

*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 36. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 36 **U.K.**

Section 283

#### PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

#### PART 1 **U.K.**

##### PRE-COMMENCEMENT PENSION SCHEMES

###### *Deemed registration of existing schemes*

- 1 (1) Any pension scheme which, immediately before 6th April 2006, is—
- (a) a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
  - (b) a former approved superannuation fund (see sub-paragraph (3)),
  - (c) a relevant statutory scheme, as defined in section 611A of ICTA, or a pension scheme treated by the Inland Revenue on that date as if it were such a relevant statutory scheme,
  - (d) an annuity contract by means of which benefits provided under a pension scheme within paragraph (a), (b) or (c) have been secured but which does not provide for the immediate payment of benefits,
  - (e) a scheme or fund mentioned in section 613(4)(b) to (d) of ICTA (Parliamentary pension schemes or funds),
  - (f) an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA, or
  - (g) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA,
- is to be treated as becoming a registered pension scheme on that date.
- (2) Where immediately before 6th April 2006 a retirement benefits scheme is, in accordance with section 611 of ICTA, treated as two or more separate schemes, the reference in sub-paragraph (1)(a) to an approved retirement benefits scheme is to such of the separate schemes as are approved (and not to the whole retirement benefits scheme).
- (3) For the purposes of sub-paragraph (1)(b) any fund which immediately before 6th April 1980 was an approved superannuation fund for the purposes of section 208 of ICTA 1970 is a former approved superannuation fund unless since 5th April 1980—
- (a) the fund has been approved for the purposes of Chapter 1 of Part 14 of ICTA (retirement benefits schemes), or
  - (b) any sum has been paid under the fund by way of contribution.
- (4) Sub-paragraph (1)(a) or (g) applies in relation to a pension scheme approved (for the purposes of Chapter 1, or under Chapter 4, of Part 14 of ICTA) on or after 6th April 2006 if the approval has effect for a period ending with 5th April 2006.

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- [<sup>F1</sup>(4A) This Part of this Act applies in relation to a pension scheme that—
- (a) is a registered pension scheme by virtue of sub-paragraph (1)(a), and
  - (b) is neither a public service pension scheme nor an occupational pension scheme,
- as it applies in relation to an occupational pension scheme.]
- (5) This paragraph is subject to paragraph 2 (opt-out).

#### Textual Amendments

**F1** Sch. 36 para. 1(4A) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), Sch. 3 paras. 1(8), **2(4)**

#### Modifications etc. (not altering text)

**C1** Sch. 36 para. 1(1) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **27(1)-(3)**

#### *Opting out of deemed registration*

- 2 (1) Paragraph 1 (1) does not apply to a pension scheme if the relevant administrator has, at any time before 6th April 2006, notified the Inland Revenue that the pension scheme is not to become a registered pension scheme on that date.
- (2) If, by virtue of sub-paragraph (1) of this paragraph, sub-paragraph (1) of paragraph 1 does not apply to a pension scheme within any of paragraphs (a) to (d), (f) and (g) of that sub-paragraph, income tax is to be charged at the rate of 40% on the relevant amount.
- (3) The relevant amount is an amount equal to the aggregate of—
- (a) the amount of the sums held for the purposes of the pension scheme immediately before 6th April 2006, and
  - (b) the market value (at that time) of the assets held for the purposes of the pension scheme at that time.
- (4) The liability to income tax is a liability of the person who is the relevant administrator on 5th April 2006 or, if more than one person is the relevant administrator on that date, is a joint and several liability of those persons.
- (5) Where tax is charged in accordance with sub-paragraph (2), for the purposes of TCGA 1992 the assets which immediately before 6th April 2006 are held for the purposes of the pension scheme—
- (a) are to be treated as having been acquired at that time for a consideration equal to the amount on which tax is charged by virtue of sub-paragraph (2) by the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets on that date, and
  - (b) are not to be treated as having been disposed of by any person at that time.
- (6) “Relevant administrator” means—
- (a) in the case of a pension scheme within paragraph 1(1)(a), (b) or (c), the person who is, or the persons who are, the administrator of the pension scheme under section 611AA of ICTA,

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- (b) in the case of a pension scheme within paragraph 1(1)(d) or (f), the trustee or trustees of the pension scheme, or the insurance company which is a party to the contract in which the pension scheme is comprised,
  - (c) in the case of a pension scheme within paragraph 1(1)(e), the trustees of the scheme or fund, and
  - (d) in the case of a pension scheme within paragraph 1(1)(g), the person who is referred to in section 638 (1) of ICTA.
- (7) If paragraph 1 (1) does not apply to a pension scheme by virtue of sub-paragraph (1), sections 431B(2) and 466(2B) of ICTA (meaning of pension business: pension scheme ceasing to be a registered pension scheme) apply as if the pension scheme had ceased to be a registered pension scheme at the beginning of 6th April 2006.

*Power to modify rules of existing schemes*

- 3
- (1) The Board of Inland Revenue may by regulations make any modifications of the rules of pension schemes to which paragraph 1 (1) applies if the modifications appear appropriate in consequence of, or in connection with, the provision made by this Part (or the repeals made by this Act in consequence of the provision made by this Part).
  - (2) Any modifications of the rules of a pension scheme made by the regulations have effect until the earlier of—
    - (a) the first date after 5th April 2006 on which amendments of the rules of the pension scheme <sup>F2</sup>which state that the modifications no longer apply in relation to it take effect, or
    - (b) the end of the tax year 2010-11 or such later time as the Board of Inland Revenue may by regulations prescribe.]
  - (3) The modifications that may be made by the regulations include, in particular—
    - (a) modifications for relieving pension schemes of obligations to make payments which, on and after 6th April 2006, would be unauthorised payments, and
    - (b) modifications of provisions (however expressed) referring to any limit contained in, or relevant in relation to approval under or for the purposes of, any provision of Part 14 of ICTA (pension schemes etc.) as it has effect at any time before 6th April 2006.

**Textual Amendments**

**F2** Words in Sch. 36 para. 3(2) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 51, 64\(1\)](#)

*Scheme administrator*

- 4
- (1) Where under paragraph 1 (1) a pension scheme is treated as becoming a registered pension scheme on 6th April 2006, (despite anything in section 270) the following person is, or the following persons are, to be treated as becoming the scheme administrator of the pension scheme on that date.
  - (2) If the pension scheme is within paragraph 1(1)(a), (b) or (c) immediately before that date, the person who is, or the persons who are, the administrator of the pension scheme under section 611AA of ICTA immediately before that date is or are to be treated as becoming the scheme administrator.

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- (3) If the pension scheme is within paragraph 1(1)(d) or (f) immediately before that date, the trustee or trustees of the pension scheme, or the insurance company which is a party to the contract in which the pension scheme is comprised, is or are to be treated as becoming the scheme administrator.
- (4) If the pension scheme is within paragraph 1(1)(e) immediately before that date, the trustees of the scheme or fund are to be treated as becoming the scheme administrator.
- (5) If the pension scheme is within paragraph 1(1)(g) immediately before that date, the person who is referred to in section 638 (1) of ICTA in relation to the pension scheme immediately before that date is to be treated as becoming the scheme administrator.

**Modifications etc. (not altering text)**

- C2** Sch. 36 para. 4 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **27(1)(2)(4)**
- C3** Sch. 36 para. 4(1) modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), **Sch. 3 Pt. 1**
- C4** Sch. 36 para. 4(2) modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), **Sch. 3 Pt. 1**
- C5** Sch. 36 para. 4(3) modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), **Sch. 3 Pt. 1**

*Post-commencement withdrawal of approval*

- 5 (1) The repeal by this Act of—
  - (a) section 591B (1) of ICTA (withdrawal of approval of retirement benefits scheme),
  - (b) section 620(7) of ICTA (withdrawal of approval of retirement annuity contract), and
  - (c) section 650 (1) of ICTA (withdrawal of approval of approved personal pension arrangements),

does not prevent the withdrawal of an approval under any of those provisions at any time after 5th April 2006 (from any earlier date until 6th April 2006).
- (2) A withdrawal of approval made under any of those provisions by virtue of subparagraph (1) has the same consequences as a withdrawal of approval made under the provision concerned before 6th April 2006, so that (in particular)—
  - (a) sections 591C and 591D of ICTA (tax on cessation of approval of retirement benefits scheme), or
  - (b) sections 650A and 651 of ICTA (charge on cessation of approval of personal pension arrangements and appeal against such withdrawal of such approval),

apply where they would have applied had the approval been withdrawn before that date.

*Pre-commencement liabilities of scheme administrator*

- 6 Any liabilities or obligations of—
  - (a) the administrator of a retirement benefits scheme (within the meaning of Chapter 1 of Part 14 of ICTA), or

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- (b) the scheme administrator of a personal pension scheme (within the meaning of Chapter 4 of Part 14 of ICTA),  
incurred in relation to the scheme before 6th April 2006 or by virtue of paragraph 4 are (on and after that date) to be treated as liabilities or obligations of the scheme administrator of the scheme.

**Modifications etc. (not altering text)**

- C6 Sch. 36 para. 6 modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), **Sch. 3 Pt. 1**

**PART 2** **U.K.**

PRE-COMMENCEMENT RIGHTS: LIFETIME ALLOWANCE CHARGE

*“Primary protection”*

- 7 (1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where—
- (a) the amount of the relevant pre-commencement pension rights of the individual exceeds £1,500,000 (the standard lifetime allowance for the tax year 2006-07), and
- (b) notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
- (2) The lifetime allowance enhancement factor is the primary protection factor.
- (3) The primary protection factor is—

$$\frac{RR - SLA}{SLA}$$

where—

RR is the amount of the relevant pre-commencement pension rights of the individual, and

SLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (4) Sub-paragraph (3) is subject to paragraph 11 (pension debit on or after 6th April 2006).
- (5) The amount of the relevant pre-commencement pension rights of the individual is the aggregate of—
- (a) the value of the individual’s relevant uncrystallised pension rights on 5th April 2006 (calculated in accordance with paragraphs 8 and 9), and
- (b) the value of the individual’s relevant crystallised pension rights on that date (calculated in accordance with paragraph 10).

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**Modifications etc. (not altering text)**

- C7** Sch. 36 para. 7 applied (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **29(1)**
- C8** Sch. 36 para. 7 construed as one with reg. 29 (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **29(3)**

- 8 (1) The value of the individual’s relevant uncrystallised pension rights on 5th April 2006 is the aggregate value of the individual’s uncrystallised rights on that date under each relevant pension arrangement relating to the individual.
- (2) An arrangement is a “relevant pension arrangement” if it is an arrangement under a pension scheme within paragraph 1(1).
- (3) For the purposes of this paragraph the individual’s rights are “uncrystallised” if the individual has not, on 5th April 2006, become entitled to the present payment of benefits in respect of the rights.
- (4) And the individual is to be treated as entitled to the present payment of benefits in respect of any accrued rights in relation to which the individual has (under section 634A (1) of ICTA) made an election to defer the purchase of an annuity.
- (5) For the purposes of this paragraph the value of the individual’s uncrystallised rights on 5th April 2006 under an arrangement is to be calculated in accordance with section 212 (valuation of uncrystallised rights for purposes of section 210) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.
- (6) Section 212 has effect for the purposes of sub-paragraph (5) as if the reference to such age (if any) as must have been reached to avoid any reduction in benefits on account of age in paragraph (a) of section 277 were to the relevant age; and for this purpose “the relevant age” is—
- (a) if on 10th December 2003 the terms of the arrangement made provision for a reduction in the amount of benefits payable in respect of rights under the arrangement on account of the holder of the rights being below a particular age, that age, and
  - (b) otherwise, 60.

**Modifications etc. (not altering text)**

- C9** Sch. 36 para. 8(5) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **9, 11**

- 9 (1) This paragraph applies if any of the individual’s uncrystallised rights on 5th April 2006 are rights under one or more arrangements under a pension scheme or schemes within paragraph 1(1)(a) to (d).
- (2) The value of the individual’s uncrystallised rights on 5th April 2006 under the arrangement, or the aggregate of the values of the individual’s uncrystallised rights on 5th April 2006 under such of the arrangements as relate to a particular employment, is <sup>F3</sup> ...—
- (a) the value, or the aggregate of the values, calculated under paragraph 8, [<sup>F4</sup> or (if lower)]

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(b) the amount arrived at in accordance with sub-paragraph (3).

(3) The amount arrived at in accordance with this sub-paragraph is—

**20 × MPP**

where MPP is the maximum permitted pension [<sup>F5</sup>as increased, in a case where sub-paragraph (5A) applies, in accordance with sub-paragraph (5B)].

(4) “The maximum permitted pension” means

[<sup>F6</sup>(a) in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section [<sup>F7</sup>611A(1)(a)] of ICTA, the maximum annual pension that could be paid to the individual under the pension scheme on 5th April 2006, and

(b) in any other case,] the maximum annual pension that could be paid to the individual on 5th April 2006 under the arrangement or arrangements if it or they were made under a pension scheme within paragraph 1(1)(a) without giving the Board of Inland Revenue grounds for withdrawing approval of the pension scheme under section 591B of ICTA.

(5) For the purposes of sub-paragraph (4) it is to be assumed—

(a) [<sup>F8</sup>in the case of any arrangement, that] if the individual was in the employment to which the arrangement or arrangements relates or relate on 5th April [<sup>F9</sup>2006] the individual left the employment on that date, and

[<sup>F10</sup>(aa) in the case of an arrangement within sub-paragraph (4)(a), that the valuation assumptions apply (see section 277),]

(b) [<sup>F11</sup>in the case of any other arrangement, that] if the individual had not reached the lowest age at which a pension may be paid under a pension scheme within paragraph 1(1)(a) to a person in good health without giving the Board of Inland Revenue grounds for withdrawing the approval of the pension [<sup>F12</sup>scheme] that fact would not give the Board such grounds.

[<sup>F13</sup>(5A) This sub-paragraph applies where, in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section 611A(1)(a) of ICTA—

(a) a lump sum could be paid to the individual on 5th April 2006 under the pension scheme otherwise than by commutation of pension, and

(b) that lump sum could not be exchanged (in whole or in part) for an increased pension.

(5B) Where sub-paragraph (5A) applies, the amount arrived at under sub-paragraph (3) is the aggregate of what it otherwise would be and so much of the amount of the lump sum as could not be so exchanged.]

(6) For the purposes of this paragraph an arrangement relating to an individual relates to an employment if—

(a) the earnings by reference to which benefits under the arrangement are calculated are earnings from the employment, or

(b) the person who is the employer in relation to the employment pays contributions under the arrangement in respect of the individual.

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### Textual Amendments

- F3** Words in Sch. 36 para. 9(2) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(3\)\(a\), 64\(1\)](#), [Sch. 11 Pt. 4](#)
- F4** Words in Sch. 36 para. 9(2)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(3\)\(b\), 64\(1\)](#)
- F5** Words in Sch. 36 para. 9(3) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 36\(2\)](#)
- F6** Words in Sch. 36 para. 9(4) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(4\)](#), 64(1)
- F7** Word in Sch. 36 para. 9(4)(a) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 45](#)
- F8** Words in Sch. 36 para. 9(5)(a) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(a\)](#), 64(1)
- F9** Word in Sch. 36 para. 9(5)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(a\)](#), 64(1)
- F10** Sch. 36 para. 9(5)(aa) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(b\)](#), 64(1)
- F11** Words in Sch. 36 para. 9(5)(b) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(c\)](#), 64(1)
- F12** Word in Sch. 36 para. 9(5)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(c\)](#), 64(1)
- F13** Sch. 36 para. 9(5A)(5B) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 36\(3\)](#)

- 10 (1) The value of the individual's relevant crystallised pension rights on 5th April 2006 is—

$$25 \times \text{ARP}$$

where ARP is an amount equal to the annual rate at which any relevant existing pension is payable to the individual on 5th April 2006 or, if more than one relevant existing pension is payable to the individual on that date, to the aggregate of the annual rates at which each of the relevant existing pensions is so payable.

- (2) “Relevant existing pension” means—
- (a) a pension under a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
  - (b) a pension under a former approved superannuation fund (defined as for the purposes of paragraph 1(1)(b)),
  - (c) a pension under a relevant statutory scheme, as defined in section 611A of ICTA, or a pension scheme treated by the Inland Revenue as if it were such a relevant statutory scheme,
  - (d) an annuity (or pension in the form of income drawdown) under an annuity contract by means of which benefits provided under a pension scheme within paragraph (a), (b) or (c) have been secured,
  - (e) a pension under a scheme or fund mentioned in section 613(4)(b) to (d) of ICTA (Parliamentary pension schemes or funds),
  - (f) an annuity under an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA,



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- (g) an annuity acquired using funds held for the purposes of a personal pension scheme approved under Chapter 4 of Part 14 of ICTA, or
      - (h) a right to make income withdrawals under section 634A of ICTA.
    - (3) But a pension, annuity or right is not a relevant existing pension if entitlement to it was attributable to the death of any person.
    - (4) In the case of a pension within sub-paragraph (2) taking the form of income drawdown, the annual rate at which the pension is payable on 5th April 2006 is the amount which, on that date, is the maximum annual amount that may be drawn down by the individual as income in accordance with the pension scheme or contract concerned.
    - (5) In the case of a right which is a relevant existing pension by virtue of sub-paragraph (2)(h), the annual rate at which the pension is payable on 5th April 2006 is the maximum amount of income withdrawals that may be made by the individual in the period of 12 months referred to in section 634A(4) of ICTA during which 5th April 2006 falls.
  - 11 (1) This paragraph applies where—
    - (a) paragraph 7 makes provision for the operation of a lifetime allowance enhancement factor in relation to an individual, and
    - (b) on or after 6th April 2006, the rights of the individual under a relevant pension arrangement (see paragraph 8(2)) relating to the individual are reduced by becoming subject to a pension debit.
  - (2) The primary protection factor (see paragraph 7(3)) is to be recalculated.
  - (3) The recalculation involves reducing RR (see paragraph 7(3)) by the amount by which the individual's rights are reduced and arriving at a revised primary protection factor.
  - (4) The revised primary protection factor operates in relation to any benefit crystallisation event occurring in relation to the individual after the time when the individual's rights are reduced by becoming subject to the pension debit.
- [<sup>F14</sup>11A(1) This paragraph applies where—
- (a) paragraph 7 makes provision for the operation of a lifetime allowance enhancement factor in relation to an individual immediately before the individual's death (and any calculation required by paragraph 11 does not mean that there is then no longer a primary protection factor),
  - (b) a person is paid a defined benefits lump sum death benefit or an uncrystallised funds lump sum death benefit in respect of the individual, and
  - (c) notice of intention to rely on this paragraph is given to an officer of Revenue and Customs by that person in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs.
- (2) If the value of the individual's pre-commencement rights to death benefits (see paragraphs 11B to 11D) exceeds RR (as adjusted under paragraph 11, where that paragraph applies), the primary protection factor is to be recalculated.
  - (3) The re-calculation involves taking RR to be the value of the individual's pre-commencement rights to death benefits and arriving at a revised primary protection factor.
  - (4) The revised primary protection factor operates in relation to—

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- (a) the benefit crystallisation event consisting of the payment of the lump sum death benefit, and
- (b) any other benefit crystallisation event consisting of the payment of a lump sum death benefit in respect of the individual.

**Textual Amendments**

**F14** Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\)](#), [Sch. 23 para. 38](#)

- 11B (1) This paragraph and paragraphs 11C and 11D specify the value of the individual's pre-commencement rights to death benefits.
- (2) Subject to paragraphs 11C and 11D, the value of the individual's pre-commencement rights to death benefits is the aggregate of the maximum amounts that could have been paid—
- (a) in respect of the individual as uncrystallised rights lump sum death benefits, and
  - (b) under relevant pension arrangements relating to the individual, if the individual had died on 5th April 2006.
- (3) Lump sum death benefits are “uncrystallised rights lump sum death benefits” if they are attributable to rights in respect of which the individual had not, on 5th April 2006, become entitled to the present payment of benefits.
- (4) An arrangement is a “relevant pension arrangement” if it is an arrangement under a pension scheme within paragraph 1(1).

**Textual Amendments**

**F14** Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\)](#), [Sch. 23 para. 38](#)

- 11C (1) In arriving at the aggregate mentioned in paragraph 11B(2) the following amounts are to be left out of account—
- (a) in the case of any lump sum death benefit which could have been paid under a pension scheme in the case of which approval could have been withdrawn under section 591B, 620(7) or 650 of ICTA, any amount in excess of the permitted limit (see sub-paragraph (2)), and
  - (b) in the case of any lump sum death benefit which could have been paid under an arrangement in the case of which rights to such a benefit are commuted into prospective rights to receive dependants' pensions, any dependants' pension proportion amount (see sub-paragraphs (3) and (4)).
- (2) An “amount in excess of the permitted limit” is so much (if any) of the maximum amount of any lump sum death benefit as could not have been paid without having given grounds for withdrawing approval of the pension scheme under section 591B, 620(7) or 650 of ICTA.
- (3) A “dependants' pension proportion amount” is so much (if any) of the maximum amount of any lump sum death benefit which could have been paid under the arrangement as is the dependants' pension proportion of the lump sum death benefit.

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(4) The dependants' pension proportion is—

UTATAUTA

where—

TA is the amount which, at the time when a defined benefits lump sum death benefit or uncrystallised funds lump sum death benefit is first paid in respect of the individual, is the aggregate of the maximum amounts of any defined benefits lump sum death benefits or uncrystallised funds lump sum death benefits which could be paid under the arrangement in respect of the individual, and

UTA is what TA would be if no prospective rights to the payment of any of those lump sum death benefits had been commuted into prospective rights to receive dependants' pensions.

#### Textual Amendments

**F14** Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\)](#), [Sch. 23 para. 38](#)

- 11D (1) Sub-paragraph (2) applies where any of the lump sum death benefits mentioned in sub-paragraph (2) of paragraph 11B would have been payable under a policy of life insurance held for the purposes of a pension scheme and on 5th April 2006 the pension scheme either—
- (a) was not an occupational pension scheme, or
  - (b) was an occupational pension scheme with fewer than 20 members.
- (2) The lump sum death benefit is only to be taken into account in arriving at the aggregate mentioned in that sub-paragraph if—
- (a) a sum was paid under the policy when the individual actually died, and
  - (b) the terms of the policy had not been varied significantly during the period beginning with 5th April 2006 and ending with the death;
- and any exercise of rights conferred by the policy is to be regarded for this purpose as a variation.
- [ A variation of the terms of a policy of life insurance made in order to comply with <sup>F15</sup>(2A) the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them) is to be ignored for the purposes of sub-paragraph (2).
- (2B) Where a policy of life insurance held on 5th April 2006 for the purposes of an occupational pension scheme is surrendered and a new one is taken out—
- (a) as part of a retirement-benefit activities compliance exercise, or
  - (b) to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them),
- the new policy is to be treated for the purposes of sub-paragraph (2) as if it were the same as the old.
- (2C) For this purpose a policy of life insurance is surrendered and a new one is taken out as part of a retirement-benefit activities compliance exercise if—

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- (a) the surrender of the old policy and taking out of the new policy constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
  - (b) the rights under the old policy and the new policy are not significantly different.]
- (3) Sub-paragraph (4) applies where any of the lump sum death benefits mentioned in sub-paragraph (2) of paragraph 11B would have been payable under an occupational pension scheme.
- (4) The lump sum death benefit is only to be taken into account in arriving at the aggregate mentioned in that sub-paragraph if—
- (a) the individual was employed by a person on 5th April 2006 and continued to be employed by that person or a person connected with that person until the time when the individual died,
  - (b) that person was a sponsoring employer in relation to the pension scheme on 5th April 2006, and
  - (c) the individual had not become entitled to the present payment of benefits in respect of rights under the pension scheme before the time when the individual died.

[<sup>F16</sup>(5) For the purposes of this paragraph whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]]

#### Textual Amendments

- F14** Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 38](#)
- F15** Sch. 36 paras. 11D(2A)-(2C) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 15, 24\(3\)](#)
- F16** Sch. 36 para. 11D(5) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 485](#) (with [Sch. 2](#))

#### *“Enhanced protection”*

- 12 (1) This paragraph applies on and after 6th April 2006 in the case of an individual who has one or more relevant existing arrangements if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
- (2) But this paragraph ceases to apply if—
- (a) relevant benefit accrual occurs under the arrangement, or any of the arrangements (see paragraph 13),
  - [<sup>F17</sup>(aa) there is an impermissible transfer into the arrangement or any of the arrangements (see paragraph 17A),]
  - (b) a transfer of sums or assets held for the purposes of, or representing accrued rights under, the arrangement or any of the arrangements is made that is not a permitted transfer, or
  - (c) an arrangement relating to the individual is made under a registered pension scheme otherwise than [<sup>F18</sup>in permitted circumstances].

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- [<sup>F19</sup>(2A) An arrangement is made in permitted circumstances if it is made—
- (a) for the purposes of a permitted transfer,
  - (b) as part of a retirement-benefit activities compliance exercise, or
  - (c) as part of an age-equality compliance exercise.
- (2B) For the purposes of sub-paragraph (2A)(b) an arrangement (“the new arrangement”) relating to an individual is made as part of a retirement-benefit activities compliance exercise if—
- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),
  - (b) the old arrangement and the new arrangement relate to the same employment,
  - (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement,
  - (d) the making of the new arrangement and the cancellation of the old arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the arrangement is made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
  - (e) the rights cancelled under the old arrangement and the rights conferred under the new arrangement are not significantly different.
- (2C) For the purposes of sub-paragraph (2A)(c) an arrangement (“the new arrangement”) is made as part of an age-equality compliance exercise if—
- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),
  - (b) the old arrangement and the new arrangement relate to the same employment,
  - (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
  - (d) the new arrangement is made, and the old arrangement cancelled, in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them).]

(3) Where this paragraph applies in the case of an individual

[<sup>F20</sup>(a) there is no liability to the lifetime allowance charge in respect of the individual, and

    - (b) the payment of a lifetime allowance excess lump sum to the individual is not permitted by the lump sum rule (see section 166).]

(4) An individual has a relevant existing arrangement if—

      - (a) before 6th April 2006 an arrangement relating to the individual has been made under a pension scheme within paragraph 1(1), and
      - (b) the pension scheme becomes a registered pension scheme on that date.

(5) Notice of intention to rely on this paragraph in relation to the individual may not be given in a case where—

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- (a) the value of the uncrystallised rights of the individual on 5th April 2006 under an arrangement, or
- (b) the aggregate of the values of the uncrystallised rights of the individual on 5th April 2006 under arrangements,

is arrived at in accordance with paragraph [F<sup>21</sup>9(3)] unless such rights as, in accordance with regulations made by the Board of Inland Revenue, are to be treated as representing the relevant excess have been surrendered.

- (6) In sub-paragraph (5) “the relevant excess” means the amount by which the value of—
  - (a) the individual’s uncrystallised rights, or
  - (b) the aggregate of the values of the individual’s uncrystallised rights,
 as arrived at in accordance with paragraph 8 exceeds what it would be if arrived at under paragraph [F<sup>22</sup>9(3)].
- (7) For the purposes of this paragraph and paragraphs 13 and 15, a transfer of sums or assets held for the purposes of, or representing accrued rights under, an arrangement is a permitted transfer if—
  - (a) <sup>F<sup>23</sup></sup> . . . . .
  - (b) the sums or assets <sup>F<sup>24</sup></sup> . . . are transferred so that sub-paragraph (8) applies in relation to them, and
  - (c) the aggregate of the amount of [F<sup>25</sup>the] sums and the market value of [F<sup>25</sup>the] assets is, applying normal actuarial practice, equivalent before and after the transfer.
- (8) This sub-paragraph applies in relation to sums or assets held for the purposes of, or representing accrued rights under, the arrangement if—
  - (a) they are transferred so as to become held for the purposes of a money purchase arrangement that is not a cash balance arrangement <sup>F<sup>26</sup></sup> . . . <sup>F<sup>26</sup></sup> . . .
  - (b) where the transfer occurs in connection with the winding up of the pension scheme under which the arrangement is made and the arrangement is a cash balance arrangement or a defined benefits arrangement, they are transferred so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement relating to the same employment as the arrangement and made under a registered pension scheme or recognised overseas pension scheme.
  - [F<sup>27</sup>(c) where the arrangement is a cash balance arrangement or a defined benefits arrangement relating to a present or former employment, they are transferred in connection with a relevant business transfer so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement made under a registered pension scheme or recognised overseas pension scheme, or
  - (d) where the arrangement (“the old arrangement”) is a cash balance arrangement or a defined benefits arrangement, they are transferred as part of a retirement-benefit activities compliance exercise so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement (“the new arrangement”) relating to the same employment as the old arrangement and made under a registered pension scheme or recognised overseas pension scheme.]

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- [<sup>F28</sup>(8A) For the purposes of sub-paragraph (8)(c) “relevant business transfer” means a transfer of an undertaking or a business (or part of an undertaking or a business) from one person to another—
- (a) which involves the transfer of at least 20 employees, and
  - (b) in the case of which, if the transferor and the transferee are bodies corporate, they would not be treated as members of the same group for the purposes of Chapter 4 of Part 10 of ICTA.
- (8B) For the purposes of sub-paragraph (8)(d) sums or assets held for the purposes of, or representing accrued rights under, the old arrangement are transferred as part of a retirement-benefit activities compliance exercise if—
- (a) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
  - (b) the transfer constitutes or forms part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the old arrangement was made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005.]
- (9) Where there is a permitted transfer—
- (a) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(a), this paragraph (and paragraphs 13 [<sup>F29</sup>, 14 and 17A(1) and (2)]) apply in relation to the arrangement <sup>F30</sup>. . . to which the transfer is made, and
  - (b) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(b) [<sup>F31</sup> or (d)], this paragraph (and paragraphs 13 [<sup>F32</sup>, 15 and 17A(3)] [<sup>F33</sup> to 17]) apply as if the arrangement to which the transfer is made were the same as that from which it is made, [<sup>F34</sup> and
  - (c) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(c), this paragraph (and paragraphs 13, 15 to 17 and 17A(3)) apply as if the arrangement to which the transfer is made were the same as that from which it is made and (if the employment is transferred) as if the employment with the transferee were the employment with the transferor.]
- [<sup>F35</sup>(10) The Treasury may by order amend sub-paragraph (8) (and make other amendments consequential on any amendment of that sub-paragraph).]

#### Textual Amendments

- F17** Sch. 36 para. 12(2)(aa) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(3\)](#), 64(1)
- F18** Words in Sch. 36 para. 12(2)(c) substituted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(2\)](#), 24(3)
- F19** Sch. 36 para. 12(2A)-(2C) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(3\)](#), 24(3)
- F20** Sch. 36 para. 12(3)(a)(b) substituted for words (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(4\)](#), 64(1)
- F21** Word in Sch. 36 para. 12(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(5\)](#), 64(1)
- F22** Word in Sch. 36 para. 12(6) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(5\)](#), 64(1)
- F23** Sch. 36 para. 12(7)(a) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(4\)\(a\)](#), 24(3)

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- F24** Words in Sch. 36 para. 12(7)(b) omitted (retrospectively) by virtue of Finance Act 2007 (c. 11), **Sch. 20 paras. 17(4)(b), 24(3)**
- F25** Words in Sch. 36 para. 12(7)(c) substituted (retrospectively) by Finance Act 2007 (c. 11), **Sch. 20 paras. 17(4)(c), 24(3)**
- F26** Words in Sch. 36 para. 12(8)(a) omitted (retrospectively) by virtue of Finance Act 2007 (c. 11), **Sch. 20 paras. 17(5), 24(3)**
- F27** Sch. 36 para. 12(8)(c)(d) inserted (retrospectively) by Finance Act 2007 (c. 11), **Sch. 20 paras. 17(6), 24(3)**
- F28** Sch. 36 para. 12(8A)(8B) inserted (retrospectively) by Finance Act 2007 (c. 11), **Sch. 20 paras. 17(7), 24(3)**
- F29** Words in Sch. 36 para. 12(9)(a) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 53(6)(a), 64(1)**
- F30** Words in Sch. 36 para. 12(9)(a) omitted (retrospectively) by virtue of Finance Act 2007 (c. 11), **Sch. 20 paras. 17(8)(a), 24(3)**
- F31** Words in Sch. 36 para. 12(9)(b) inserted (retrospectively) by Finance Act 2007 (c. 11), **Sch. 20 paras. 17(8)(b), 24(3)**
- F32** Words in Sch. 36 para. 12(9)(b) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 53(6)(b), 64(1)**
- F33** Words in Sch. 36 para. 12(9)(b) inserted (retrospectively) by Finance Act 2007 (c. 11), **Sch. 20 paras. 17(8)(b), 24(3)**
- F34** Sch. 36 para. 12(9)(c) and preceding word inserted (retrospectively) by Finance Act 2007 (c. 11), **Sch. 20 paras. 17(8)(c), 24(3)**
- F35** Sch. 36 para. 12(10) inserted (retrospectively) by Finance Act 2007 (c. 11), **Sch. 20 paras. 17(9), 24(3)**

**Modifications etc. (not altering text)**

- C10** Sch. 36 para. 12 construed as one with reg. 30 (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **30(3)**
- C11** Sch. 36 para. 12 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **30(2)**
- C12** Sch. 36 para. 12(8) modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), **35**

- 13 Relevant benefit accrual occurs in relation to an individual under an arrangement—
- (a) in the case of a money purchase arrangement that is not a cash balance arrangement, if a relevant contribution is paid under the arrangement [<sup>F36</sup>or, where the arrangement has been a hybrid arrangement, if a relevant contribution was so paid at any time after 5th April 2006,] (see paragraph 14), and
- (b) in the case of a cash balance arrangement or defined benefits arrangement, if, when a benefit crystallisation event or transfer that is a permitted transfer by virtue of paragraph 12(8)(a) (a “relevant event”) occurs in relation to the individual and the arrangement, the relevant crystallised amount exceeds the appropriate limit (see paragraph 15).

**Textual Amendments**

- F36** Words in Sch. 36 para. 13(a) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 53(7), 64(1)**

- 14 (1) For the purposes of paragraph 13(a) a relevant contribution is paid under the arrangement if—
- (a) a relievable pension contribution is paid by or on behalf of the individual under the arrangement,



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- (b) a contribution is paid in respect of the individual under the arrangement by an employer of the individual, or
  - (c) a contribution paid [<sup>F37</sup>otherwise than by or on behalf of the individual or by an employer of the individual] in respect of the individual subsequently becomes held for the purposes of the provision under the arrangement of benefits to or in respect of the individual.
- (2) [<sup>F38</sup>Minimum] payments under section 8 of the Pension Schemes Act 1993 (c. 48) or section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) or any amount recovered under regulations made under subsection (3) of either of those sections [<sup>F39</sup>are not relevant contributions for the purposes of paragraph 13(a)].
- [<sup>F40</sup>(3) A contribution is not a relevant contribution for the purposes of paragraph 13(a) if—
- (a) it may only be applied for or towards the payment of premiums under a policy of insurance on the life of the individual,
  - (b) the policy is issued, or issued in respect of insurances made, before 6th April 2006,
  - (c) there is no right to surrender any rights under the policy,
  - (d) the terms of the policy are not varied significantly during the period beginning with 6th April 2006 and ending with the individual's actual death so as to increase the benefits payable under the policy or extend the period during which benefits are so payable, and
  - (e) no benefits are paid, or other payments made, under (or on the surrender of rights under) the policy except by reason of the individual's death;
- and any exercise of rights conferred by the policy is to be regarded for this purpose as a variation.
- [ A variation of the terms of a policy made in order to comply with the Employment
- <sup>F41</sup>(3A) Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them) is to be ignored for the purposes of sub-paragraph (3).
- (3B) Where a policy of insurance on the life of the individual issued, or issued in respect of insurances made, before 6th April 2006 is surrendered and a new one is taken out—
- (a) as part of a retirement-benefit activities compliance exercise, or
  - (b) as part of an age-equality compliance exercise.
- the new policy is to be treated for the purposes of sub-paragraph (3) as if it were the same as the old.
- (3C) For the purposes of sub-paragraph (3B)(a) a policy is surrendered, and a new policy of life insurance is taken out, as part of a retirement-benefit activities compliance exercise if—
- (a) the surrender of the old policy and the taking out of the new policy constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the arrangement is made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
  - (b) the rights under the old policy and the new policy are not significantly different.

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- (3D) For the purposes of sub-paragraph (3B)(b) a policy is surrendered, and a new policy of life insurance is taken out, as part of an age-equality compliance exercise if—
- (a) the old policy is surrendered, and the new policy is taken out, in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them), and
  - (b) any significant difference between the rights under the old policy and the rights under the new policy is attributable to the need to comply with those Regulations (or any regulations amending or replacing them).]
- (4) A contribution is not a relevant contribution for the purposes of paragraph 13(a) if it is paid—
- (a) by a sponsoring employer,
  - (b) under a relevant hybrid arrangement, and
  - (c) solely in respect of the provision in respect of the individual of lump sum death benefits which are defined benefits or cash balance benefits.
- (5) A “relevant hybrid arrangement” is a hybrid arrangement under an occupational pension scheme—
- (a) which subsequently becomes a money purchase arrangement that is not a cash balance arrangement, and
  - (b) under which lump sum death benefits would have been payable in respect of the individual if the individual had died on 5th April 2006.]

#### Textual Amendments

- F37** Words in Sch. 36 para. 14(1)(c) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(9\)](#), [64\(1\)](#)
- F38** Word in Sch. 36 para. 14(2) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(10\)\(a\)](#), [64\(1\)](#)
- F39** Words in Sch. 36 para. 14(2) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(10\)\(b\)](#), [64\(1\)](#)
- F40** Sch. 36 para. 14(3)-(5) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 39](#)
- F41** Sch. 36 para. 14(3A)-(3D) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 18](#), [24\(3\)](#)

- 15 (1) For the purposes of paragraph 13(b) “the relevant crystallised amount” is—
- (a) if the relevant event is the first relevant event occurring in relation to the individual and to the arrangement or any other cash balance arrangement or defined benefits arrangement related to the arrangement (“the first relevant event”), the amount crystallised by that event, and
  - (b) otherwise, the aggregate of the amount crystallised by the relevant event and the amount crystallised by the relevant event, or by each of the relevant events, which has or have previously occurred in relation to the individual and to the arrangement or any other cash balance arrangement or defined benefits arrangement related to the arrangement.
- (2) If the relevant event is a permitted transfer which is not a benefit crystallisation event, sub-paragraph (1) applies as if the amount crystallised by the event were the aggregate of—

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- (a) the amount of any sums held for the purposes of, or representing accrued rights under, the arrangement [<sup>F42</sup>which are transferred], and
  - (b) the market value of any assets held for the purposes of, or representing accrued rights under, the arrangement [<sup>F42</sup>which are transferred].
- (3) For the purposes of this paragraph (and [<sup>F43</sup>paragraphs 15A and 16]) another arrangement is related to the arrangement if—
- (a) the other arrangement relates to the individual, and
  - (b) both the arrangement and the other arrangement relate to the same employment;
- and whether an arrangement relates to an employment is to be determined in accordance with paragraph 9(6).
- (4) For the purposes of paragraph 13(b) “the appropriate limit”, in relation to a relevant event, [<sup>F44</sup>is (subject to paragraph 15A) the greater] of—
- (a) the value of the individual’s rights on 5th April 2006 under the arrangement, or (where there is or are one or more other cash balance arrangements or defined benefits arrangements related to the arrangement) the aggregate of the value of the individual’s rights under the arrangement and the other arrangement or arrangements, arrived at in accordance with paragraphs 8 and 9, as increased by the relevant indexation percentage (see sub-paragraph (5)), and
  - (b) what would be the value of those rights, so arrived at, on the assumptions specified in sub-paragraph (6).
- (5) For the purposes of sub-paragraph (4)(a) [<sup>F45</sup>and paragraph 15A(2)(a)] “the relevant indexation percentage”, in relation to a relevant event, means whichever is the greatest of—
- (a) the percentage by which an amount would be increased if it were increased for the period beginning with 6th April 2006 and ending with the date on which the relevant event occurs at an annual rate of 5%,
  - (b) the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, and
  - (c) the percentage by which the retail prices index for the month in which the relevant event occurs is higher than that for April 2006.
- (6) The assumptions referred to in sub-paragraph (4)(b) [<sup>F46</sup>and paragraph 15A(2)(b)] are—
- (a) that the individual’s age on 5th April 2006 were what it is at the time of the first relevant event (so that neither paragraph 8(6) nor section 277(a) applies in arriving at what would be the value of the rights under paragraph 8), and
  - (b) that the amount of the earnings which would have fallen to be taken into account under the arrangement for calculating the amount of benefits payable to or in respect of the individual (if the individual became entitled to the present payment of benefits in respect of the rights under the arrangement on that date) were the lesser of the two amounts specified in sub-paragraph (7).
- (7) The amounts referred to in sub-paragraph (6)(b) are—

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- (a) the current amount of the relevant pensionable earnings immediately before the first relevant event, and
  - (b) the post-commencement earnings limit (see paragraphs 16 and 17).
- (8) But sub-paragraph (6)(b) applies in relation to an arrangement under a pension scheme within paragraph 1(1)(c) or (e) as if for “the lesser of the two amounts specified in sub-paragraph (7)” there were substituted “the amount specified in sub-paragraph (7)(a)”.
- (9) In this paragraph “the relevant pensionable earnings” means the description of earnings (or the portion of the description of earnings) of the individual by reference to which the amount of benefits payable to or in respect of the individual would have fallen to be calculated if the individual became entitled to the present payment of benefits in respect of the rights under the arrangement on 5th April 2006.
- (10) For the purposes of sub-paragraph (7)(a) “the current amount” of the relevant pensionable earnings immediately before the first relevant event is the amount of the relevant pensionable earnings which, at that time, would fall to be taken into account in calculating the amount of benefits payable to or in respect of the individual under the arrangement if the individual became entitled to the present payment of benefits at that time (but subject to sub-paragraph (11)).
- (11) If at that time the individual is absent from work in connection with pregnancy, maternity, paternity or adoption, the current amount of the relevant pensionable earnings at that time includes what would be likely to be included in that amount if the individual were not so absent.

#### Textual Amendments

- F42** Words in Sch. 36 para. 15(2) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 19\(2\), 24\(3\)](#)
- F43** Words in Sch. 36 para. 15(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 40\(2\)](#)
- F44** Words in Sch. 36 para. 15(4) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 40\(3\)](#)
- F45** Words in Sch. 36 para. 15(5) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 40\(4\)](#)
- F46** Words in Sch. 36 para. 15(6) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 40\(5\)](#)

#### Modifications etc. (not altering text)

- C13** Sch. 36 para. 15 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [36](#)

[<sup>F47</sup>15A(1)] This paragraph applies where—

- (a) a person is paid a defined benefits lump sum death benefit or an uncrystallised funds lump sum death benefit in respect of the individual under the arrangement, and
- (b) notice of intention to rely on this paragraph is given to an officer of Revenue and Customs by that person in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs.

*Status: Point in time view as at 06/04/2007.*

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- (2) For the purposes of paragraph 13(b), if the amount yielded by sub-paragraph (3) is greater than what would otherwise be the appropriate limit in relation to a relevant event which consists of—
- (a) the payment of the lump sum death benefit, or
  - (b) the payment of any other lump sum death benefit in respect of the individual under the arrangement or another cash balance arrangement or defined benefits arrangement related to the arrangement,
- that greater amount is the appropriate limit in relation to such a relevant event.
- (3) The amount yielded by this sub-paragraph is the greater of—
- (a) the value of the individual's pre-commencement rights to death benefits, as increased by the relevant indexation percentage (see sub-paragraph (5) of paragraph 15), or
  - (b) what would be the value of the individual's pre-commencement rights to death benefits on the assumptions specified in sub-paragraph (6) of that paragraph (but subject to the modifications in sub-paragraph (7) of this paragraph).
- (4) The value of the individual's pre-commencement rights to death benefits is the aggregate of the maximum amounts that could have been paid in respect of the individual as uncrystallised rights lump sum death benefits under—
- (a) the arrangement, or
  - (b) any other cash balance arrangement or defined benefits arrangement related to the arrangement,
- if the individual had died on 5th April 2006.
- (5) Lump sum death benefits are “uncrystallised rights lump sum death benefits” if they are attributable to rights in respect of which the individual had not, on 5th April 2006, become entitled to the present payment of benefits.
- (6) Paragraphs 11C and 11D apply in arriving at the aggregate mentioned in sub-paragraph (4) as in arriving at that mentioned in paragraph 11B(2) but as if—
- (a) each of the references to paragraph 11B(2) were to sub-paragraph (4) of this paragraph, and
  - (b) in paragraph 11D(1), for “of a pension scheme” there were substituted “of any arrangement within paragraph 15A(4) under a pension scheme”.
- (7) In their operation for the purposes of this paragraph sub-paragraphs (6) to (11) of paragraph 15 have effect as if—
- (a) for the references in sub-paragraphs (6)(a) and (7)(a) and (10) to the time of the first relevant event there were substituted a reference to the time immediately before the individual's death, and
  - (b) the words in parentheses in sub-paragraph (6)(a) were omitted.]

#### Textual Amendments

**F47** Sch. 36 para. 15A inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\)](#), [Sch. 23 para. 41](#)

- 16 (1) This paragraph specifies the post-commencement earnings limit if the individual was on 5th April 2006 a person in relation to <sup>F48</sup>whom—

*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 36. (See end of Document for details)*

- (a) section 590C of ICTA or paragraph 20 of Schedule 6 to FA 1989 (earnings cap) had effect, or
- (b) provision similar to section 590C of ICTA had effect by virtue of conditions imposed under section 591 of that Act (discretionary approval),
- in] relation to any pension scheme under which the arrangement or any other arrangement related to the arrangement was made.
- (2) The post-commencement earnings limit is the lesser of amount A and amount B.
- (3) Amount A is 7.5% of the standard lifetime allowance when the first relevant event occurs.
- (4) Amount B is the amount of the individual's employment income from the employment to which the arrangement relates for the best period of 12 months during the appropriate three year period.
- (5) The appropriate three year period is the period of three years ending with [<sup>F49</sup>the earliest of—
- the first relevant event,
  - the individual leaving the employment to which the arrangement relates, and
  - the individual's death].
- [<sup>F50</sup>(5A) Where the appropriate three year period ends otherwise than with the first relevant event, Amount B is what it would be apart from this sub-paragraph increased by whichever is the greatest of—
- the percentage by which an amount would be increased if it were increased for the period beginning with the date on which it ends and ending with the date on which the relevant event occurs at an annual rate of 5%,
  - the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, or
  - the percentage by which the retail prices index for the month in which the first relevant event occurs is higher than that for the month in which the appropriate period ends.]
- (6) A period of 12 months during the appropriate three year period is the best period of 12 months during the appropriate three year period if the amount of the individual's employment income from the employment to which the arrangement relates is greater for that period of 12 months than for any other period of 12 months during the appropriate three year period.
- (7) For the purposes of this paragraph and paragraph 17 the amount of the individual's employment income includes, in relation to any time when the individual is absent from work in connection with pregnancy, maternity, paternity or adoption, what would be likely to be included in that amount if the individual were not so absent.

#### Textual Amendments

**F48** Words in Sch. 36 para. 16(1) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(12\), 64\(1\)](#)

**F49** Words in Sch. 36 para. 16(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(13\), 64\(1\)](#)

**F50** Sch. 36 para. 16(5A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(14\), 64\(1\)](#)

*Status: Point in time view as at 06/04/2007.*

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- 17 (1) This paragraph specifies the post-commencement earnings limit in any other case.
- (2) The post-commencement earnings limit is—
- (a) if amount B is not greater than amount A, amount B, and
  - (b) otherwise, amount C.
- (3) Amount A and amount B have the same meanings as in paragraph 16.
- (4) Amount C is the greater of—
- (a) amount A, and
  - (b) amount D.
- (5) Amount D is—

$$\frac{\text{ETY}}{3}$$

where ETY is the amount of the individual's employment income from the employment to which the arrangement relates for the appropriate three year period (within the meaning of paragraph 16).

- [<sup>F51</sup>(6) Where the appropriate three year period ends otherwise than with the first relevant event, Amount D is what it would be apart from this sub-paragraph increased by whichever is the greatest of—
- (a) the percentage by which an amount would be increased if it were increased for the period beginning with the date on which it ends and ending with the date on which the relevant event occurs at an annual rate of 5%,
  - (b) the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, or
  - (c) the percentage by which the retail prices index for the month in which the first relevant event occurs is higher than that for the month in which the appropriate period ends.]

#### Textual Amendments

**F51** Sch. 36 para. 17(6) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(15\), 64\(1\)](#)

- [<sup>F52</sup>17A(1) There is an impermissible transfer into a relevant existing arrangement relating to an individual under a pension scheme in a case where the relevant existing arrangement is a money purchase arrangement that is not a cash balance arrangement if—
- (a) sums or assets held for the purposes of, or representing rights under, an arrangement relating otherwise than to the individual are transferred so as to become held for the purposes of the relevant existing arrangement, otherwise than pursuant to a pension sharing order or provision,
  - (b) sums or assets which are neither held for the purposes of, nor represent rights under, a pension scheme are so transferred, or
  - (c) a transfer lump sum death benefit is paid so as to become held for the purposes of, or to represent accrued rights under, the relevant existing arrangement.

*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 36. (See end of Document for details)*

- (2) Sub-paragraph (1) applies where the relevant existing arrangement has been a hybrid arrangement as if the references to sums or assets being transferred, or to a transfer lump sum death benefit being paid, were to transfer or payment at any time after 5th April 2006.
- (3) There is an impermissible transfer into a relevant existing arrangement relating to an individual under a pension scheme in a case where the relevant existing arrangement is a cash balance arrangement or a defined benefits arrangement if it becomes a money purchase arrangement that is not a cash balance arrangement.]

#### Textual Amendments

**F52** Sch. 36 para. 17A inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(16\), 64\(1\)](#)

#### *Pre-commencement pension credits*

- 18 (1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where before 6th April 2006 the individual has acquired rights under a pension scheme within paragraph 1 (1) by virtue of having become entitled to a pension credit.
- (2) The lifetime allowance enhancement factor is the pre-commencement pension credit factor.
- (3) The pre-commencement pension credit factor is—

$$\frac{\text{IAPC}}{\text{SLA}}$$

where—

IAPC is the amount which is the appropriate amount for the purposes of section 29 (1) of WRPA 1999 or Article 26 (1) of WRP(NI)O 1999 in relation to the pension credit, as increased by the percentage specified in sub-paragraph (4), and

SLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (4) The percentage is the percentage by which the retail prices index for April 2006 is greater than that for the month in which the rights were acquired.
- (5) This paragraph does not apply in the case of an individual if paragraph 7 (primary protection) applies in relation to the individual.
- (6) This paragraph only applies if notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

#### *Individuals permitted to take pension before normal minimum pension age*

- 19 (1) This paragraph applies where a benefit crystallisation event occurs in relation to an individual who is a member of a registered pension scheme—



*Status: Point in time view as at 06/04/2007.*

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- (a) in protected circumstances, and
  - (b) before the individual reaches normal minimum pension age.
- (2) What would otherwise be the individual's lifetime allowance is to be reduced by the relevant percentage.
- (3) A benefit crystallisation event occurs in protected circumstances if—
- (a) paragraph 22 or 23 (right to take pension before normal minimum pension age) applies to the individual and the pension scheme,
  - (b) the individual's protected pension age (see paragraph 22(8) or 23(8)) is less than 50, and
  - (c) the pension scheme is not prescribed by regulations made by the Board of Inland Revenue.
- (4) The relevant percentage is—

$$Y \times 2.5$$

where Y is the number of complete years falling between the date on which the benefit crystallisation event occurs and the date on which the individual will reach normal minimum pension age.

- (5) Sub-paragraph (6) applies where, after the occurrence in relation to the individual of a benefit crystallisation event in relation to which this paragraph has had effect, another benefit crystallisation event occurs in relation to the individual<sup>F53</sup>....
- (6) If the amount crystallised on the previous benefit crystallisation event exceeded the available amount of the individual's lifetime allowance at the time of that benefit crystallisation event, section 219 (availability of individual's lifetime allowance) applies as if the amount crystallised were the available amount of the individual's lifetime allowance at that time.

#### Textual Amendments

**F53** Words in Sch. 36 para. 19(5) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 54\(2\), 64\(1\)](#)

#### *Pre-commencement pensions*

- 20 (1) This paragraph makes provision about an individual who, on 5th April 2006, has an actual (rather than a prospective) right to the payment of one or more relevant existing pensions.
- (2) Section 219 (availability of individual's lifetime allowance) applies as if, immediately before the first benefit crystallisation event occurring in relation to the individual—
- (a) a benefit crystallisation event had occurred in relation to the individual, and
  - (b) the amount crystallised was the value of the individual's pre-commencement pension rights immediately before the benefit crystallisation event.
- (3) The value of the individual's pre-commencement pension rights at any time is—

*Status: Point in time view as at 06/04/2007.*

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## 25 × ARP

where (subject to sub-paragraph (4)) ARP is an amount equal to—

- (a) the annual rate at which the relevant existing pension is payable to the individual at that time, or
  - (b) if more than one relevant existing pension is payable to the individual at that time, the aggregate of the annual rates at which each of the relevant existing pensions is so payable.
- (4) In the case of unsecured pension or alternatively secured pension ARP is the maximum amount that may be paid in the unsecured pension year or alternatively secured pension year in which the time falls in accordance with pension rule 5 or pension rule 7 (see section 165).
- (5) In this paragraph “relevant existing pension” has the same meaning as in paragraph 10(2); and paragraph 10(4) and (5) operates for the purposes of this paragraph for determining the annual rate at which a relevant existing pension is payable at any time (treating the references there to 5th April 2006 as to that time).

### Modifications etc. (not altering text)

- C14** Sch. 36 para. 20(2)(b) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **20**

## PART 3 U.K.

### PRE-COMMENCEMENT BENEFIT RIGHTS

### Modifications etc. (not altering text)

- C15** Sch. 36 Pt. 3 modified (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **31(1)**

*Rights to take [<sup>F54</sup>benefit] before normal minimum pension age*

### Textual Amendments

- F54** Word in Sch. 36 para. 21 heading substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 54\(3\)](#), [64\(1\)](#)

- 21 (1) If paragraph 22 or 23 applies in relation to a registered pension scheme and a member of the pension scheme, this Part of this Act (except for section 218(6) and paragraph 19) has effect in relation to the member and the pension scheme as if references to normal minimum pension age were to the member’s protected pension age.
- (2) Paragraphs 22(8) and 23(8) define the member’s protected pension age.

*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 36. (See end of Document for details)*

- 22 (1) This paragraph applies in relation to a registered pension scheme and a member of the pension scheme if—
- (a) the pension scheme is a protected pension scheme, and
  - (b) the retirement condition is met in relation to the member and the pension scheme.
- (2) A pension scheme is a protected pension scheme if condition A or condition B is met.
- (3) Condition A is met if—
- (a) the pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1), and
  - (b) the entitlement condition is met in relation to the member and the pension scheme.
- (4) The entitlement condition is met in relation to the member and the pension scheme if—
- (a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to [<sup>F55</sup>any benefit] from an age of less than 55,
  - (b) the rules of the pension scheme on 10th December 2003 included provision conferring such a right on some or all of the persons who were then members of the pension scheme, and
  - (c) such a right either was then conferred on the member or would have been had the member been a member of the scheme on that date.
- (5) Condition B is met if the member is a member of the pension scheme [<sup>F56</sup>(“a transferee pension scheme”) as a result of—
- (a) a block transfer from the pension scheme (“the original pension scheme”) in relation to which condition A is met to the transferee pension scheme, or
  - (b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.]
- (6) A transfer is a block transfer if—
- (a) it involves the transfer in a single transaction of all the sums and 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 member and at least one other member of that pension scheme, and
  - [<sup>F57</sup>(b) either the member was not a member of the pension scheme to which the transfer is made before the transfer or he has been a member of that pension scheme for no longer than such period as is prescribed by regulations made by the Board of Inland Revenue.]
- (7) The retirement condition is met in relation to the member and the pension scheme if—
- (a) the member becomes entitled to all the [<sup>F58</sup>benefits] payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date, and
  - [<sup>F59</sup>(b) in a case where on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 50, Condition 1 is met or, in any other case, Condition 2 or 3 is met.]

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<sup>F60</sup>(7A) Condition 1 is met if—

- (a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected, and
- (b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

(7B) Condition 2 is met if—

- (a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person specified in sub-paragraph (7C), and
- (b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

(7C) The persons referred to in sub-paragraph (7B)(a) are—

- (a) any person who was a sponsoring employer in relation to the pension scheme at any time during the period of six months ending with the day on which the member became entitled to the benefits mentioned in sub-paragraph (7)(a) and by whom the member was employed at any time during that period,
- (b) any person who is connected with any such person, or
- (c) any person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected.

(7D) If the member has become entitled to the benefits payable under arrangements under the pension scheme by reason of service in the armed forces of the Crown, any employment on compulsory recall is to be disregarded for the purposes of sub-paragraph (7B)(a).

(7E) Condition 3 is met if—

- (a) paragraph (a) of sub-paragraph (7B) is not satisfied but one of the re-employment conditions is met, and
- (b) paragraph (b) of that sub-paragraph is satisfied.

(7F) The re-employment conditions are—

- (a) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of six months beginning with the day on which the member becomes entitled to the benefits mentioned in sub-paragraph (7)(a), and
- (b) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of one month beginning with that day, but is so employed during the period of five months beginning at the end of that period, and either the pension abatement condition or the materially different employment condition is met.

(7G) The pension abatement condition is met if—

- (a) the pension scheme is a public service pension scheme, and
- (b) the member's benefits under the scheme consist of or include a scheme pension which is liable to reduction by abatement while the member is employed as mentioned in sub-paragraph (7B)(a) and is under the age of 55.

(7H) The materially different employment condition is met—

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- (a) in a case where the member is employed as mentioned in sub-paragraph (7B) (a) in more than one employment during the period of five months mentioned in sub-paragraph (7F)(b), if each of those employments, and
- (b) otherwise, if the employment in which the member is so employed during that period,

is materially different in nature from the employment in which the member was employed immediately before becoming entitled to the benefits mentioned in sub-paragraph (7)(a).

(7I) For the purposes of sub-paragraph (7D) “employment on compulsory recall” means permanent service—

- (a) under Part 4 of the Reserve Forces Act 1996,
- (b) under Part 5 of that Act,
- (c) under a call-out or recall order made under that Act,
- (d) having been called out or recalled under the Reserve Forces Act 1980, or
- (e) because of any other call-out or recall obligation of an officer.

(7J) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.]

(8) The member’s protected pension age is the age from which the member had an actual or prospective right to <sup>[F61]</sup>any benefit] under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).

(9) But this paragraph does not have effect so as to give the member a protected pension age of more than 50 at any time before 6th April 2010.

#### Textual Amendments

- F55** Words in Sch. 36 para. 22(4)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 54\(5\), 64\(1\)](#)
- F56** Words in Sch. 36 para. 22(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 55\(3\), 64\(1\)](#)
- F57** Sch. 36 para. 22(6)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 55\(4\), 64\(1\)](#)
- F58** Word in Sch. 36 para. 22(7)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 54\(6\)\(a\), 64\(1\)](#)
- F59** Sch. 36 para. 22(7)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 43\(2\)](#)
- F60** Sch. 36 para. 22(7A)-(7J) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 43\(3\)](#)
- F61** Words in Sch. 36 para. 22(8) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 54\(7\), 64\(1\)](#)

- 23 (1) This paragraph applies in relation to a registered pension scheme and a member of the pension scheme if—
- (a) the pension scheme is a protected pension scheme, and
  - (b) the retirement condition is met in relation to the member and the pension scheme.
- (2) A pension scheme is a protected pension scheme if condition A or condition B is met.
- (3) Condition A is met if—

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- (a) the pension scheme was within paragraph (f) or (g) of paragraph 1(1), and
  - (b) the entitlement condition is met in relation to the member and the pension scheme.
- (4) The entitlement condition is met in relation to the member and the pension scheme if—
- (a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to a pension from an age of less than 50, and
  - (b) the member’s occupation was on that date (or had been) one prescribed by regulations made by the Board of Inland Revenue.
- (5) Condition B is met if the member is a member of the pension scheme [<sup>F62</sup>(“a transferee pension scheme”) as a result of—
- (a) a block transfer from the pension scheme (“the original pension scheme”) in relation to which condition A is met to the transferee pension scheme, or
  - (b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.]
- (6) “Block transfer” has the same meaning as in paragraph 22(6).
- (7) The retirement condition is met in relation to the member and the pension scheme if the member becomes entitled to all the pensions payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date.
- (8) The member’s protected pension age is the age from which the member had an actual or prospective right to a pension under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).

#### Textual Amendments

**F62** Words in Sch. 36 para. 23(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 55\(5\), 64\(1\)](#)

[<sup>F63</sup>23A(1) Where—

- (a) paragraph 19 applies to a benefit crystallisation event occurring in relation to an individual, and
  - (b) the benefit crystallisation event consists in the individual becoming entitled to a pension or a pension commencement lump sum,
- paragraph 2(6) of Schedule 29 has effect as if CSLA were the current standard lifetime allowance reduced by the relevant percentage (within the meaning of paragraph 19).
- (2) Sub-paragraph (3) applies where, after the occurrence in relation to an individual of a benefit crystallisation event in relation to which paragraph 19 has had effect, another benefit crystallisation event occurs in relation to the individual.
- (3) If the amount crystallised on the previous benefit crystallisation event exceeded the available amount of the individual's lifetime allowance at the time of that benefit crystallisation event, paragraph 2(6) of Schedule 29 has effect as if, for the purposes

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 36. (See end of Document for details)*

of AAC, the amount crystallised were the available amount of the individual's lifetime allowance at that time.]

#### Textual Amendments

**F63** Sch. 36 para. 23A inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 56, 64\(1\)](#)

#### *Lump sum rights exceeding £375,000: primary and enhanced protection*

- 24 (1) If the lump sum condition and the registration condition are met in relation to an individual—
- (a) paragraphs 27 to 29 (which modify Schedule 29 in relation to pension commencement lump sums), and
  - (b) paragraph 30 (which makes provision about scheme chargeable payments),
- apply in relation to the individual.
- (2) The lump sum condition is met if on 5th April 2006 the amount of an individual's total lump sum rights exceeds £375,000 (25% of the standard lifetime allowance for the tax year 2006-07).
- (3) Paragraph 25 defines the amount of an individual's total lump sum rights on that date.
- (4) The registration condition is met if either or both of the notice requirements is met.
- (5) The first notice requirement is met if notice of intention to rely on paragraph 7 (primary protection) is given to the Inland Revenue in accordance with regulations under that paragraph in relation to the individual.
- (6) The second notice requirement is met if notice of intention to rely on paragraph 12 (enhanced protection) is given to the Inland Revenue in accordance with regulations under that paragraph in relation to the individual.
- 25 (1) The amount of an individual's total lump sum rights on 5th April 2006 is—

$$\frac{\text{VCPR}}{4} + \text{VULSR}$$

where—

VCPR is the value of the individual's relevant crystallised pension rights on 5th April 2006, calculated in accordance with paragraph 10, and

VULSR is the value of the individual's relevant uncrystallised lump sum rights on that date.

- (2) The value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 is the aggregate value of the individual's uncrystallised lump sum rights on that date under each relevant pension arrangement relating to the individual.
- (3) An uncrystallised lump sum right is a right to a lump sum which on 5th April 2006 is prospective (rather than actual).
- (4) An arrangement is a "relevant pension arrangement" if it is an arrangement under a pension scheme within paragraph 1(1).

*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 36. (See end of Document for details)*

- (5) The value of the individual's uncrystallised lump sum rights under an arrangement on 5th April 2006—
- (a) in the case of an arrangement under a pension scheme falling within paragraph 1(1)(f), is 25% of the value of the funds held for the purposes of the arrangement on that date, and
  - (b) in the case of any other arrangement, is an amount calculated in accordance with sub-paragraph (6).
- (6) The amount is the amount of any lump sum to which the individual would have been entitled under the arrangement on 5th April 2006 on the assumption that the individual became entitled to the present payment of a lump sum under the arrangement on that date.
- (7) In calculating an amount in accordance with sub-paragraph (6) the valuation assumptions apply but as if the reference to such age (if any) as must have been reached to avoid any reduction in benefits on account of age in paragraph (a) of section 277 were to the relevant age; and for this purpose “the relevant age” is—
- (a) if on 10th December 2003 the terms of the arrangement made provision for a reduction in the amount of benefits payable in respect of rights under the arrangement on account of the holder of the rights being below a particular age, that age, and
  - (b) otherwise, 60.
- 26 (1) This paragraph applies if any of the individual's uncrystallised lump sum rights on 5th April 2006 are rights under one or more arrangements under a pension scheme or schemes within paragraph 1(1)(a) to (d).
- (2) The value of the individual's uncrystallised lump sum rights on 5th April 2006 under the arrangement, or the aggregate of the values of the individual's uncrystallised lump sum rights on 5th April 2006 under such of the arrangements as relate to a particular employment, is <sup>F64</sup>...—
- (a) the value, or the aggregate of the values, calculated under paragraph 25, <sup>F65</sup>or (if lower)]
  - (b) the maximum permitted lump sum.
- (3) “The maximum permitted lump sum” means
- <sup>F66</sup>(a) in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section <sup>F67</sup>[611A(1)(a)] of ICTA, the maximum lump sum that could be paid to the individual under the pension scheme on 5th April 2006, and
  - (b) in any other case,]
 

the maximum lump sum that could be paid to the individual on 5th April 2006 under the arrangement or arrangements if it or they were made under a pension scheme within paragraph 1(1)(a) without giving the Board of Inland Revenue grounds for withdrawing approval of the pension scheme under section 591B of ICTA.
- (4) For the purposes of sub-paragraph (3) it is to be assumed—
- (a) <sup>F68</sup>[in the case of any arrangement, that] if the individual was in the employment to which the arrangement or arrangements relates or relate on 5th April <sup>F69</sup>[2006] the individual left the employment on that date, and
  - <sup>F70</sup>(aa) in the case of an arrangement within sub-paragraph (3)(a), that the valuation assumptions apply (see section 277),]



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(b) [<sup>F71</sup>in the case of any other arrangement, that] if the individual had not reached the lowest age at which a lump sum may be paid under a pension scheme within paragraph 1(1)(a) to a person in good health without giving the Board of Inland Revenue grounds for withdrawing the approval of the pension [<sup>F72</sup>scheme] that fact would not give the Board such grounds.

(5) Whether an arrangement relating to an individual relates to an employment is to be determined in accordance with paragraph 9(6).

#### Textual Amendments

- F64** Words in Sch. 36 para. 26(2) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(7\)\(a\), 64\(1\)](#), [Sch. 11 Pt. 4](#)
- F65** Words in Sch. 36 para. 26(2)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(7\)\(b\), 64\(1\)](#)
- F66** Words in Sch. 36 para. 26(3) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(8\)](#), 64(1)
- F67** Word in Sch. 36 para. 26(3)(a) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 45](#)
- F68** Words in Sch. 36 para. 26(4)(a) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(9\)\(a\), 64\(1\)](#)
- F69** Word in Sch. 36 para. 26(4)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(9\)\(a\), 64\(1\)](#)
- F70** Sch. 36 para. 26(4)(aa) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(9\)\(b\)](#), 64(1)
- F71** Words in Sch. 36 para. 26(4)(b) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(9\)\(c\), 64\(1\)](#)
- F72** Word in Sch. 36 para. 26(4)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(9\)\(c\), 64\(1\)](#)

- 27 (1) If (and for so long as) paragraph 12 (enhanced protection) applies in relation to the individual, paragraph 2 of Schedule 29 applies in relation to the individual with the following modifications.
- (2) If the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26) was nil, the permitted maximum under paragraph 2 is nil.
- (3) Otherwise, paragraph 2 applies as if for sub-paragraphs (5) to (8) there were substituted—
- “(5) If sub-paragraph (2) does not apply, the permitted maximum is the applicable amount, calculated in accordance with paragraph 3.”
- 28 (1) If paragraph 12 (enhanced protection) does not apply in relation to the individual, paragraph 2 of Schedule 29 applies in relation to the individual with the following modifications.
- (2) If the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26) was nil, the permitted maximum under paragraph 2 is nil.
- (3) Otherwise, paragraph 2 applies as if for sub-paragraphs (5) to (7) there were substituted—
- “(5) If sub-paragraph (2) does not apply, the permitted maximum is the available portion of the member's lump sum allowance.

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- (6) The available portion of the member’s lump sum allowance is—

## VULSR – APCLS

where—

VULSR is the value of the individual’s relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26 of Schedule 36), as adjusted under sub-paragraph (6A), and

APCLS is the aggregate of the amounts of each pension commencement lump sum to which the individual has previously become entitled, as adjusted under sub-paragraph (7) (or, if the individual has not previously become entitled to a pension commencement lump sum, is nil).

- (6A) The adjustment referred to in the definition of VULSR is the multiplication of the value of the individual’s relevant uncrystallised lump sum rights on 5th April 2006 by—

$$\frac{\text{CSLA}}{\text{FSLA}}$$

where—

CSLA is the current standard lifetime allowance, and

FSLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (7) The adjustment of the amount of a pension commencement lump sum to which the individual has previously become entitled referred to in the definition of APCLS is the multiplication of the amount by—

$$\frac{\text{CSLA}}{\text{PSLA}}$$

where—

CSLA is the current standard lifetime allowance, and

PSLA is the standard lifetime allowance at the time the individual became entitled to the lump sum.”

- 29 (1) If (and for so long as) paragraph 12 (enhanced protection) applies in relation to the individual, paragraph 3 of Schedule 29 (applicable amount) applies with the following modifications.

- (2) Paragraph 3 applies as if for sub-paragraphs (1) to (3) there were substituted—

“(1) Where the member becomes entitled to income withdrawal, the applicable amount is—

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$$\frac{\text{VULSR}}{\text{VUR}} \times (\text{LS} + \text{AD})$$

where—

VULSR is the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006, calculated in accordance with paragraphs 25 and 26 of Schedule 36,

VUR is the value of the individual's uncrystallised pension rights on 5th April 2006, calculated in accordance with paragraphs 8 and 9 of that Schedule,

LS is the lump sum paid, and

AD is the aggregate of the amount of the sums, and the market value of the assets, designated as available for the payment of unsecured pension on that occasion.

- (2) For the purposes of sub-paragraph (1) there is to be deducted from the aggregate of the lump sum and the amount of the sums and the market value of the assets designated as available for the payment of unsecured pension so much (if any) of that amount as represents rights which are attributable to a disqualifying pension credit.
- (3) Where the member becomes entitled to a lifetime annuity, the applicable amount is—

$$\frac{\text{VULSR}}{\text{VUR}} \times (\text{LS} + \text{APP})$$

where—

VULSR, VUR and LS have the same meaning as in sub-paragraph (1), and APP is the annuity purchase price.”

- (3) Paragraph 3 applies as if for sub-paragraphs (5) to [F73(7A)] there were substituted—
  - “(5) There is to be deducted from the aggregate of the amount of the lump sum and the annuity purchase price—
    - (a) if the annuity is purchased (in whole or in part) by the application of sums or assets representing the whole or part of the member's unsecured pension fund, the aggregate of the amount of those sums and the market value of those assets, and
    - (b) in any case, so much (if any) of the aggregate of the lump sum and the annuity purchase price as represents rights which are attributable to a disqualifying pension credit.
  - (6) Where the member becomes entitled to a scheme pension [F74 under a defined benefits arrangement], the applicable amount is—

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$$\frac{\text{VULSR}}{\text{VUR}} \times (\text{LS} + \text{AC})$$

but subject to sub-paragraph (8).

(7) In sub-paragraph (6)—

VULSR, VUR and LS have the same meaning as in sub-paragraph (1), and AC is the amount crystallised by reason of the member becoming entitled to the pension (see section 216).

[<sup>F75</sup>(7A) Where the member becomes entitled to a scheme pension under a money purchase arrangement, the applicable amount is (subject to sub-paragraph (8))—

$$\text{VULSRVUR} \times (\text{LS} + \text{SPPP})$$

where—

VULSR, VUR and LS have the same meaning as in sub-paragraph (1), and SPPP is the scheme pension purchase price.”]

#### Textual Amendments

- F73** Word in Sch. 36 para. 29(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 24\(2\)](#)
- F74** Words in Sch. 36 para. 29(3) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 24\(3\)](#)
- F75** Words in Sch. 36 para. 29(3) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 24\(4\)](#)

- 30 (1) Any part of a lump sum falling within paragraph 1 (1) of Schedule 29 which—
- (a) under paragraph 1(2) of that Schedule is not a pension commencement lump sum (because the lump sum exceeds the permitted maximum), and
  - (b) is an unauthorised payment,
- is to be treated as exempt from being scheme chargeable (under section 241(2)) if the condition in sub-paragraph (2) is met.
- (2) The condition is that it would not have been an unauthorised payment if—
- (a) paragraphs 27 and 29 (in the case of an individual in relation to whom paragraph 12 applies), or
  - (b) paragraph 28 (in the case of an individual in relation to whom paragraph 12 does not apply),
- had not applied.

#### *Entitlement to lump sums exceeding 25% of uncrystallised rights*

- 31 (1) If the pension condition is met in relation to an individual and a registered pension scheme which is a protected pension scheme, the provisions of Schedule 29 relating to pension commencement lump sums apply in relation to the individual and the

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pension scheme with the modifications specified in paragraph 34 (but subject to subparagraph (2)).

- (2) Those provisions do not apply with those modifications if the lump sum condition and registration condition in paragraph 24 are met.
- (3) The pension condition is that the individual becomes entitled to all the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) on the same date.
- (4) A registered pension scheme is a protected pension scheme if condition A or condition B is met.
- (5) Condition A is met if—
  - (a) the pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1), and
  - (b) on 5th April 2006 the lump sum percentage of the individual’s uncrystallised rights under the pension scheme exceeded 25%.
- (6) The lump sum percentage of an individual’s uncrystallised pension rights under a pension scheme on 5th April 2006 is—

$$\frac{\text{VULSR}}{\text{VUR}} \times 100$$

where—

VULSR is the value of the individual’s uncrystallised lump sum rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 32, and

VUR is the value of the individual’s uncrystallised rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 33.

- (7) Condition B is met if the individual is a member of the pension scheme [<sup>F76</sup>(“a transferee pension scheme”) as a result of—
  - (a) a block transfer from the pension scheme (“the original pension scheme”) in relation to which condition A is met to the transferee pension scheme, or
  - (b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.]
- (8) “Block transfer” has the same meaning as in paragraph 22(6), but treating the references there to the member as references to the individual.
- (9) Where a pension scheme is a protected pension scheme because condition B is met, Schedule 29 as modified by paragraph 34 applies as if the protected pension scheme were the same pension scheme as the original pension scheme.

#### Textual Amendments

**F76** Words in Sch. 36 para. 31(7) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 55\(6\), 64\(1\)](#)

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**Modifications etc. (not altering text)**

- C16** Sch. 36 para. 31 applied (6.4.2006) by [The Registered Pension Schemes \(Enhanced Lifetime Allowance\) Regulations 2006 \(S.I. 2006/131\)](#), regs. 1, **9(8)**
- C17** Sch. 36 para. 31 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **21, 22**
- C18** Sch. 36 para. 31(3) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **26**

- 32 (1) Subject to sub-paragraph (2), the value of the individual's uncrystallised lump sum rights under the pension scheme on 5th April 2006 is the aggregate of the value of the individual's uncrystallised lump sum rights under each arrangement in respect of the individual under the pension scheme, calculated in accordance with paragraph 25(5), on that date.
- (2) If the pension scheme is a relevant pension scheme, the value of the individual's uncrystallised lump sum rights on 5th April 2006 under an arrangement—
- (a) which relates to a particular employment, and
  - (b) in relation to which the excess lump sum condition is met (see sub-paragraph (5) or (6)),
- is the amount arrived at in accordance with sub-paragraph (7) or (8).
- (3) A pension scheme is a relevant pension scheme if it falls within paragraph 1(1)(a) to (d).
- (4) Whether an arrangement relating to the individual relates to a particular employment is to be determined in accordance with paragraph 9(6).
- (5) If no other arrangement relating to the individual under a relevant pension scheme relates to the employment to which the arrangement relates, the excess lump sum condition is met in relation to the arrangement if—
- (a) the value of the individual's uncrystallised lump sum rights under the arrangement calculated in accordance with paragraph 25(5), exceeds
  - (b) the amount arrived at in relation to the arrangement in accordance with paragraph 26.
- (6) If one or more other arrangements relating to the individual under a relevant pension scheme or relevant pension schemes relates or relate to the employment to which the arrangement relates, the excess lump sum condition is met in relation to the arrangement if—
- (a) the aggregate of the values of the individual's uncrystallised lump sum rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 25(5), exceeds
  - (b) the amount arrived at in relation to those arrangements in accordance with paragraph 26;
- and the amount by which the aggregate of those values exceeds that amount is the "lump sum excess".
- (7) Where the excess lump sum condition is met by virtue of sub-paragraph (5), the value of the individual's uncrystallised lump sum rights under the arrangement is the amount arrived at in accordance with paragraph 26.
- (8) Where the excess lump sum condition is met by virtue of sub-paragraph (6), the value of the individual's uncrystallised lump sum rights under the arrangement is the value

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of those rights calculated in accordance with paragraph 25(5), less the appropriate proportion of the lump sum excess.

(9) The appropriate proportion of the lump sum excess is—

$$\frac{V}{AV}$$

where—

V is the value of the individual's uncrystallised lump sum rights under the arrangement, calculated in accordance with paragraph 25(5), and

AV is the aggregate of the values of the individual's uncrystallised lump sum rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 25(5).

- 33 (1) Subject to sub-paragraph (2), the value of the individual's uncrystallised rights under the pension scheme on 5th April 2006 is the aggregate of the value of the individual's uncrystallised rights under each arrangement in respect of the individual under the pension scheme, calculated in accordance with paragraph 8(5).
- (2) If the pension scheme is a relevant pension scheme, the value of the individual's uncrystallised rights on 5th April 2006 under an arrangement—
- (a) which relates to a particular employment, and
  - (b) in relation to which the excess rights condition is met (see sub-paragraph (5) or (6)),
- is the amount arrived at in accordance with sub-paragraph (7) or (8).
- (3) A pension scheme is a relevant pension scheme if it falls within paragraph 1(1)(a) to (d).
- (4) Whether an arrangement relating to the individual relates to a particular employment is to be determined in accordance with paragraph 9(6).
- (5) If no other arrangement relating to the individual under a relevant pension scheme relates to the employment to which the arrangement relates, the excess rights condition is met in relation to the arrangement if—
- (a) the value of the individual's uncrystallised rights under the arrangement calculated in accordance with paragraph 8(5), exceeds
  - (b) the amount arrived at in relation to the arrangement in accordance with paragraph 9(3).
- (6) If one or more other arrangements relating to the individual under a relevant pension scheme or relevant pension schemes relates or relate to the employment to which the arrangement relates, the excess rights condition is met in relation to the arrangement if—
- (a) the aggregate of the values of the individual's uncrystallised rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 8(5), exceeds
  - (b) the amount arrived at in relation to those arrangements in accordance with paragraph 9(3);

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and the amount by which the aggregate of those values exceeds that amount is the “rights excess”.

- (7) Where the excess rights condition is met by virtue of sub-paragraph (5), the value of the individual’s uncrystallised rights under the arrangement is the amount arrived at in accordance with paragraph 9(3).
- (8) Where the excess rights condition is met by virtue of sub-paragraph (6), the value of the individual’s uncrystallised rights under the arrangement is the value of those rights calculated in accordance with paragraph 8(5), less the appropriate proportion of the rights excess.
- (9) The appropriate proportion of the rights excess is—

$$\frac{V}{AV}$$

where—

V is the value of the individual’s uncrystallised rights under the arrangement, calculated in accordance with paragraph 8(5), and

AV is the aggregate of the values of the individual’s uncrystallised rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 8(5).

- 34 (1) Schedule 29 applies with the following modifications.
- (2) Paragraph 2 applies as if the reference in sub-paragraph (2) to the arrangement under which the member becomes entitled to the relevant pension were to the pension scheme and for sub-paragraphs (5) to (8) there were substituted—

“(5) If paragraph 2(2) does not apply <sup>F77</sup> ..., the permitted maximum is—

$$\left( \text{VULSR} \times \frac{\text{CSLA}}{\text{FSLA}} \right) + \text{ALSA}$$

<sup>F78</sup>(6) .....

(7) In this paragraph—

VULSR is the value of the individual’s uncrystallised lump sum rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 32 of Schedule 36,

CSLA is the current standard lifetime allowance,

FSLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07), and

ALSA is the [<sup>F79</sup>greater of the additional lump sum amount and nil].

(7A) The additional lump sum amount is—



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$$\frac{LS + AC - \left( VUR \times \frac{CSLA}{FSLA} \right)}{4}$$

where—

LS is the lump sum paid (but this is subject to [F80 sub-paragraphs (7AA) and (7B)]),

AC is the amount crystallised on the individual becoming entitled to the pension in connection with which the lump sum is paid (see section 216) (but this is subject to sub-paragraph (7B)), and

VUR is the value of the individual’s uncrystallised rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 33 of Schedule 36.

[F81(7AA) Where the pension in connection with which the lump sum is paid is a scheme pension under a money purchase arrangement, AC is the scheme pension purchase price, as it would be defined by paragraph 3 if the words “but subject to sub-paragraph (8)” in sub-paragraph (7A) and sub-paragraph (8) were omitted.]

(7B) Any part of [F82 what would otherwise be LS or AC] which represents rights attributable to a disqualifying pension credit is to be disregarded.

F78(7C) . . . . .”

(3) Omit paragraph 3 (applicable amount for pension commencement lump sums) [F83 (but without prejudice to its operation for the purposes of paragraph 2(7AA) of Schedule 29 as inserted by sub-paragraph (2))].

#### Textual Amendments

- F77 Words in Sch. 36 para. 34(2) omitted (retrospective to 6.4.2006) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 29 para. 13\(1\)\(a\)\(2\)](#)
- F78 Words in Sch. 36 para. 34(2) omitted (retrospective to 6.4.2006) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 29 para. 13\(1\)\(b\)\(2\)](#)
- F79 Words in Sch. 36 para. 34(2) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 57](#), 64(1)
- F80 Words in Sch. 36 para. 34(2) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 25\(2\)](#)
- F81 Words in Sch. 36 para. 34(2) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 25\(3\)](#)
- F82 Words in Sch. 36 para. 34(2) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 25\(4\)](#)
- F83 Words in Sch. 36 para. 34(3) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 25\(5\)](#)

#### Modifications etc. (not altering text)

- C19 Sch. 36 para. 34 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), 21, 23

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*Winding-up lump sums paid by former approved superannuation funds*

- 35 (1) For the tax year 2006-07, Schedule 29 (authorised lump sums) applies in relation to former approved superannuation funds with the modifications specified in sub-paragraphs (2) and (3).
- (2) Paragraph 10 (winding-up lump sums) applies as if the following were omitted—
- (a) sub-paragraph (1)(c) and (d),
  - (b) sub-paragraph (2), and
  - (c) sub-paragraph (3).
- (3) Paragraph 11 (lifetime allowance excess lump sums) applies as if at the end of paragraph (b) there were inserted “or a winding-up lump sum”.
- (4) Section 636B of ITEPA 2003 (taxation of trivial commutation and winding-up lump sums) applies in relation to a winding-up lump sum paid by a former approved superannuation fund in the tax year 2006-07 as if—
- (a) in subsection (2), after “equal to” there were inserted “75% of”, and
  - (b) subsection (3) were omitted.
- (5) “Former approved superannuation fund” has the meaning given by paragraph 1(3).

**Modifications etc. (not altering text)**

**C20** Sch. 36 paras. 35, 36 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **32**

*Right to payment of lump sum death benefit*

- 36 (1) This paragraph applies to a member of a registered pension scheme if on 5th April 2006—
- (a) the pension scheme is within any of paragraphs (a) to (e) of paragraph 1(1),
  - (b) the member has an actual (rather than a prospective) right to a pension under an arrangement under the pension scheme, and
  - (c) under the arrangement a lump sum death benefit is payable if the member dies within the guarantee period.
- (2) The guarantee period is the period of five years beginning with the day on which the member became entitled to the pension or, if later, the day on which the pension was first paid.
- (3) If the member dies after having reached the age of 75 and before the end of the guarantee period—
- (a) paragraph 14 of Schedule 29 (pension protection lump sum death benefit),
  - (b) paragraph 16 of that Schedule (annuity protection lump sum death benefit), and
  - (c) paragraph 17 of that Schedule (unsecured pension fund lump sum death benefit),
- apply in relation to the member and the arrangement with the following modifications.
- (4) Each of those paragraphs applies as if sub-paragraph (1)(a) were omitted.

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- (5) Paragraph 14 (1) applies as if paragraph (d) were omitted.
- (6) Paragraph 14(2) applies as if the reference to the pension protection limit were to the transitional protection limit.
- (7) Paragraph 16(2) applies as if the reference to the annuity protection limit were to the transitional protection limit.
- (8) Paragraph 17(3) applies in relation to a lump sum falling within paragraph 17 (1) as if the reference to the permitted maximum were to the transitional protection limit.
- (9) Section 206 (1) (special lump sum death benefits charge) does not apply to any pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit paid by virtue of sub-paragraphs (3) to (8).
- (10) If the member dies before having reached the age of 75 and before the end of the guarantee period—
  - (a) section 206 (1) does not apply to so much of any pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit paid under the arrangement as does not exceed the transitional protection limit, and
  - (b) if the arrangement is a defined benefits arrangement, paragraph 14(1)(d) of Schedule 29 is to be treated as satisfied in relation to so much of the lump sum death benefit paid under the arrangement as does not exceed the transitional protection limit.
- (11) The transitional protection limit is—

## $P - TPLS$

where—

P is the amount of pension to which (had the member lived) the member would have been entitled under the arrangement in respect of the period beginning with the day of the member's death and ending with the last day of the guarantee period, and

TPLS is the amount of any pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit previously paid in respect of the pension.

**Modifications etc. (not altering text)**

**C20** Sch. 36 paras. 35, 36 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **32**

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## OTHER PROVISIONS

*Pre-commencement ill-health insurance contracts*

- 37 (1) Payments under protected ill-health insurance contracts are not unauthorised member payments.
- (2) Ill-health insurance contracts are contracts providing insurance against a risk relating to non-payment by a member of a pension scheme of contributions under the pension scheme.
- (3) An ill-health insurance contract is protected if it was made before 6th April 2006 under—
- (a) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA before 6th April 2001, or
  - (b) an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA.

*<sup>F84</sup>Pre-commencement holdings of taxable property***Textual Amendments**

**F84** Sch. 36 paras. 37A-37I and cross-headings inserted (retrospective to 6.4.2006) by [Finance Act 2006](#) (c. 25), s. 158(2), [Sch. 21 para. 15](#)

- 37A (1) This paragraph applies in relation to an investment-regulated pension scheme if—
- (a) on 6th April 2006 the pension scheme holds an interest in taxable property which it acquired before that date, and
  - (b) immediately before that date the pension scheme was not prohibited from holding the interest in the property,
- and, in a case where immediately before that date the interest in the property was held directly by a person other than the pension scheme, if the pension scheme was not prohibited from holding the interest it held in that person at that time.
- (2) This paragraph also applies in relation to an investment-regulated pension scheme if—
- (a) before 6th April 2006 a contract to acquire an interest in property was entered into by the pension scheme or a person in whom the pension scheme directly or indirectly held an interest when the contract was entered into,
  - (b) the pension scheme does not acquire the interest in the property before that date,
  - (c) the property is taxable property on that date, and
  - (d) immediately before that date the pension scheme would not have been prohibited from holding the interest in the property,
- and, in a case where the contract to acquire the interest in the property was entered into by a person in whom the pension scheme directly or indirectly held an interest, if the pension scheme was not prohibited from holding the interest it held in that person immediately before that date.

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- (3) The taxable property provisions (apart from this paragraph and paragraphs 37B to 37E) do not apply in relation to the pension scheme and the interest in the property.
- (4) For the purposes of this Schedule a pension scheme is to be treated as having been prohibited from holding an interest in property, or in a person, immediately before 6th April 2006 if approval could have been withdrawn under section 591B, 620(7) or 650 of ICTA on the basis of the holding of the interest at that time.
- (5) This paragraph is subject to paragraphs 37B to 37E.
- 37B (1) Paragraph 37A ceases to apply to an investment-regulated pension scheme and an interest in taxable property on the relevant date if Condition A, B or C is met.
- (2) Condition A is that there is a change in the occupation or use of the property such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the property at that time.
- (3) Condition B is that—
- (a) the taxable property is residential property on 6th April 2006, and
  - (b) improvement works on the property are begun on or after that date.
- (4) Condition C is that there is a change in the pension scheme's interest in—
- (a) any person who holds the interest in the property directly, or
  - (b) any person who has entered into a contract to acquire the interest in the property,
- such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the person at that time.
- (5) For the purposes of this paragraph the relevant date is—
- (a) where Condition A is met, the date on which the change in the occupation or use of the taxable property takes place,
  - (b) where Condition B is met, the date on which the improvement works are substantially completed, or
  - (c) where Condition C is met, the date on which the change in the pension scheme's interest in the person takes place,
- but where the pension scheme has not acquired the interest in the property by what would otherwise be the relevant date, the relevant date is the date on which it acquires the interest.
- (6) Where Condition A, B or C is met the pension scheme is to be treated for the purposes of the taxable property provisions as acquiring the interest in the property on the relevant date.
- (7) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of the acquisition is—
- (a) the market value on the relevant date of the interest in the property held by the person who holds it directly, or
  - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 of Schedule 29A if it were assigned to the person on that date.
- (8) Where—

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- (a) the pension scheme holds the interest in the property directly, and
  - (b) the interest is not a lease at a rent,
- for the purposes of section 185G (gains from taxable property: disposal by person holding directly) the pension scheme is to be treated as having acquired the interest for a consideration equal to its market value on 6th April 2006.
- (9) For the purposes of sub-paragraph (3)(b) improvement works are to be taken to have been begun before 6th April 2006 only if—
- (a) a binding contract for the works was entered into before that date, or
  - (b) a substantial amount of the works has been carried out before that date.
- (10) For the purposes of this Schedule “improvement works” means, in relation to a property, works which—
- (a) materially improve the property, and
  - (b) are not carried out wholly for the purposes of complying with a statutory requirement or a requirement imposed by a government department, a statutory body or a person holding a statutory office.
- (11) For the purposes of sub-paragraph (10)(a) a property is materially improved by works only if—
- (a) its market value on the date the works are substantially completed (“MVW”) exceeds what would have been its market value on that date if the works had not been carried out (“MV”), and
  - (b) the amount by which MVW exceeds MV is greater than 20% of MV.
- (12) For the purposes of sub-paragraph (10)(b)—
- “statutory body” means a body set up by or under an enactment (including an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament);
  - “statutory office” means a body set up by or under such an enactment; and
  - “statutory requirement” means a requirement imposed by provision made by or under such an enactment.
- (13) This paragraph is subject to paragraph 37D.
- 37C (1) This paragraph applies where—
- (a) on 6th April 2006 an investment-regulated pension scheme holds an interest in taxable property which it acquired before that date, and
  - (b) immediately before that date the pension scheme was prohibited from holding the interest.
- (2) This paragraph also applies where—
- (a) on 6th April 2006 an investment-regulated pension scheme holds an interest in taxable property indirectly which it acquired before that date, and
  - (b) immediately before that date the pension scheme was prohibited from holding the interest it held in the person that held the interest in the property directly at that time.
- (3) The pension scheme is to be treated for the purposes of the taxable property provisions as acquiring the interest in the property on 6th April 2006.

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- (4) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of the acquisition is—
- (a) the market value on 6th April 2006 of the interest in the property held by the person who holds it directly, or
  - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 of Schedule 29A if it were assigned to the person on that date.
- (5) Where—
- (a) the pension scheme holds the interest in the property directly, and
  - (b) the interest is not a lease at a rent,
- for the purposes of section 185G (gains from taxable property: disposal by person holding directly) the pension scheme is to be treated as having acquired the interest for a consideration equal to its market value on 6th April 2006.
- 37D (1) This paragraph applies where—
- (a) sub-paragraph (1) or (2) of paragraph 37A applies in relation to a pension scheme and an interest in property,
  - (b) immediately before 6th April 2006 the pension scheme was a self-invested personal pension scheme or a small self-administered scheme,
  - (c) on that date the pension scheme holds the interest in the property indirectly or (if sub-paragraph (2) of paragraph 37A applies in relation to the pension scheme and the interest in the property) the pension scheme will hold the interest indirectly once it has been acquired pursuant to the contract,
  - (d) the property is residential property on that date, and
  - (e) improvement works on the property were begun after 5th December 2005.
- (2) This paragraph also applies where—
- (a) sub-paragraph (1) or (2) of paragraph 37A applies in relation to a pension scheme and an interest in property,
  - (b) immediately before 6th April 2006 the pension scheme was a small self-administered scheme,
  - (c) on that date the pension scheme holds the interest in the property directly,
  - (d) the pension scheme acquired the interest before 5th August 1991,
  - (e) the property is residential property on 6th April 2006, and
  - (f) improvement works on the property were begun after 5th December 2005.
- (3) If the works are completed on or after 6th April 2006, paragraph 37B applies in relation to the pension scheme and the interest in the property as if the works were begun on or after that date.
- (4) If the works are completed before that date—
- (a) paragraph 37A does not apply in relation to the pension scheme and the interest in the property, and
  - (b) unless the pension scheme has still to acquire the interest in the property on that date, sub-paragraphs (3) to (5) of paragraph 37C apply in relation to the pension scheme and the interest.
- (5) For the purposes of this paragraph improvement works are to be taken to have been begun before 6th December 2005 only if—

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- (a) a binding contract for the works was entered into before that date, or
- (b) a substantial amount of the works has been carried out before that date.

37E (1) This paragraph applies where—

- (a) paragraph 37A would otherwise apply in relation to a pension scheme and an interest in property,
- (b) immediately before 6th April 2006 the pension scheme was a retirement benefits scheme approved under section 590 of ICTA, and
- (c) the pension scheme was approved under that section after 5th December 2005.

(2) Paragraph 37A does not apply in relation to the pension scheme and the interest in the property.

(3) Unless the pension scheme has still to acquire the interest in the property on 6th April 2006, sub-paragraphs (3) to (5) of paragraph 37C apply in relation to the pension scheme and the interest.

*Post-commencement acquisitions of taxable property*

37F (1) This paragraph applies where on or after 6th April 2006 an investment-regulated pension scheme acquires an interest in taxable property consisting of tangible moveable property because a person in whom the pension scheme directly or indirectly holds an interest comes to hold the interest in the property directly.

(2) The taxable property provisions (apart from this paragraph and paragraph 37G) do not apply in relation to the pension scheme and the interest in the property if the conditions in sub-paragraph (3) are met.

(3) Those conditions are that—

- (a) on 6th April 2006 the pension scheme held the interest in the person by virtue of acquiring it before that date,
- (b) immediately before that date the pension scheme was not prohibited from holding the interest in the person,
- (c) at no time during the period beginning with that date and ending immediately before the acquisition of the interest in the property has the pension scheme's interest in the person been such that, if it had held that interest in the person immediately before 6th April 2006, it would have been prohibited from holding that interest at that time, and
- (d) the person acquires the interest in the property so that the property may be used for the purposes of a trade, profession or vocation carried on by the person or for the purposes of its administration or management.

(4) This paragraph is subject to paragraph 37G.

37G (1) Where Condition A or B is met in relation to the pension scheme and an interest in property to which paragraph 37F has applied, the pension scheme is to be treated for the purposes of the taxable property provisions as acquiring the interest in the property on the date on which the Condition is met.

(2) Condition A is that there is a change in the pension scheme's interest in the person who holds the interest in the property directly such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the person at that time.



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- (3) Condition B is that the property ceases to be used for the purposes of—
- (a) a trade, profession or vocation carried on by the person, or
  - (b) its administration or management.
- (4) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of the acquisition is the market value on the relevant date of the interest in the property held by the person.
- 37H (1) This paragraph applies where on or after 6th April 2006 an investment-regulated pension scheme acquires an interest in taxable property consisting of residential property because a person in whom the pension scheme directly or indirectly holds an interest comes to hold the interest in the property directly.
- (2) The taxable property provisions (apart from this paragraph and paragraph 37I) do not apply in relation to the pension scheme and the interest in the property if the conditions in sub-paragraph (3) are met.
- (3) Those conditions are that—
- (a) on 6th April 2006 the pension scheme held the interest in the person by virtue of acquiring it before that date,
  - (b) immediately before that date the pension scheme was not prohibited from holding the interest in the person,
  - (c) immediately before that date the person had a business involving the holding and letting of residential property and held directly five or more assets consisting of interests in residential property for the purposes of that business,
  - (d) at no time during the period beginning with that date and ending immediately before the acquisition of the interest in the property has the pension scheme's interest in the person been such that, if it had held that interest in the person immediately before 6th April 2006, it would have been prohibited from holding that interest at that time,
  - (e) the person acquires the interest in the property for the purposes of its property rental business, and
  - (f) after the acquisition of the interest in the property, the property is not occupied or used by a member of the pension scheme or a person connected with such a member.
- (4) This paragraph is subject to paragraph 37I.
- (5) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.
- 37I (1) Where Condition A, B or C is met in relation to the pension scheme and an interest in property to which paragraph 37H has applied, the pension scheme is to be treated for the purposes of the taxable property provisions as acquiring, on the date on which the Condition is met, each interest in property—
- (a) which it holds on that date, and
  - (b) to which paragraph 37H has applied before that date.
- (2) Condition A is that there is a change in the pension scheme's interest in the person who holds the interest in the property directly such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the person at that time.

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- (3) Condition B is that the property ceases to be used for the purposes of the person's property rental business.
- (4) Condition C is that the property is occupied or used by a member of the pension scheme or a person connected with such a member.
- (5) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of an acquisition of an interest in property treated as made by virtue of this paragraph is—
  - (a) the market value on the relevant date of the interest in the property held by the person who holds it directly, or
  - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 of Schedule 29A if it were assigned to the person on that date.]

*Pre-commencement loans to sponsoring employers*

- 38
- (1) This paragraph applies to a loan if—
    - (a) the loan was made before 6th April 2006 by an occupational pension scheme which becomes a registered pension scheme on that date,
    - (b) had this Part had been in force and had the pension scheme been a registered pension scheme at the time when the loan was made, it would have been a loan to a sponsoring employer, and
    - (c) the date by which the total amount owing (including interest) must be paid is on or after 6th April 2006.
  - (2) If on or after 6th April 2006 there is no alteration in the repayment terms, section 179 (authorised employer loan) does not apply in relation to the loan.
  - (3) If on or after 6th April 2006 there is an alteration in the repayment terms, section 179 applies as if, on the date of the alteration, the pension scheme made a loan to the sponsoring employer of an amount equal to the amount owing (including interest) on that date.
  - (4) The postponement of the date by which the total amount owing (including interest) must be paid is not an alteration in the repayment terms if—
    - (a) an amount is outstanding on the date by which the total amount owing should have been paid,
    - (b) the postponement is for a period not exceeding five years, and
    - (c) there has been no previous postponement on or after 6th April 2006.

*Retirement annuity contracts: carry-back of pre-commencement contributions*

- 39
- The repeal by this Act of section 619(4) of ICTA (election on or before 31st January following tax year in which retirement annuity contract premium is paid to treat premium as paid in earlier tax year) does not prevent the making of an election under that provision (in relation to a premium paid in the tax year 2005-06) at any time on or before 31st January 2007.

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*Members' contributions to pre-commencement retirement annuity contracts*

- 40 (1) Relief in respect of contributions made by a member under pre-commencement retirement annuity arrangements is not required to be given in accordance with section 192 (relief at source).
- (2) If relief in respect of contributions made by a member under pre-commencement retirement annuity arrangements is not given in accordance with section 192, relief in respect of the contributions is to be given in accordance with section 194 (relief on making of claim).
- (3) “Pre-commencement retirement annuity arrangements” means—
- (a) an annuity contract or trust scheme approved under section 620 or 621 of ICTA, or
  - (b) a substituted contract within the meaning of section 622(3) of ICTA.

**Modifications etc. (not altering text)**

**C21** Sch. 36 para. 40(3) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **27(1)(2)(5)**

*Employers' contributions relieved before 6th April 2006*

- 41 To the extent that any contribution paid by an employer under a registered pension scheme was—
- (a) allowed to be deducted for the purposes of [<sup>F85</sup> Part 2 of ITTOIA 2005 (trading income) or] Case I or II of Schedule D,
  - (b) deductible under section 75 of ICTA (expenses of management: companies with investment business), or
  - (c) brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies),
- for a period beginning before 6th April 2006, it is not allowed to be so deducted, so deductible, or available to be so brought into account for that or any other period in accordance with section 196 (relief for employers in respect of contributions paid).

**Textual Amendments**

**F85** Words in Sch. 36 para. 41(a) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 656(2)** (with Sch. 2)

*Spreading of employer's contributions*

- 42 The power of the Board of Inland Revenue under section 592(6) of ICTA to direct that a sum paid under an exempt approved scheme otherwise than by way of ordinary annual contribution be treated as an expense to be spread over such period of years as the Board think fit continues to apply in relation to sums paid before 6th April 2006.

*Taxation of annuities paid under pre-commencement retirement annuity contracts*

<sup>F86</sup>43 .....

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#### Textual Amendments

**F86** Sch. 36 para. 43 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 61\(a\), 64\(2\)](#), [Sch. 11 Pt. 4](#)

#### *Taxation of pensions accruing (but not taxed) pre-commencement and paid or received post-commencement*

- 44 (1) If an amount which accrued but was not paid before 6th April 2006 would have constituted taxable pension income under Chapter 7 of Part 9 of ITEPA 2003 (former approved superannuation fund annuities) had it been paid before that date, it is to be treated for the purposes of Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) as if it accrues when it is paid.
- (2) If an amount which accrued but was not received before 6th April 2006 would have constituted taxable pension income under section 596 of ITEPA 2003 (personal pension annuities) had it been received before that date, it is to be treated for the purposes of Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) as if it accrues when it is received.

#### *Pensions taxed pre-commencement but accruing post-commencement*

- 45 (1) If an amount which was paid but had not accrued before 6th April 2006 constituted taxable pension income under Chapter 7 of Part 9 of ITEPA 2003 (former approved superannuation fund annuities), it does not also constitute taxable pension income under Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) when it accrues.
- (2) If an amount which was received but had not accrued before 6th April 2006 constituted taxable pension income under section 596 of ITEPA 2003 (personal pension annuities), it does not also constitute taxable pension income under Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) when it accrues.

#### *Application of PAYE to certain annuities in payment at commencement*

<sup>F87</sup>46 .....

#### Textual Amendments

**F87** Sch. 36 para. 46 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 61\(b\), 64\(2\)](#), [Sch. 11 Pt. 4](#)

#### *Authorised surplus payments charge: pre-19th March 1986 winding-up*

- 47 Section 207 (authorised surplus payments charge) does not apply to any payment made in pursuance of the winding-up of a pension scheme if the winding-up commenced before 19th March 1986.

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*Annual allowance charge: post-commencement contributions  
to discharge pre-commencement unfunded promises*

- 48 (1) This paragraph applies where, during the period beginning with 6th April 2006 and ending with 7th July 2006, an employer of an individual makes a relevant consolidation contribution in respect of the individual under an arrangement under a registered pension scheme relating to the individual.
- (2) The pension input amount in respect of the arrangement during the pension input period of the arrangement ending in the tax year 2006-07 is to be reduced by the amount of the contribution.
- (3) “Relevant consolidation contribution” means a contribution made by way of discharge of any liability incurred by the employer before 6th April 2006 to pay any pension or lump sum to or in respect of the individual.

*Annual allowance charge: enhanced protection*

- 49 (1) This paragraph applies if notice of intention to rely on paragraph 12 (enhanced protection) is given to the Inland Revenue in accordance with regulations under that paragraph in the case of an individual.
- (2) Sections 227 to 238 (annual allowance charge) do not apply in relation to the individual for any tax year if that paragraph applies in relation to the individual throughout the tax year.

*Saving of sections 605 and 651A of ICTA*

- 50 The repeal by this Act of sections 605 and 651A of ICTA (information powers) does not affect the operation of those sections, or regulations under them, in relation to times before 6th April 2006.

*Individuals with pre-commencement entitlement to corresponding relief*

- 51 (1) This paragraph applies where the Board of Inland Revenue allow contributions made by an individual under a pension scheme as deductions under Chapter 2 of Part 5 of ITEPA 2003 for the tax year 2005-06 in accordance with section 355 of that Act (deductions for corresponding payments by non-domiciled employees with foreign employers).
- (2) Where the individual makes contributions under the pension scheme for any subsequent tax year, the Board of Inland Revenue may allow the contributions as deductions under Chapter 2 of Part 5 of that Act if, as well as the Board of Inland Revenue being satisfied that the conditions in section 355 of that Act are met, the scheme manager complies with any prescribed benefit crystallisation information requirements imposed on the scheme manager.
- (3) Schedule 34 (non-UK schemes: application of certain charges) applies in relation to the pension scheme and the individual as if allowing the contributions as deductions under Chapter 2 of Part 5 of ITEPA 2003 by virtue of sub-paragraph (2) were the giving of relief by virtue of Schedule 33 (overseas pension schemes: migrant member relief).
- (4) “Prescribed benefit crystallisation information requirements” means requirements imposed by or under regulations made by the Board of Inland Revenue to provide to

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the Inland Revenue any information relating to events that are benefit crystallisation events in relation to the individual.

- (5) The references in sub-paragraphs (2) and (3) to the pension scheme include a pension scheme [<sup>F88</sup>(“a transferee pension scheme”) if there has been—
- (a) a block transfer from the pension scheme within sub-paragraph (1) (“the original pension scheme”) to the transferee pension scheme, or
  - (b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.]
- (6) “Block transfer” has the same meaning as in paragraph 22(6), but treating the references there to the member as references to the individual.

#### Textual Amendments

**F88** Words in Sch. 36 para. 51(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 55\(7\), 64\(1\)](#)

#### *Continuing operation of section 392 of ITEPA 2003*

- 52 Section 392 of ITEPA 2003 (non-approved schemes: relief where no benefits are paid or payable) continues to have effect in relation to a sum charged to tax by virtue of section 386 of ITEPA 2003 or section 595 of ICTA (charges on payments to schemes) before 6th April 2006.

#### *Benefits taxable under Chapter 2 of Part 6 of ITEPA 2003: contributions taxed pre-commencement*

- 53 (1) Paragraph 54 or 55 has effect where—
- (a) section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) operates (or would otherwise operate) by reason of the provision of a lump sum under an employer-financed retirement benefits scheme on or after 6th April 2006, and
  - (b) before that date an employer has paid any sum or sums, with a view to the provision of benefits under the scheme, in respect of which an employee is taxed.
- (2) For the purposes of sub-paragraph (1)(a) section 394 of ITEPA 2003 operates if—
- (a) an amount counts as employment income of an individual under that section, or
  - (b) the person who is, or persons who are, the responsible person in relation to the scheme is or are chargeable [<sup>F89</sup>to income tax under subsection (2) of] that section.
- (3) For the purposes of sub-paragraph (1)(b) an employee is taxed in respect of a sum or sums if—
- (a) the employee is assessed to tax by virtue of section 595 (1) of ICTA (charges on payments) in respect of the sum or sums, or
  - (b) the sum or sums counts or count as employment income of the employee under section 386 (1) of ITEPA 2003 (charges on payments).

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- (4) It is to be assumed, unless the contrary is shown, that neither paragraph 54 nor paragraph 55 has effect.

#### Textual Amendments

**F89** Words in Sch. 36 para. 53(2)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 656\(3\)](#) (with Sch. 2)

- 54 (1) This paragraph has effect if—
- (a) all of the income and gains accruing to the scheme are brought into charge to tax and the lump sum is provided to the employee, a relative of the employee, the personal representatives of the employee, an ex-spouse [<sup>F90</sup>or former civil partner] of the employee or any other individual designated by the employee, or
  - (b) the scheme was entered into before [<sup>F91</sup>1st December 1993] and has not been varied on or after that date with a view to the provision of benefits under the scheme.
- (2) In a case where the employer has not paid any sum or sums with a view to the provision of benefits under the scheme since before 6th April 2006, section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) does not apply in relation to the lump sum.
- (3) In a case where the employer has paid any sum or sums with a view to the provision of benefits under the scheme on or after 6th April 2006—
- (a) section 394 of ITEPA 2003 does not apply in relation to so much of the lump sum as does not exceed the appropriate fraction of the amount of the market value of the assets of the scheme on 5th April 2006 as increased under sub-paragraph (4), and
  - (b) only any sum or sums paid by the employee after that date with a view to the provision of benefits under the scheme is or are to be taken into account under section 395 of ITEPA 2003 (general rules).
- (4) For the purposes of sub-paragraph (3)(a)—
- (a) “the appropriate fraction” of the amount of the market value of the assets of the scheme on 5th April 2006 is the same fraction as the fraction of the assets of the scheme to which the employee would have been entitled had the scheme been wound up on that date, and
  - (b) the amount of the market value of the assets of the scheme on that date is to be increased by the percentage by which the retail prices index for the month in which the lump sum is provided is greater than that for April 2006.
- (5) In this paragraph—
- “ex-spouse”, in relation to an employee, means the other party to a marriage with the employee that has been dissolved or annulled, and
  - [<sup>F92</sup>“former civil partner”, in relation to an employee, means the other party to a civil partnership with the employee that has been dissolved or annulled,]
  - “relative”, in relation to an employee, means—
- (a) the [<sup>F93</sup>spouse or civil partner] of the employee,
  - (b) the widow or widower [<sup>F94</sup>or surviving civil partner] of the employee,

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- (c) a child of the employee, or
- (d) a dependant of the employee.

**Textual Amendments**

- F90** Words in Sch. 36 para. 54(1)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **182(a)**
- F91** Words in Sch. 36 para. 54(1)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), **Sch. 23 para. 46**
- F92** Words in Sch. 36 para. 54(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **182(b)(i)**
- F93** Words in Sch. 36 para. 54(5) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **182(b)(ii)(aa)**
- F94** Words in Sch. 36 para. 54(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **182(b)(ii)(bb)**

- 55 (1) This paragraph has effect if paragraph 54 does not.
- (2) Section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) does not apply in relation to so much of the lump sum as does not exceed the sum, or the aggregate of the sums, referred to in paragraph 53(1)(b).
- (3) And the reference in section 395 of that Act (general rules) to the amount of the lump sum is to the amount of the remainder of the lump sum.

*Inheritance tax*

- 56 (1) This paragraph applies in relation to a fund or scheme—
- (a) which is not a registered pension scheme [<sup>F95</sup>, a qualifying non-UK pension scheme] or a superannuation fund to which section 615(3) of ICTA applies, but
  - (b) to which section 151 of the Inheritance Tax Act 1984 (c. 51) (treatment of pension rights) applied immediately before 6th April 2006.
- (2) If no contributions are made under the fund or scheme on or after that date—
- (a) section 151 of the Inheritance Tax Act 1984 continues to apply to the fund or scheme on and after that date for all purposes of that Act, and
  - (b) property which is part of or held for the purposes of the fund or scheme does not constitute relevant property for the purposes of Chapter 3 of Part 3 of that Act (settlements without interest in possession).
- (3) In any other case, paragraphs 57 and 58 apply to the fund or scheme on and after that date.

[<sup>F96</sup>(4) In this paragraph “qualifying non-UK pension scheme” has the same meaning as in the Inheritance Tax Act 1984 (see section 271A of that Act).]

**Textual Amendments**

- F95** Words in Sch. 36 para. 56(1)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2008 \(c. 9\)](#), **Sch. 29 para. 18(7)(a)(8)**



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**F96** Sch. 36 para. 56(4) inserted (retrospective to 6.4.2006) by [Finance Act 2008 \(c. 9\)](#), [Sch. 29 para. 18\(7\)\(b\)\(8\)](#)

57 (1) The [<sup>F97</sup>percentage] of the assets of the fund or scheme which at any time is the protected [<sup>F97</sup>percentage] of those assets does not at that time constitute relevant property for the purposes of Chapter 3 of Part 3 of the Inheritance Tax Act 1984 (settlements without interest in possession).

(2) “The protected [<sup>F98</sup>percentage]” of the assets of the fund or scheme at a time is—

$$\frac{ACV}{V} \times 100$$

where—

V is the market value of the assets of the fund or scheme at that time, and

ACV is the adjusted commencement value, that is an amount equal to the market value of the assets of the fund or scheme on 5th April 2006, but subject to the adjustments provided by sub-paragraph (3).

(3) The adjustments are—

- (a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for April 2006, and
- (b) a reduction by the amount of any relevant payments made under the fund or scheme on or after 6th April 2006 and before that time.

(4) “Relevant payments” are payments other than—

- (a) payments of costs or expenses, or
- (b) payments which are (or will be) income of any person for any of the purposes of income tax.

#### Textual Amendments

**F97** Word in Sch. 36 para. 57(1) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 58\(2\), 64\(1\)](#)

**F98** Word in Sch. 36 para. 57(2) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 58\(2\), 64\(1\)](#)

58 (1) Section 151 of the Inheritance Tax Act 1984 (treatment of pension rights) continues to apply to so much of the assets of the fund or scheme at any time as does not exceed the amount that is the protected amount at that time.

(2) But sub-paragraph (1) does not affect the operation of subsection (1)(d) of section 58 of that Act (because paragraph 57 makes provision about the extent to which the assets of the fund or scheme constitute relevant property within the meaning given by that section).

(3) If inheritance tax has not previously been chargeable (otherwise than only because of this paragraph) by reference to the value of the assets of the fund or scheme on or after 6th April 2006, the protected amount is an amount equal to the amount of the market value of the assets of the fund or scheme on 5th April 2006, but subject to the adjustments provided by sub-paragraph (4).

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- (4) The adjustments are—
- (a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for April 2006, and
  - (b) a reduction by the amount of any relevant payments made under the fund or scheme on or after 6th April 2006 and before that time.
- (5) If inheritance tax would (apart from this paragraph) have previously been chargeable by reference to the value of the assets of the fund or scheme on one or more occasions on or after 6th April 2006, the protected amount is what it was immediately before the occasion, or (where there has been more than one) the last occasion, on which inheritance tax would have been so chargeable (“the relevant tax occasion”), but—
- (a) reduced by the value of the property on which inheritance tax would have been chargeable on the relevant tax occasion, and
  - (b) subject to the adjustments provided by sub-paragraph (6).
- (6) The adjustments are —
- (a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for the month in which the relevant tax occasion fell, and
  - (b) a reduction by the amount of any [<sup>F99</sup>relevant] payments made under the fund or scheme since the relevant tax occasion.
- (7) “Relevant payments” are payments other than—
- (a) payments of costs or expenses, or
  - (b) payments which are (or will be) income of any person for any of the purposes of income tax.

#### Textual Amendments

**F99** Word in Sch. 36 para. 58(6)(b) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 58\(3\), 64\(1\)](#)

**Status:**

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**Changes to legislation:**

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