rights of the member have been extinguished by—

- (a) purchasing one annuity policy which satisfied the requirements prescribed under section 74(3)(c) of the Pensions act 1995(b) (“the prescribed requirements”), or
- (b) assigning one annuity policy which satisfies the prescribed requirements, to the member.

(3) Condition B is that the contract under which the annuity policy was purchased (“the annuity contract”) does not authorise the making of any payment which would be an unauthorised payment within the meaning of Part 4 of the Finance Act 2004.

(4) Condition C is that the annuity contract does not provide for the immediate payment of benefits.

(5) If the annuity purchase condition is met, paragraph 1(1) of Schedule 36 shall be modified so as to provide in addition that—

- (a) in the case of annuity policy within paragraph (2)(a), the annuity policy is treated as having become a registered pension scheme (“the new pension scheme”) on the date on which the contract was made, and
- (b) in case of an annuity policy within paragraph (2)(b), the annuity policy is treated as having become a registered pension scheme (“the new pension scheme”) on the date the annuity policy was assigned.◀

Membership of the new pension scheme

16.—(1) For the purposes of Part 3 of Schedule 36 (pension schemes: transitional provisions and savings: pre-commencement benefit rights) the member is to be treated as having become a member of the new pension scheme as the result of a block transfer to it.

(2) In paragraph (1) “block transfer” has the meaning given by paragraph 22(6) of Schedule 36(c).

(a) Paragraph 31 of Schedule 36 was amended by paragraph 55(6) of Schedule 10 to the Finance Act 2005 with effect from 6th April 2006.

(b) 1995 c. 26.

(c) Paragraph 22(6) of Schedule 36 was amended by paragraph 55(4) of Schedule 10 to the Finance Act 2005 with effect from 6th April 2006.

Art. 17

¹Art. 17 inserted by art. 5(1) & 6(1) of S.I. 2010/529 as from 24.3.10.

¹Stand-alone lump sums

17.—(1) Paragraph (6) applies if condition A, B or C is met.

(2) Condition A is that—

- (a) a pension scheme is being wound up (“the original pension scheme”) and the winding up commenced before 6th April 2006,
- (b) the stand-alone lump sum condition (see paragraph (5)) would have been met immediately before the commencement of the winding up, if the pension scheme had commenced winding up on or after 6th April 2006, and
- (c) the annuity purchase condition set out in article 15 is met.

(3) Condition B is that—

- (a) the original pension scheme is being wound up and the winding up commenced before 6th April 2006,
- (b) an individual became a member of the original pension scheme before 6th April 2006 but after the commencement of the winding up,
- (c) the stand-alone lump sum condition would have been met immediately before the commencement of the winding up, if the pension scheme had commenced winding up on or after 6th April 2006, and
- (d) the annuity purchase condition set out in article 15 is met.

(4) Condition C is that—

- (a) the original pension scheme is being wound up and the winding up commenced on or after 6th April 2006,
- (b) the annuity purchase condition set out in article 15 is met, and
- (c) the stand-alone lump sum condition is met.

(5) The stand-alone lump sum condition is that a member of the original pension scheme was entitled to be paid, a stand-alone lump sum which, if it had been paid would have been a stand-alone lump sum paid in circumstances where article 25B(4) (circumstance C) of the Taxation of Pension Schemes (Transitional Provisions) Order 2006(a) (“the Transitional Provisions Order”) applied.

(6) The new pension scheme (within the meaning of article 15(5)(a) or (b) as the case may be) is treated as the same pension scheme as the original pension scheme (so that accordingly, the new pension scheme may pay a stand-alone lump sum to the member in circumstances where Article 25B(4) (circumstance C) of the Transitional Provisions Order applies).◀

*Tom Watson
Vernon Coaker*

9th March 2006

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 2006/572 amended by S.I. 2006/2004.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 4 of the Finance Act 2004 (c. 12) makes new provision for pension schemes on and after 6th April 2006. Schedule 36 to that Act, which falls within Part 4, contains transitional provisions and savings, designed to protect rights which existed before 6th April 2006. The general principles are that rights are protected in the scheme under which they were held on 5th April 2006, and that protection is lost if the individual's rights are transferred out of the scheme on or after 6th April 2006; but some protection may be retained if, on or after 6th April 2006, an individual's rights are transferred out of the original pension scheme as part of a block transfer.

This Order exercises the power to make further transitional provision. Article 1 deals with citation, commencement and interpretation; and articles 2 and 3 deal, respectively, with the original pension scheme condition and the employee condition: expressions used in more than one context in later provisions.

This Order then deals with three matters of a transitional nature.

The first matter, dealt with in articles 4 to 8, relates to the transfer (or transfers) of an undertaking during the period beginning with 10th December 2003 and ending with 5th April 2006. Under Part 4 of the Finance Act 2004 such a transfer would have the effect that the right to retire before the normal minimum pension age would be lost. These articles ensure that, where rights are transferred in the period beginning with 10th December 2003 and ending with 5th April 2006, and where the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply to the transfers of the undertaking, the right to retire before the normal minimum pension age is preserved. The conditions that must be met before article 8 applies are indicated in article 4. There must be a pension scheme ("the original pension scheme") whose rules conferred a right to retire before the normal minimum pension age (article 2), and the employee must have been entitled to take advantage of that right as it existed in relation to the original pension scheme (article 3). There must then be either one transfer of the relevant undertaking (article 5) or two or more such transfers (article 6), which have the overall result that an employee's pension rights are transferred from the original pension scheme to a different pension scheme ("the new pension scheme"). The new pension scheme must also have rules which confer a right to retire before the normal minimum pension age (article 7). The effect of article 8 is to preserve the employee's right to retire before the normal minimum pension age in these circumstances.

The second matter, dealt with in articles 9 to 12, relates to reorganisations during the period beginning with 10th December 2003 and ending with 5th April 2006. The conditions that must be met before article 12 applies are indicated in article 9. There must be a pension scheme ("the original pension scheme") whose rules conferred a right to retire before the normal minimum pension age (article 2), and the employee must have been entitled to take advantage of that right as it existed in relation to the original pension scheme (article 3). There must then be a reorganisation (article 10), which has the overall result that the pension rights of an employee (or former employee) are transferred from the original pension scheme to a different pension scheme ("the new pension scheme"). The new pension scheme must also have rules which confer a right to retire before the normal minimum pension age (article 11). Article 12 preserves the employee's right to retire before the normal minimum pension age in these circumstances.

The third matter, dealt with in articles 13 to 16, relates to the case where a pension scheme is being wound up. The conditions that must be met before article 16 applies are indicated in article 13. The conditions relate to the rights of members of the pension scheme that is being wound up (article 14), and to the nature of the annuities purchased for a member (article 15). In these circumstances, article 16 operates to secure the individual's accrued pension rights by providing that the member is to be treated as having become a member of a new pension scheme as the result of a block transfer to it.

PENSION SCHEMES (TRANSFERS, REORGANISATIONS AND WINDING UP) (TRANSITIONAL PROVISIONS) ORDER 2006

The Board of Inland Revenue published a regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it, on 8 April 2004. The assessment is available on the website for Her Majesty's Revenue and Customs at www.hmrc.gov.uk/ria/simplifying-pensions.pdf or (for hard copies) by writing to the Ministerial Correspondence Unit, 1st Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.