

## SCHEDULES

### SCHEDULE 20

Section 156

#### INHERITANCE TAX: RULES FOR TRUSTS ETC

##### PART 1

##### “TRUSTS FOR BEREAVED MINORS”, “AGE 18-TO-25 TRUSTS” AND “ACCUMULATION AND MAINTENANCE” TRUSTS

##### *Trusts for bereaved minors and Age 18-to-25 trusts*

1 (1) In IHTA 1984, after section 71 insert—

##### “71A Trusts for bereaved minors

- (1) This section applies to settled property (including property settled before 22nd March 2006) if—
- (a) it is held on statutory trusts for the benefit of a bereaved minor under sections 46 and 47(1) of the Administration of Estates Act 1925 (succession on intestacy and statutory trusts in favour of issue of intestate), or
  - (b) it is held on trusts for the benefit of a bereaved minor and subsection (2) below applies to the trusts,
- but this section does not apply to property in which a disabled person’s interest subsists.
- (2) This subsection applies to trusts—
- (a) established under the will of a deceased parent of the bereaved minor, or
  - (b) established under the Criminal Injuries Compensation Scheme, which secure that the conditions in subsection (3) below are met.
- (3) Those conditions are—
- (a) that the bereaved minor, if he has not done so before attaining the age of 18, will on attaining that age become absolutely entitled to—
    - (i) the settled property,
    - (ii) any income arising from it, and
    - (iii) any income that has arisen from the property held on the trusts for his benefit and been accumulated before that time,
  - (b) that, for so long as the bereaved minor is living and under the age of 18, if any of the settled property is applied for the benefit of a beneficiary, it is applied for the benefit of the bereaved minor, and

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- (c) that, for so long as the bereaved minor is living and under the age of 18, either—
  - (i) the bereaved minor is entitled to all of the income (if there is any) arising from any of the settled property, or
  - (ii) no such income may be applied for the benefit of any other person.
- (4) Trusts such as are mentioned in paragraph (a) or (b) of subsection (2) above are not to be treated as failing to secure that the conditions in subsection (3) above are met by reason only of—
  - (a) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
  - (b) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
  - (c) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
  - (d) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1) (a) of that section, or
  - (e) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (a) to (d) above.
- (5) In this section “the Criminal Injuries Compensation Scheme” means—
  - (a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995,
  - (b) arrangements made by the Secretary of State for compensation for criminal injuries in operation before the commencement of those schemes, and
  - (c) the scheme established under the Criminal Injuries Compensation (Northern Ireland) Order 2002.
- (6) The preceding provisions of this section apply in relation to Scotland as if, in subsection (2) above, before “which” there were inserted “the purposes of”.

### **71B Charge to tax on property to which section 71A applies**

- (1) Subject to subsections (2) and (3) below, there shall be a charge to tax under this section—
  - (a) where settled property ceases to be property to which section 71A above applies, and
  - (b) in a case where paragraph (a) above does not apply, where the trustees make a disposition as a result of which the value of settled property to which section 71A above applies is less than it would be but for the disposition.
- (2) Tax is not charged under this section where settled property ceases to be property to which section 71A applies as a result of—
  - (a) the bereaved minor attaining the age of 18 or becoming, under that age, absolutely entitled as mentioned in section 71A(3)(a) above, or
  - (b) the death under that age of the bereaved minor, or

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- (c) being paid or applied for the advancement or benefit of the bereaved minor.
- (3) Subsections (3) to (8) and (10) of section 70 above apply for the purposes of this section as they apply for the purposes of that section, but—
- (a) with the substitution of a reference to subsection (1)(b) above for the reference in subsection (4) of section 70 above to subsection (2) (b) of that section,
  - (b) with the substitution of a reference to property to which section 71A above applies for each of the references in subsections (3), (5) and (8) of section 70 above to property to which that section applies,
  - (c) as if, for the purposes of section 70(8) above as applied by this subsection, property—
    - (i) which is property to which section 71A above applies,
    - (ii) which, immediately before it became property to which section 71A above applies, was property to which section 71 above applied, and
    - (iii) which, by the operation of section 71(1B) above, ceased on that occasion to be property to which section 71 above applied,had become property to which section 71A above applies not on that occasion but on the occasion (or last occasion) before then when it became property to which section 71 above applied, and
  - (d) as if, for the purposes of section 70(8) above as applied by this subsection, property—
    - (i) which is property to which section 71A above applies,
    - (ii) which, immediately before it became property to which section 71A above applies, was property to which section 71D below applied, and
    - (iii) which, by the operation of section 71D(5)(a) below, ceased on that occasion (“the 71D-to-71A occasion”) to be property to which section 71D below applied,had become property to which section 71A above applies not on the 71D-to-71A occasion but on the relevant earlier occasion.
- (4) In subsection (3)(d) above—
- (a) “the relevant earlier occasion” means the occasion (or last occasion) before the 71D-to-71A occasion when the property became property to which section 71D below applied, but
  - (b) if the property, when it became property to which section 71D below applied, ceased at the same time to be property to which section 71 above applied without ceasing to be settled property, “the relevant earlier occasion” means the occasion (or last occasion) when the property became property to which section 71 above applied.

### **71C Sections 71A and 71B: meaning of “bereaved minor”**

In sections 71A and 71B above “bereaved minor” means a person—

- (a) who has not yet attained the age of 18, and
- (b) at least one of whose parents has died.

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### **71D Age 18-to-25 trusts**

- (1) This section applies to settled property (including property settled before 22nd March 2006), but subject to subsection (5) below, if—
  - (a) the property is held on trusts for the benefit of a person who has not yet attained the age of 25,
  - (b) at least one of the person's parents has died, and
  - (c) subsection (2) below applies to the trusts.
- (2) This subsection applies to trusts—
  - (a) established under the will of a deceased parent of the person mentioned in subsection (1)(a) above, or
  - (b) established under the Criminal Injuries Compensation Scheme, which secure that the conditions in subsection (6) below are met.
- (3) Subsection (4) has effect where—
  - (a) at any time on or after 22nd March 2006 but before 6th April 2008, or on the coming into force of paragraph 3(1) of Schedule 20 to the Finance Act 2006, any property ceases to be property to which section 71 above applies without ceasing to be settled property, and
  - (b) immediately after the property ceases to be property to which section 71 above applies—
    - (i) it is held on trusts for the benefit of a person who has not yet attained the age of 25, and
    - (ii) the trusts secure that the conditions in subsection (6) below are met.
- (4) From the time when the property ceases to be property to which section 71 above applies, but subject to subsection (5) below, this section applies to the property (if it would not apply to the property by virtue of subsection (1) above) for so long as—
  - (a) the property continues to be settled property held on trusts such as are mentioned in subsection (3)(b)(i) above, and
  - (b) the trusts continue to secure that the conditions in subsection (6) below are met.
- (5) This section does not apply—
  - (a) to property to which section 71A above applies,
  - (b) to property to which section 71 above, or section 89 below, applies, or
  - (c) to settled property if a person is beneficially entitled to an interest in possession in the settled property and—
    - (i) the person became beneficially entitled to the interest in possession before 22nd March 2006, or
    - (ii) the interest in possession is an immediate post-death interest, or a transitional serial interest, and the person became beneficially entitled to it on or after 22nd March 2006.
- (6) Those conditions are—

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- (a) that the person mentioned in subsection (1)(a) or (3)(b)(i) above (“B”), if he has not done so before attaining the age of 25, will on attaining that age become absolutely entitled to—
    - (i) the settled property,
    - (ii) any income arising from it, and
    - (iii) any income that has arisen from the property held on the trusts for his benefit and been accumulated before that time,
  - (b) that, for so long as B is living and under the age of 25, if any of the settled property is applied for the benefit of a beneficiary, it is applied for the benefit of B, and
  - (c) that, for so long as B is living and under the age of 25, either—
    - (i) B is entitled to all of the income (if there is any) arising from any of the settled property, or
    - (ii) no such income may be applied for the benefit of any other person.
- (7) For the purposes of this section, trusts are not to be treated as failing to secure that the conditions in subsection (6) above are met by reason only of—
- (a) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
  - (b) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
  - (c) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
  - (d) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1) (a) of that section, or
  - (e) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (a) to (d) above.
- (8) In this section “the Criminal Injuries Compensation Scheme” means—
- (a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995,
  - (b) arrangements made by the Secretary of State for compensation for criminal injuries in operation before the commencement of those schemes, and
  - (c) the scheme established under the Criminal Injuries Compensation (Northern Ireland) Order 2002.
- (9) The preceding provisions of this section apply in relation to Scotland—
- (a) as if, in subsection (2) above, before “which” there were inserted “the purposes of”, and
  - (b) as if, in subsections (3)(b)(ii) and (4)(b) above, before “trusts” there were inserted “purposes of the”.

### **71E Charge to tax on property to which section 71D applies**

- (1) Subject to subsections (2) to (4) below, there shall be a charge to tax under this section—

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- (a) where settled property ceases to be property to which section 71D above applies, or
  - (b) in a case where paragraph (a) above does not apply, where the trustees make a disposition as a result of which the value of the settled property to which section 71D above applies is less than it would be but for the disposition.
- (2) Tax is not charged under this section where settled property ceases to be property to which section 71D above applies as a result of—
- (a) B becoming, at or under the age of 18, absolutely entitled as mentioned in section 71D(6)(a) above,
  - (b) the death, under the age of 18, of B,
  - (c) becoming, at a time when B is living and under the age of 18, property to which section 71A above applies, or
  - (d) being paid or applied for the advancement or benefit of B—
    - (i) at a time when B is living and under the age of 18, or
    - (ii) on B's attaining the age of 18.
- (3) Tax is not charged under this section in respect of—
- (a) a payment of costs or expenses (so far as they are fairly attributable to property to which section 71D above applies), or
  - (b) a payment which is (or will be) income of any person for any of the purposes of income tax or would for any of those purposes be income of a person not resident in the United Kingdom if he were so resident,
- or in respect of a liability to make such a payment.
- (4) Tax is not charged under this section by virtue of subsection (1)(b) above if the disposition is such that, were the trustees beneficially entitled to the settled property, section 10 or section 16 above would prevent the disposition from being a transfer of value.
- (5) For the purposes of this section the trustees shall be treated as making a disposition if they omit to exercise a right (unless it is shown that the omission was not deliberate) and the disposition shall be treated as made at the time or latest time when they could have exercised the right.

### **71F Calculation of tax charged under section 71E in certain cases**

- (1) Where—
- (a) tax is charged under section 71E above by reason of the happening of an event within subsection (2) below, and
  - (b) that event happens after B has attained the age of 18,
- the tax is calculated in accordance with this section.
- (2) Those events are—
- (a) B becoming absolutely entitled as mentioned in section 71D(6)(a) above,
  - (b) the death of B, and
  - (c) property being paid or applied for the advancement or benefit of B.
- (3) The amount of the tax is given by—

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**Chargeable amount × Relevant fraction × Settlement rate**

- (4) For the purposes of subsection (3) above, the “Chargeable amount” is—
- (a) the amount by which the value of property which is comprised in the settlement and to which section 71D above applies is less immediately after the event giving rise to the charge than it would be but for the event, or
  - (b) where the tax is payable out of settled property to which section 71D above applies immediately after the event, the amount which, after deducting the tax, is equal to the amount on which tax would be charged by virtue of paragraph (a) above.
- (5) For the purposes of subsection (3) above, the “Relevant fraction” is three tenths multiplied by so many fortieths as there are complete successive quarters in the period—
- (a) beginning with the day on which B attained the age of 18 or, if later, the day on which the property became property to which section 71D above applies, and
  - (b) ending with the day before the occasion of the charge.
- (6) Where the whole or part of the Chargeable amount is attributable to property that was excluded property at any time during the period mentioned in subsection (5) above then, in determining the “Relevant fraction” in relation to that amount or part, no quarter throughout which that property was excluded property shall be counted.
- (7) For the purposes of subsection (3) above, the “Settlement rate” is the effective rate (that is to say, the rate found by expressing the tax chargeable as a percentage of the amount on which it is charged) at which tax would be charged on the value transferred by a chargeable transfer of the description specified in subsection (8) below.
- (8) The chargeable transfer postulated in subsection (7) above is one—
- (a) the value transferred by which is equal to an amount determined in accordance with subsection (9) below,
  - (b) which is made at the time of the charge to tax under section 71E above by a transferor who has in the period of seven years ending with the day of the occasion of the charge made chargeable transfers having an aggregate value equal to that of any chargeable transfers made by the settlor in the period of seven years ending with the day on which the settlement commenced, disregarding transfers made on that day, and
  - (c) on which tax is charged in accordance with section 7(2) above.
- (9) The amount referred to in subsection (8)(a) above is equal to the aggregate of—
- (a) the value, immediately after the settlement commenced, of the property then comprised in it,
  - (b) the value, immediately after a related settlement commenced, of the property then comprised in it, and
  - (c) the value, immediately after it became comprised in the settlement, of any property which became so comprised after the settlement

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commenced and before the occasion of the charge under section 71E above (whether or not it has remained so comprised).

### **71G Calculation of tax charged under section 71E in all other cases**

- (1) Where—
- (a) tax is charged under section 71E above, and
  - (b) the tax does not fall to be calculated in accordance with section 71F above,
- the tax is calculated in accordance with this section.
- (2) The amount on which the tax is charged is—
- (a) the amount by which the value of property which is comprised in the settlement and to which section 71D above applies is less immediately after the event giving rise to the charge than it would be but for the event, or
  - (b) where the tax is payable out of settled property to which section 71D above applies immediately after the event, the amount which, after deducting the tax, is equal to the amount on which tax would be charged by virtue of paragraph (a) above.
- (3) The rate at which the tax is charged is the rate that would be given by subsections (6) to (8) of section 70 above—
- (a) if the reference to section 70 above in subsection (8)(a) of that section were a reference to section 71D above,
  - (b) if the other references in those subsections to section 70 above were references to section 71E above, and
  - (c) if, for the purposes of section 70(8) above, property—
    - (i) which is property to which section 71D above applies,
    - (ii) which, immediately before it became property to which section 71D above applies, was property to which section 71 applied, and
    - (iii) which ceased on that occasion to be property to which section 71 above applied without ceasing to be settled property,

had become property to which section 71D above applies not on that occasion but on the occasion (or last occasion) before then when it became property to which section 71 above applied.

### **71H Sections 71A to 71G: meaning of “parent”**

- (1) In sections 71A to 71G above “parent” includes step-parent.
- (2) For the purposes of sections 71A to 71G above, a deceased individual (“D”) shall be taken to have been a parent of another individual (“Y”) if, immediately before D died, D had—
- (a) parental responsibility for Y under the law of England and Wales,
  - (b) parental responsibilities in relation to Y under the law of Scotland, or
  - (c) parental responsibility for Y under the law of Northern Ireland.



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(3) In subsection (2)(a) above “parental responsibility” has the same meaning as in the Children Act 1989.

(4) In subsection (2)(b) above “parental responsibilities” has the meaning given by section 1(3) of the Children (Scotland) Act 1995.

(5) In subsection (2)(c) above “parental responsibility” has the same meaning as in the Children (Northern Ireland) Order 1995.”

(2) Sub-paragraph (1) shall be deemed to have come into force on 22nd March 2006.

*Section 71 of IHTA 1984 not to apply to property settled on or after 22nd March 2006*

2 (1) Section 71 of IHTA 1984 (accumulation and maintenance trusts) is amended as follows.

(2) In subsection (1) (settled property to which section applies, subject to subsection (2)), for “subsection” substitute “subsections (1A) to”.

(3) After subsection (1) insert—

“(1A) This section does not apply to settled property at any particular time on or after 22nd March 2006 unless this section—

(a) applied to the settled property immediately before 22nd March 2006, and

(b) has applied to the settled property at all subsequent times up to the particular time.

(1B) This section does not apply to settled property at any particular time on or after 22nd March 2006 if, at that time, section 71A below applies to the settled property.”

(4) Where a chargeable transfer to which section 54A of IHTA 1984 applies was made before 22nd March 2006, that section has effect in relation to that transfer as if references in that section to section 71 of IHTA 1984 were to section 71 of IHTA 1984 without the amendments made by sub-paragraphs (2) and (3).

(5) There is no charge to tax under section 71 of IHTA 1984 in a case where settled property ceases, by the operation of the subsection (1B) inserted into that section by this paragraph, to be property to which that section applies.

(6) Sub-paragraphs (1) to (5) shall be deemed to have come into force on 22nd March 2006.

*Section 71 of IHTA 1984 to cease to apply to certain settled property from 6th April 2008*

3 (1) In section 71(1)(a) of IHTA 1984 (section applies to settled property only if one or more persons will become beneficially entitled on or before reaching a specified age not exceeding 25)—

(a) for “twenty-five” substitute “eighteen”, and

(b) omit “or to an interest in possession in it”.

(2) Sub-paragraph (1) comes into force on 6th April 2008 but only for the purpose of determining whether, at a time on or after that day, section 71 of IHTA 1984 applies to settled property.

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- (3) There is no charge to tax under section 71 of IHTA 1984 in a case where—
- (a) settled property ceases, on the coming into force of sub-paragraph (1), to be property to which that section applies, but
  - (b) that section would immediately after the coming into force of sub-paragraph (1) apply to the settled property but for the amendments made by sub-paragraph (1).

## PART 2

### INTERESTS IN POSSESSION: WHEN SETTLED PROPERTY IS PART OF BENEFICIARY'S ESTATE

#### *Aggregation with person's estate of property in which interest in possession subsists*

- 4 (1) In section 49 of IHTA 1984, after subsection (1) insert—
- “(1A) Where the interest in possession mentioned in subsection (1) above is one to which the person becomes beneficially entitled on or after 22nd March 2006, subsection (1) above applies in relation to that interest only if, and for so long as, it is—
- (a) an immediate post-death interest,
  - (b) a disabled person's interest, or
  - (c) a transitional serial interest.
- (1B) Where the interest in possession mentioned in subsection (1) above is one to which the person became beneficially entitled before 22nd March, subsection (1) above does not apply in relation to that interest at any time when section 71A below applies to the property in which the interest subsists.”
- (2) Sub-paragraph (1) shall be deemed to have come into force on 22nd March 2006.

#### *“Immediate post-death interests” and “transitional serial interests”*

- 5 (1) In IHTA 1984, after section 49 insert—
- “49A Immediate post-death interest**
- (1) Where a person (“L”) is beneficially entitled to an interest in possession in settled property, for the purposes of this Chapter that interest is an “immediate post-death interest” only if the following conditions are satisfied.
  - (2) Condition 1 is that the settlement was effected by will or under the law relating to intestacy.
  - (3) Condition 2 is that L became beneficially entitled to the interest in possession on the death of the testator or intestate.
  - (4) Condition 3 is that—
    - (a) section 71A below does not apply to the property in which the interest subsists, and
    - (b) the interest is not a disabled person's interest.

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- (5) Condition 4 is that Condition 3 has been satisfied at all times since L became beneficially entitled to the interest in possession.

#### **49B Transitional serial interests**

Where a person is beneficially entitled to an interest in possession in settled property, for the purposes of this Chapter that interest is a “transitional serial interest” only—

- (a) if section 49C or 49D below so provides, or
- (b) if, and to the extent that, section 49E below so provides.

#### **49C Transitional serial interest: interest to which person becomes entitled during period 22nd March 2006 to 5th April 2008**

- (1) Where a person (“B”) is beneficially entitled to an interest in possession in settled property (“the current interest”), that interest is a transitional serial interest for the purposes of this Chapter if the following conditions are met.
- (2) Condition 1 is that—
- (a) the settlement commenced before 22nd March 2006, and
  - (b) immediately before 22nd March 2006, the property then comprised in the settlement was property in which B, or some other person, was beneficially entitled to an interest in possession (“the prior interest”).
- (3) Condition 2 is that the prior interest came to an end at a time on or after 22nd March 2006 but before 6th April 2008.
- (4) Condition 3 is that B became beneficially entitled to the current interest at that time.
- (5) Condition 4 is that—
- (a) section 71A below does not apply to the property in which the interest subsists, and
  - (b) the interest is not a disabled person’s interest.

#### **49D Transitional serial interest: interest to which person becomes entitled on death of spouse or civil partner on or after 6th April 2008**

- (1) Where a person (“E”) is beneficially entitled to an interest in possession in settled property (“the successor interest”), that interest is a transitional serial interest for the purposes of this Chapter if the following conditions are met.
- (2) Condition 1 is that—
- (a) the settlement commenced before 22nd March 2006, and
  - (b) immediately before 22nd March 2006, the property then comprised in the settlement was property in which a person other than E was beneficially entitled to an interest in possession (“the previous interest”).
- (3) Condition 2 is that the previous interest came to an end on or after 6th April 2008 on the death of that other person (“F”).

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- (4) Condition 3 is that, immediately before F died, F was the spouse or civil partner of E.
- (5) Condition 4 is that E became beneficially entitled to the successor interest on F's death.
- (6) Condition 5 is that—
  - (a) section 71A below does not apply to the property in which the successor interest subsists, and
  - (b) the successor interest is not a disabled person's interest.

#### **49E Transitional serial interest: contracts of life insurance**

- (1) Where—
  - (a) a person (“C”) is beneficially entitled to an interest in possession in settled property (“the present interest”), and
  - (b) on C's becoming beneficially entitled to the present interest, the settled property consisted of, or included, rights under a contract of life insurance entered into before 22nd March 2006,

the present interest so far as subsisting in rights under the contract, or in property comprised in the settlement that directly or indirectly represents rights under the contract, is a “transitional serial interest” for the purposes of this Chapter if the following conditions are met.

- (2) Condition 1 is that—
  - (a) the settlement commenced before 22nd March 2006, and
  - (b) immediately before 22nd March 2006—
    - (i) the property then comprised in the settlement consisted of, or included, rights under the contract, and
    - (ii) those rights were property in which C, or some other person, was beneficially entitled to an interest in possession (“the earlier interest”).
- (3) Condition 2 is that—
  - (a) the earlier interest came to an end at a time on or after 6th April 2008 (“the earlier-interest end-time”) on the death of the person beneficially entitled to it and C became beneficially entitled to the present interest—
    - (i) at the earlier-interest end-time, or
    - (ii) on the coming to an end, on the death of the person beneficially entitled to it, of an interest in possession to which that person became beneficially entitled at the earlier-interest end-time, or
    - (iii) on the coming to an end of the second or last in an unbroken sequence of two or more consecutive interests in possession to the first of which a person became beneficially entitled at the earlier-interest end-time and each of which ended on the death of the person beneficially entitled to it, or
  - (b) C became beneficially entitled to the present interest—

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- (i) on the coming to an end, on the death of the person entitled to it, of an interest in possession that is a transitional serial interest under section 49C above, or
  - (ii) on the coming to an end of the second or last in an unbroken sequence of two or more consecutive interests in possession the first of which was a transitional serial interest under section 49C above and each of which ended on the death of the person beneficially entitled to it.
- (4) Condition 3 is that rights under the contract were comprised in the settlement throughout the period beginning with 22nd March 2006 and ending with C's becoming beneficially entitled to the present interest.
- (5) Condition 4 is that—
- (a) section 71A below does not apply to the property in which the present interest subsists, and
  - (b) the present interest is not a disabled person's interest.”
- (2) Sub-paragraph (1) shall be deemed to have come into force on 22nd March 2006.

*Disabled persons' trusts: meaning of “disabled person's interest” and “disabled person”*

- 6 (1) After section 89 (trusts for disabled persons) insert—

**“89A Self-settlement by person with condition expected to lead to disability**

- (1) This section applies to property transferred by a person (“A”) into settlement on or after 22nd March 2006 if—
- (a) A was beneficially entitled to the property immediately before transferring it into settlement,
  - (b) A satisfies the Commissioners for Her Majesty's Revenue and Customs that, when the property was transferred into settlement, A had a condition that it was at that time reasonable to expect would have such effects on A as to lead to A becoming—
    - (i) a person falling within section 89(4)(a) above,
    - (ii) in receipt of an attendance allowance mentioned in section 89(4)(b) above, or
    - (iii) in receipt of a disability living allowance mentioned in section 89(4)(c) above by virtue of entitlement to the care component at the highest or middle rate, and
  - (c) the property is held on trusts—
    - (i) under which, during the life of A, no interest in possession in the settled property subsists, and
    - (ii) which secure that Conditions 1 and 2 are met.
- (2) Condition 1 is that if any of the settled property is applied during A's life for the benefit of a beneficiary, it is applied for the benefit of A.
- (3) Condition 2 is that any power to bring the trusts mentioned in subsection (1) (c) above to an end during A's life is such that, in the event of the power being exercised during A's life, either—

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- (a) A or another person will, on the trusts being brought to an end, be absolutely entitled to the settled property, or
  - (b) on the trusts being brought to an end, a disabled person's interest within section 89B(1)(a) or (c) below will subsist in the settled property.
- (4) If this section applies to settled property transferred into settlement by a person, the person shall be treated as beneficially entitled to an interest in possession in the settled property.
- (5) For the purposes of subsection (1)(b)(ii) above, assume—
- (a) that A will meet the conditions as to residence under section 64(1) of whichever of the 1992 Acts is applicable, and
  - (b) that there will be no provision made by regulations under section 67(1) and (2) of that Act.
- (6) For the purposes of subsection (1)(b)(iii) above, assume—
- (a) that A will meet the prescribed conditions as to residence under section 71(6) of whichever of the 1992 Acts is applicable, and
  - (b) that there will be no provision made by regulations under section 72(8) of that Act.
- (7) For the purposes of subsection (3) above, ignore—
- (a) power to give directions as to the settled property that is exercisable jointly by the persons who between them are entitled to the entire beneficial interest in the property, and
  - (b) anything that could occur as a result of exercise of any such power.
- (8) In this section “the 1992 Acts” means—
- the Social Security Contributions and Benefits Act 1992, and
  - the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

### **89B Meaning of “disabled person’s interest”**

- (1) In this Act “disabled person’s interest” means—
- (a) an interest in possession to which a person is under section 89(2) above treated as beneficially entitled,
  - (b) an interest in possession to which a person is under section 89A(4) above treated as beneficially entitled,
  - (c) an interest in possession in settled property (other than an interest within paragraph (a) or (b) above) to which a disabled person becomes beneficially entitled on or after 22nd March 2006, or
  - (d) an interest in possession in settled property (other than an interest within paragraph (a) or (b) above) to which a person (“A”) is beneficially entitled if—
    - (i) A is the settlor,
    - (ii) A was beneficially entitled to the property immediately before transferring it into settlement,
    - (iii) A satisfies Her Majesty’s Commissioners for Revenue and Customs as mentioned in section 89A(1)(b) above,

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- (iv) the settled property was transferred into settlement on or after 22nd March 2006, and
- (v) the trusts on which the settled property is held secure that, if any of the settled property is applied during A's life for the benefit of a beneficiary, it is applied for the benefit of A.

- (2) Subsections (4) to (6) of section 89 above (meaning of “disabled person” in subsection (1) of that section) have effect for the purposes of subsection (1) (c) above as they have effect for the purposes of subsection (1) of that section.
- (3) Section 71D above does not apply to property in which there subsists a disabled person's interest within subsection (1)(c) above (but see also section 71D(5) above).”

(2) In section 89, after subsection (4) insert—

“(5) The reference in subsection (1) above to a disabled person includes, in relation to any settled property, a reference to a person who, when the property was transferred into settlement,—

- (a) would have been in receipt of attendance allowance under section 64 of either of the Acts mentioned in subsection (4)(b) above had provision made by regulations under section 67(1) or (2) of that Act (non-satisfaction of conditions for attendance allowance where person is undergoing treatment for renal failure in a hospital or is provided with certain accommodation) been ignored, or
  - (b) would have been in receipt of disability living allowance by virtue of entitlement to the care component at the highest or middle rate had provision made by regulations under section 72(8) of either of the Acts mentioned in subsection (4)(c) above (no payment of disability living allowance for persons for whom certain accommodation is provided) been ignored.
- (6) The reference in subsection (1) above to a disabled person also includes, in relation to any settled property, a reference to a person who satisfies the Commissioners for Her Majesty's Revenue and Customs—
- (a) that he would, when the property was transferred into settlement, have been in receipt of attendance allowance under section 64 of either of the Acts mentioned in subsection (4)(b) above—
    - (i) had he met the conditions as to residence under section 64(1) of that Act, and
    - (ii) had provision made by regulations under section 67(1) or (2) of that Act been ignored, or
  - (b) that he would, when the property was transferred into settlement, have been in receipt of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate—
    - (i) had he met the prescribed conditions as to residence under section 71(6) of either of the Acts mentioned in subsection (4)(c) above, and
    - (ii) had provision made by regulations under section 72(8) of that Act been ignored.”

(3) Sub-paragraph (1) shall be deemed to have come into force on 22nd March 2006.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Sub-paragraph (2) shall be deemed to have come into force on 22nd March 2006, but only in respect of property transferred into settlement on or after that day.

### PART 3

#### RELATED AMENDMENTS IN IHTA 1984

##### *Commencement*

- 7 The following paragraphs of this Part of this Schedule shall be deemed to have come into force on 22nd March 2006.

##### *Deemed disposition where omission to exercise a right increases value of another person's estate or of settled property not aggregated with a person's estate*

- 8 In section 3(3) of IHTA 1984 (failure to exercise a right treated as disposition if the omission increases the value of another person's estate or the value of settled property in which no interest in possession subsists), for the words from the beginning to "increased" substitute—

“Where the value of a person's estate is diminished, and the value—

- (a) of another person's estate, or
- (b) of any settled property, other than settled property treated by section 49(1) below as property to which a person is beneficially entitled,

is increased”.

##### *Potentially exempt transfers: provision in consequence of section 71 of IHTA 1984 not applying to property settled on or after 22nd March 2006*

- 9 (1) Section 3A of IHTA 1984 (potentially exempt transfers) is amended as follows.
- (2) In subsection (1)(a) (transfer must be one made on or after 18th March 1986), after “1986” insert “but before 22nd March 2006”.
- (3) After subsection (1) insert—
- “(1A) Any reference in this Act to a potentially exempt transfer is also a reference to a transfer of value—
- (a) which is made by an individual on or after 22nd March 2006,
  - (b) which, apart from this section, would be a chargeable transfer (or to the extent to which, apart from this section, it would be such a transfer), and
  - (c) to the extent that it constitutes—
    - (i) a gift to another individual,
    - (ii) a gift into a disabled trust, or
    - (iii) a gift into a bereaved minor's trust on the coming to an end of an immediate post-death interest.



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(1B) Subsections (1) and (1A) above have effect subject to any provision of this Act which provides that a disposition (or transfer of value) of a particular description is not a potentially exempt transfer.”

(4) In subsection (2) (extent to which transfer is a gift to another individual), after “subsection (1)(c)” insert “or (1A)(c)(i)”.

(5) After subsection (3) insert—

“(3A) Subject to subsection (6) below, a transfer of value falls within subsection (1A)(c)(ii) above to the extent that the value transferred is attributable to property which, by virtue of the transfer, becomes settled property to which section 89 below applies.

(3B) A transfer of value falls within subsection (1A)(c)(iii) above to the extent that the value transferred is attributable to settled property (whenever settled) that becomes property to which section 71A below applies in the following circumstances—

- (a) under the settlement, a person (“L”) is beneficially entitled to an interest in possession in the settled property,
- (b) the interest in possession is an immediate post-death interest,
- (c) on or after 22nd March 2006, but during L’s life, the interest in possession comes to an end,
- (d) L is beneficially entitled to the interest in possession immediately before it comes to an end, and
- (e) on the interest in possession coming to an end, the property—
  - (i) continues to be held on the trusts of the settlement, and
  - (ii) becomes property to which section 71A below applies.”

(6) In subsection (7) (application of section in relation to charge to tax under section 52), after “subsection (1)(a)” insert “or (1A)(a)”.

*Person’s “estate” not to include certain interests in possession*

10 (1) Section 5 of IHTA 1984 (meaning of “estate”) is amended as follows.

(2) In subsection (1) (person’s estate is aggregate of all property to which person beneficially entitled, except that person’s estate immediately before death does not include excluded property), for “except that the” substitute “except that—

- (a) the estate of a person—
  - (i) does not include an interest in possession in settled property to which section 71A or 71D below applies, and
  - (ii) does not include an interest in possession that falls within subsection (1A) below, and
- (b) the”.

(3) After subsection (1) insert—

“(1A) An interest in possession falls within this subsection if—

- (a) it is an interest in possession in settled property,
- (b) the settled property is not property to which section 71A or 71D below applies,

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- (c) the person is beneficially entitled to the interest in possession,
- (d) the person became beneficially entitled to the interest in possession on or after 22nd March 2006, and
- (e) the interest in possession is—
  - (i) not an immediate post-death interest,
  - (ii) not a disabled person’s interest, and
  - (iii) not a transitional serial interest.”

*Life assurance policies entered into before 22nd March 2006*

- 11 (1) After section 46 of IHTA 1984 insert—

**“46A Contract of life insurance entered into before 22nd March 2006 which on that day is settled property in which interest in possession subsists**

- (1) Subsections (2) and (4) below apply where—
- (a) a settlement commenced before 22nd March 2006,
  - (b) a contract of life insurance was entered into before that day,
  - (c) a premium payable under the contract is paid, or an allowed variation is made to the contract, at a particular time on or after that day,
  - (d) immediately before that day, and at all subsequent times up to the particular time, there were rights under the contract that—
    - (i) were comprised in the settlement, and
    - (ii) were settled property in which a transitionally-protected interest (whether or not the same such interest throughout that period) subsisted,
  - (e) rights under the contract become, by reference to payment of the premium or as a result of the variation,—
    - (i) comprised in the settlement, and
    - (ii) part of the settled property in which the then-current transitionally-protected interest subsists, and
  - (f) any variation of the contract on or after 22nd March 2006 but before the particular time, so far as it is a variation that—
    - (i) increased the benefits secured by the contract, or
    - (ii) extended the term of the insurance provided by the contract, was an allowed variation.
- (2) For the purposes of the provisions mentioned in subsection (3) below—
- (a) the rights mentioned in subsection (1)(e) above shall be taken to have become comprised in the settlement, and
  - (b) the person beneficially entitled to the then-current transitionally-protected interest shall be taken to have become beneficially entitled to his interest in possession so far as it subsists in those rights, before 22nd March 2006.
- (3) Those provisions are—
- section 3A(2) above;
  - section 5(1A) above;
  - section 49(1A) and (1B) below;

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section 51(1A) and (1B) below;  
section 52(2A) and (3A) below;  
section 53(1A) and (2A) below;  
section 54(2A) and (2B) below;  
section 54A(1A) below;  
section 57A(1A) below;  
section 58(1B) and (1C) below;  
section 59(1) and (2) below;  
section 80(4) below;  
section 100(1A) below;  
section 101(1A) below;  
section 102ZA(1) of the Finance Act 1986 (gifts with reservation); and  
sections 72(1A) and (2A) and 73(2A) of the 1992 Act.

(4) If payment of the premium is a transfer of value made by an individual, that transfer of value is a potentially exempt transfer.

(5) In this section—

“allowed variation”, in relation to a contract, means a variation that takes place by operation of, or as a result of exercise of rights conferred by, provisions forming part of the contract immediately before 22nd March 2006;

“transitionally-protected interest” means—

- (a) an interest in possession to which a person was beneficially entitled immediately before, and on, 22nd March 2006, or
- (b) a transitional serial interest.

**46B Contract of life insurance entered into before 22nd March 2006 which immediately before that day is property to which section 71 applies**

(1) Subsections (2) and (5) below apply where—

- (a) a settlement commenced before 22nd March 2006,
- (b) a contract of life insurance was entered into before that day,
- (c) a premium payable under the contract is paid, or an allowed variation is made to the contract, at a particular time on or after that day,
- (d) immediately before that day, and at all subsequent times up to the particular time, there were rights under the contract that—
  - (i) were comprised in the settlement, and
  - (ii) were settled property to which section 71 below applied,
- (e) rights under the contract become, by reference to payment of the premium or as a result of the variation, comprised in the settlement, and
- (f) any variation of the contract on or after 22nd March 2006 but before the particular time, so far as it was a variation that—
  - (i) increased the benefits secured by the contract, or
  - (ii) extended the term of the insurance provided by the contract, was an allowed variation.

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*Status: This is the original version (as it was originally enacted).*

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- (2) If the rights mentioned in subsection (1)(e) above would, but for subsection (1A) of section 71 below, become property to which that section applies, those rights shall become settled property to which that section applies when they become comprised in the settlement.
- (3) Subsection (5) below also applies where—
- (a) a settlement commenced before 22nd March 2006,
  - (b) a contract of life insurance was entered into before that day,
  - (c) a premium payable under the contract is paid, or an allowed variation is made to the contract, at a particular time on or after that day when there are rights under the contract—
    - (i) that are comprised in the settlement and are settled property to which section 71A or 71D below applies,
    - (ii) that immediately before that day were settled property to which section 71 below applied, and
    - (iii) that on or after that day, but before the particular time, became property to which section 71A or 71D below applies in circumstances falling within subsection (4) below,
  - (d) rights under the contract become, by reference to payment of the premium or as a result of the variation, comprised in the settlement, and
  - (e) any variation of the contract on or after 22nd March 2006 but before the particular time, so far as it was a variation that—
    - (i) increased the benefits secured by the contract, or
    - (ii) extended the term of the insurance provided by the contract, was an allowed variation.
- (4) The circumstances referred to in subsection (3)(c)(iii) above are—
- (a) in the case of property to which section 71D below applies, that the property on becoming property to which section 71D below applies ceased to be property to which section 71 below applied without ceasing to be settled property;
  - (b) in the case of property to which section 71A below applies—
    - (i) that the property on becoming property to which section 71A below applies ceased, by the operation of section 71(1B) below, to be property to which section 71 below applied, or
    - (ii) that the property, having become property to which section 71D below applied in circumstances falling within paragraph (a) above, on becoming property to which 71A below applies ceased, by the operation of section 71D(5)(a) below, to be property to which section 71D below applied.
- (5) If payment of the premium is a transfer of value made by an individual, that transfer of value is a potentially exempt transfer.
- (6) In this section “allowed variation”, in relation to a contract, means a variation that takes place by operation of, or as a result of exercise of rights conferred by, provisions forming part of the contract immediately before 22nd March 2006.”

(2) Sub-paragraph (1) shall be deemed to have come into force on 22nd March 2006.

*Tax where interest in possession ends, or is treated as ending, during beneficiary's life*

12 In section 51 of IHTA 1984 (disposal of interest in possession not a transfer of value, but treated as coming to end of interest), after subsection (1) insert—

“(1A) Where the interest disposed of is one to which the person became beneficially entitled on or after 22nd March 2006, subsection (1) above applies in relation to the disposal only if the interest is—

- (a) an immediate post-death interest,
- (b) a disabled person's interest within section 89B(1)(c) or (d) below, or
- (c) a transitional serial interest.

(1B) Where the interest disposed of is one to which the person became beneficially entitled before 22nd March 2006, subsection (1) above does not apply in relation to the disposal if, immediately before the disposal, section 71A or 71D below applies to the property in which the interest subsists.”

13 (1) Section 52 of IHTA 1984 (tax on termination of interest in possession) is amended as follows.

(2) After subsection (2) insert—

“(2A) Where the interest mentioned in subsection (1) or (2) above is one to which the person became beneficially entitled on or after 22nd March 2006, that subsection applies in relation to the coming to an end of the interest only if the interest is—

- (a) an immediate post-death interest,
- (b) a disabled person's interest, or
- (c) a transitional serial interest.”

(3) After subsection (3) insert—

“(3A) Where the interest mentioned in paragraph (a) of subsection (3) above is one to which the person mentioned in that paragraph became beneficially entitled on or after 22nd March 2006, that subsection applies in relation to the transaction only if the interest is—

- (a) an immediate post-death interest,
- (b) a disabled person's interest, or
- (c) a transitional serial interest.”

14 (1) Section 53 of IHTA 1984 (exceptions from tax charge under section 52) is amended as follows.

(2) After subsection (1) insert—

“(1A) Tax shall not be chargeable under section 52 above if—

- (a) the person whose interest comes to an end became beneficially entitled to the interest before 22nd March 2006,
- (b) the interest comes to an end on or after that day, and
- (c) immediately before the interest comes to an end, section 71A or 71D below applies to the property in which the interest subsists.”

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(3) After subsection (2) insert—

“(2A) Where—

- (a) a person becomes beneficially entitled on or after 22nd March 2006 to an interest in possession in settled property, and
- (b) the interest is not a disabled person’s interest,

subsection (2) above applies in relation to the coming to an end of the interest with the omission of the words “or to another interest in possession in the property”.”

*Non-aggregation with deceased person’s estate of property in which he had interest in possession if property reverts to settlor or passes to settlor’s spouse or civil partner etc*

15 (1) Section 54 of IHTA 1984 (exceptions from charge on death) is amended as follows.

(2) After subsection (2) insert—

“(2A) Where a person becomes beneficially entitled on or after 22nd March 2006 to an interest in possession in settled property, subsections (1) and (2) above apply in relation to the interest only if it is—

- (a) a disabled person’s interest, or
- (b) a transitional serial interest.

(2B) Where—

- (a) a person (“B”) becomes beneficially entitled on or after 22nd March 2006 to an interest in possession in settled property,
- (b) B dies,
- (c) the interest in possession, throughout the period beginning with when B becomes beneficially entitled to it and ending with B’s death, is an immediate post-death interest,
- (d) the settlor died before B’s death but less than two years earlier, and
- (e) on B’s death, the settlor’s widow or widower, or surviving civil partner, becomes beneficially entitled to the settled property and is domiciled in the United Kingdom,

the value of the settled property shall be left out of account in determining for the purposes of this Act the value of B’s estate immediately before his death.”

(3) In subsection (3) (section 53(5) and (6) apply in relation to subsections (1) and (2))—

- (a) for “(1) and (2)” substitute “(1), (2) and (2B)”, and
- (b) at the end add “, but as if the reference in section 53(5)(a) above to section 53(4)(b) above were to subsection (2)(b) or (2B) above.”

*Rate of tax on ending of interest in possession in property settled during settlor’s life*

16 (1) Section 54A of IHTA 1984 (special rate of charge on coming to end of interest in possession in settled property affected by potentially exempt transfer) is amended as follows.

(2) After subsection (1) insert—

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*Status: This is the original version (as it was originally enacted).*

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- “(1A) Where a person becomes beneficially entitled on or after 22nd March 2006 to an interest in possession in settled property, subsection (1)(b) above applies in relation to the person’s death only if the interest is—
- (a) a disabled person’s interest, or
  - (b) a transitional serial interest.”
- (3) In subsection (2) (circumstances in which section applies to a chargeable transfer)—
- (a) in paragraph (c), omit “, other than property to which section 71 below applies”, and
  - (b) in paragraph (d)(i), omit “or to which section 71 below applies”.
- (4) Where a chargeable transfer to which section 54A of IHTA 1984 applies was made before 22nd March 2006, that section has effect in relation to that transfer without the amendments made by sub-paragraph (3).

*Property entering maintenance fund after death of person entitled to interest in possession*

- 17 In section 57A of IHTA 1984 (relief where property enters fund for maintenance of historic buildings etc), after subsection (1) insert—

“(1A) Where the interest mentioned in subsection (1)(a) above is one to which the person became beneficially entitled on or after 22nd March 2006, subsection (2) below does not apply unless, immediately before the person’s death, the interest was—

- (a) an immediate post-death interest,
- (b) a disabled person’s interest, or
- (c) a transitional serial interest.”

*“Relevant property” not to include property held on trust for a bereaved child*

- 18 In section 58(1)(b) of IHTA 1984 (property to which certain sections apply is not relevant property for purposes of Chapter 3 of Part 3), after “71,” insert “71A, 71D,”.

*“Relevant property” to include property held on employee trusts or newspaper trusts if certain interests in possession subsist in the property*

- 19 (1) Section 58 of IHTA 1984 (meaning of “relevant property” in Chapter 3 of Part 3) is amended as follows.

(2) In subsection (1)(b) (which provides that property to which section 86 applies is not relevant property), after “86 below applies” insert “(but see subsection (1A) below)”.

(3) After subsection (1) insert—

“(1A) Settled property to which section 86 below applies is “relevant property” for the purposes of this Chapter if—

- (a) an interest in possession subsists in that property, and
- (b) that interest falls within subsection (1B) or (1C) below.

(1B) An interest in possession falls within this subsection if—

- (a) an individual is beneficially entitled to the interest in possession,
- (b) the individual became beneficially entitled to the interest in possession on or after 22nd March 2006, and

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- (c) the interest in possession is—
  - (i) not an immediate post-death interest,
  - (ii) not a disabled person’s interest, and
  - (iii) not a transitional serial interest.

(1C) An interest in possession falls within this subsection if—

- (a) a company is beneficially entitled to the interest in possession,
- (b) the business of the company consists wholly or mainly in the acquisition of interests in settled property,
- (c) the company has acquired the interest in possession for full consideration in money or money’s worth from an individual who was beneficially entitled to it,
- (d) the individual became beneficially entitled to the interest in possession on or after 22nd March 2006, and
- (e) immediately before the company acquired the interest in possession, the interest in possession was neither an immediate post-death interest nor a transitional serial interest.”

*Certain interests in possession to which a person becomes entitled on or after 22nd March 2006 not to be “qualifying interests in possession” for purposes of Chapter 3 of Part 3 of IHTA 1984*

- 20 (1) Section 59 of IHTA 1984 (settlements without interests in possession: meaning of “qualifying interest in possession”) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) In this Chapter “qualifying interest in possession” means—
- (a) an interest in possession—
    - (i) to which an individual is beneficially entitled, and
    - (ii) which, if the individual became beneficially entitled to the interest in possession on or after 22nd March 2006, is an immediate post-death interest, a disabled person’s interest or a transitional serial interest, or
  - (b) an interest in possession to which, where subsection (2) below applies, a company is beneficially entitled.”
- (3) In subsection (2) (cases where interest in possession to which a company is entitled is a “qualifying” interest), after paragraph (b) insert “, and
- (c) if the individual became beneficially entitled to the interest in possession on or after 22nd March 2006, the interest is an immediate post-death interest, or a disabled person’s interest within section 89B(1)(c) or (d) below or a transitional serial interest, immediately before the company acquires it.”
- (4) Where a chargeable transfer to which section 54A of IHTA 1984 applies was made before 22nd March 2006, that section has effect in relation to that transfer as if in that section “qualifying interest in possession” has the meaning it would have apart from sub-paragraphs (1) to (3).
- (5) In the heading to Chapter 3 of Part 3 of IHTA 1984, at the end add “, AND CERTAIN SETTLEMENTS IN WHICH INTERESTS IN POSSESSION SUBSIST”.



*New meaning of “qualifying interest in possession” not to apply in section 72 of IHTA 1984*

- 21 (1) Section 72 of IHTA 1984 (property leaving employee trusts and newspaper trusts) is amended as follows.
- (2) In subsection (1) (section 72 applies to property to which section 86 applies if no qualifying interest in possession subsists in it), for “if no qualifying interest in possession subsists in it” substitute “if—
- (a) no interest in possession subsists in it to which an individual is beneficially entitled, and
  - (b) no company-purchased interest in possession subsists in it.”
- (3) After subsection (1) insert—
- “(1A) For the purposes of subsection (1)(b) above, an interest in possession is “company-purchased” if—
- (a) a company is beneficially entitled to the interest in possession,
  - (b) the business of the company consists wholly or mainly in the acquisition of interests in settled property, and
  - (c) the company has acquired the interest in possession for full consideration in money or money’s worth from an individual who was beneficially entitled to it.
- (1B) Section 59(3) and (4) above apply for the purposes of subsection (1A)(c) above as for those of section 59(2)(b) above, but as if the references to the condition set out in section 59(2)(a) above were to the condition set out in subsection (1A)(b) above.”

*No charge under sections 71B, 71E etc where property held on trusts for bereaved child becomes held on trusts for charitable purposes etc*

- 22 In section 76(1) of IHTA 1984 (which provides for tax not to be charged under certain provisions of Chapter 3 of Part 3 where property becomes held for charitable purposes etc), after “71,” insert “71A, 71D,”.

*No postponement of commencement date of settlement where property settled on or after 22nd March 2006 unless settlor, or spouse or civil partner, has immediate post-death interest*

- 23 In section 80 of IHTA 1984 (postponement of commencement date of settlement where settlor, or spouse or civil partner or surviving spouse or surviving civil partner, has interest in possession at outset), after subsection (3) insert—
- “(4) Where the occasion first referred to in subsection (1) above occurs on or after 22nd March 2006, this section applies—
- (a) as though for “an interest in possession” in each place where that appears in subsection (1) above there were substituted “a postponing interest”, and
  - (b) as though, for the purposes of that subsection, each of the following were a “postponing interest”—
    - (i) an immediate post-death interest;
    - (ii) a disabled person’s interest.”

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*Status: This is the original version (as it was originally enacted).*

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### *Protective trusts*

24 In section 88 of IHTA 1984 (protective trusts), after subsection (2) insert—

“(3) Where—

- (a) settled property became held before 22nd March 2006 on trusts to the like effect as those specified in section 33(1)(i) of the Trustee Act 1925, and
- (b) as a result of the failure or determination of those trusts on or after 22nd March 2006, the principal beneficiary is treated by subsection (2)(b) above as beneficially entitled to an interest in possession,

this Act shall apply in relation to that interest in possession as if the principal beneficiary became beneficially entitled to that interest in possession before 22nd March 2006.

(4) Subsection (5) below applies where—

- (a) settled property becomes held on or after 22nd March 2006 on trusts to the like effect as those specified in section 33(1)(i) of the Trustee Act 1925,
- (b) the interest of the principal beneficiary under those trusts is—
  - (i) an immediate post-death interest,
  - (ii) a disabled person’s interest within section 89B(1)(c) or (d) below, or
  - (iii) a transitional serial interest, and
- (c) as a result of the failure or determination of those trusts, the principal beneficiary is treated by subsection (2)(b) above as beneficially entitled to an interest in possession.

(5) This Act shall apply—

- (a) as if that interest in possession were a continuation of the immediate post-death interest, disabled person’s interest or transitional serial interest, and
- (b) as if the immediate post-death interest, or disabled person’s interest or transitional serial interest, had not come to an end on the failure or determination of the trusts.

(6) Subsection (2) above does not apply in a case where—

- (a) settled property becomes held on or after 22nd March 2006 on trusts to the like effect as those specified in section 33(1)(i) of the Trustee Act 1925, and
- (b) the interest of the principal beneficiary under those trusts is—
  - (i) not an immediate post-death interest,
  - (ii) not a disabled person’s interest within section 89B(1)(c) or (d) below, and
  - (iii) not a transitional serial interest.”

*Alterations of capital etc of close company where participator holds shares etc in company as trustee of settled property in which an interest in possession subsists*

25 In section 100 of IHTA 1984 (alteration of close company’s capital etc where participator is trustee of settlement under which an individual is beneficially entitled to an interest in possession), after subsection (1) insert—

“(1A) Where the interest in possession is one to which the individual became beneficially entitled on or after 22nd March 2006, this section applies only if the interest in possession is—

- (a) an immediate post-death interest,
- (b) a disabled person’s interest, or
- (c) a transitional serial interest.”

*Close company’s interest in possession treated as interest of its participators*

26 In section 101 of IHTA 1984 (where close company has interest in possession in settled property, its participators are treated for purposes of IHTA 1984 as the persons entitled to the interest), after subsection (1) insert—

“(1A) Where the interest in possession mentioned in subsection (1) above is one to which the company became entitled on or after 22nd March 2006 (whether or not the company was a close company when it became entitled to the interest), subsection (1) above applies in relation to the interest only if it is—

- (a) an immediate post-death interest, or
- (b) a transitional serial interest.

(1B) Subsection (1C) below applies where any of the participators mentioned in subsection (1) above (“the prior participator”) disposes of rights and interests of his in the company to another person (“the later participator”).

(1C) If and so far as the later participator is a participator in the company by virtue of having any of the rights and interests disposed of, subsection (1) above is to be applied to him only as a participator in his own right (in particular, he is not to be treated by virtue of that subsection as having entitlement to the interest in possession as a result of disposal to him of entitlement that the prior participator was treated as having by virtue of that subsection, but this is without prejudice to the application of this Act in relation to the prior participator as the person making the disposal).”

*Distributions within two years of person’s death out of property settled by his will*

27 (1) Section 144 of IHTA 1984 (distribution etc from property settled by will) is amended as follows.

(2) In subsection (1)—

- (a) for “This section applies” substitute “Subsection (2) below applies”, and
- (b) in paragraph (a), for “(apart from this section)” substitute “(apart from subsection (2) below)”.

(3) After subsection (1) insert—

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*Status: This is the original version (as it was originally enacted).*

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“(1A) Where the testator dies on or after 22nd March 2006, subsection (1) above shall have effect as if the reference to any interest in possession were a reference to any interest in possession that is—

- (a) an immediate post-death interest, or
- (b) a disabled person’s interest.”

(4) In subsection (2), for “this section” (in both places) substitute “this subsection”.

(5) After subsection (2) insert—

“(3) Subsection (4) below applies where—

- (a) a person dies on or after 22nd March 2006,
- (b) property comprised in the person’s estate immediately before his death is settled by his will, and
- (c) within the period of two years after his death, but before an immediate post-death interest or a disabled person’s interest has subsisted in the property, there occurs an event that involves causing the property to be held on trusts that would, if they had in fact been established by the testator’s will, have resulted in—
  - (i) an immediate post-death interest subsisting in the property, or
  - (ii) section 71A or 71D above applying to the property.

(4) Where this subsection applies by virtue of an event—

- (a) this Act shall have effect as if the will had provided that on the testator’s death the property should be held as it is held after the event, but
- (b) tax shall not be charged on that event under any provision of Chapter 3 of Part 3 of this Act.

(5) Subsection (4) above also applies where—

- (a) a person dies before 22nd March 2006,
- (b) property comprised in the person’s estate immediately before his death is settled by his will,
- (c) an event occurs—
  - (i) on or after 22nd March 2006, and
  - (ii) within the period of two years after the testator’s death, that involves causing the property to be held on trusts within subsection (6) below,
- (d) no immediate post-death interest, and no disabled person’s interest, subsisted in the property at any time in the period beginning with the testator’s death and ending immediately before the event, and
- (e) no other interest in possession subsisted in the property at any time in the period beginning with the testator’s death and ending immediately before 22nd March 2006.

(6) Trusts are within this subsection if they would, had they in fact been established by the testator’s will and had the testator died at the time of the event mentioned in subsection (5)(c) above, have resulted in—

- (a) an immediate post-death interest subsisting in the property, or
- (b) section 71A or 71D above applying to the property.”

### *Interpretation of IHTA 1984*

28 In section 272 of IHTA 1984 (general interpretation), in the appropriate place insert—

““disabled person’s interest” has the meaning given by section 89B above;”

““immediate post-death interest” means an immediate post-death interest for the purposes of Chapter 2 of Part 3 (see section 49A above);”

““transitional serial interest” means a transitional serial interest for the purposes of Chapter 2 of Part 3 (see section 49B above);”.

## **PART 4**

### RELATED AMENDMENTS IN TCGA 1992

29 (1) TCGA 1992 is amended in accordance with the following paragraphs of this Part of this Schedule.

(2) The following paragraphs of this Part of this Schedule shall be deemed to have come into force on 22nd March 2006.

30 (1) Section 72 (death of person entitled to an interest in possession) is amended as follows.

(2) After subsection (1) insert—

“(1A) Where the interest in possession mentioned in subsection (1) above is one to which the person becomes entitled on or after 22nd March 2006, the first sentence of that subsection applies in relation to that interest only if—

- (a) immediately before the person’s death, the interest falls within subsection (1B) below, or
- (b) the person dies under the age of 18 years and, immediately before the person’s death, section 71D of the Inheritance Tax Act 1984 (age 18-to-25 trusts) applies to the property in which the interest subsists.

(1B) An interest falls within this subsection if—

- (a) the interest is—
  - (i) an immediate post-death interest, within the meaning given by section 49A of the Inheritance Tax Act 1984,
  - (ii) a transitional serial interest, within the meaning given by section 49B of that Act, or
  - (iii) a disabled person’s interest within section 89B(1)(c) or (d) of that Act, or
- (b) section 71A of that Act (trusts for bereaved minors) applies to the property in which the interest subsists.

(1C) Subsection (1A) above does not have effect in relation to the operation of subsection (1) above as applied by subsection (2) below (but see subsection (2A) below).”

(3) After subsection (2) insert—

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*Status: This is the original version (as it was originally enacted).*

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- “(2A) Where the interest in possession mentioned in subsection (2) above is one to which the person becomes entitled on or after 22nd March 2006—
- (a) subsection (2) above, and
  - (b) the first sentence of subsection (1) above as applied by subsection (2) above,
- apply in relation to that interest only if, immediately before the person’s death, the interest falls within subsection (1B)(a) above.”
- 31 In section 73 (no chargeable gain on deemed disposal under section 71(1) where person becomes absolutely entitled on death of person entitled to interest in possession), after subsection (2) insert—
- “(2A) Where the interest in possession referred to in subsection (1) above is one to which the person becomes entitled on or after 22nd March 2006, subsections (1) and (2) above apply in relation to that interest only if—
- (a) immediately before the person’s death, the interest falls within section 72(1B), or
  - (b) the person dies under the age of 18 years and, immediately before the person’s death, section 71D of the Inheritance Tax Act 1984 (age 18-to-25 trusts) applies to the property in which the interest subsists.”
- 32 In section 260(2) (disposals where gain may be held over), after paragraph (d) insert—
- “(da) by virtue of subsection (2) of section 71B of that Act (trusts for bereaved minors) does not constitute an occasion on which inheritance tax is chargeable under that section,
  - (db) by virtue of subsection (2) of section 71E of that Act (age 18-to-25 trusts) does not constitute an occasion on which inheritance tax is charged under that section.”.

## PART 5

### PROPERTY SUBJECT TO A RESERVATION

- 33 (1) FA 1986 is amended as follows.
- (2) After section 102 (gifts with reservation) insert—

**“102ZA Gifts with reservation: termination of interests in possession**

- (1) Subsection (2) below applies where—
- (a) an individual is beneficially entitled to an interest in possession in settled property,
  - (b) either—
    - (i) the individual became beneficially entitled to the interest in possession before 22nd March 2006, or
    - (ii) the individual became beneficially entitled to the interest in possession on or after 22nd March 2006 and the interest is an immediate post-death interest, a disabled person’s interest or a transitional serial interest, and

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*Status: This is the original version (as it was originally enacted).*

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- (c) the interest in possession comes to an end during the individual's life.
- (2) For the purposes of—
  - (a) section 102 above, and
  - (b) Schedule 20 to this Act,the individual shall be taken (if, or so far as, he would not otherwise be) to dispose, on the coming to an end of the interest in possession, of the no-longer-possessed property by way of gift.
- (3) In subsection (2) above “the no-longer-possessed property” means the property in which the interest in possession subsisted immediately before it came to an end, other than any of it to which the individual becomes absolutely and beneficially entitled in possession on the coming to an end of the interest in possession.”
- (3) In Schedule 20 (supplementary rules about gifts with reservation), after paragraph 4 insert—

*“Termination of interests in possession*

- 4A (1) This paragraph applies where—
- (a) under section 102ZA of this Act, an individual (“D”) is taken to dispose of property by way of gift, and
  - (b) the property continues to be settled property immediately after the disposal.
- (2) Paragraphs 2 to 4 above shall not apply but, subject to the following provisions of this paragraph, the principal section and the following provisions of this Schedule shall apply as if the property comprised in the gift consisted of the property comprised in the settlement on the material date, except in so far as that property neither is, nor represents, nor is derived from, property originally comprised in the gift.
- (3) Any property which—
- (a) on the material date is comprised in the settlement, and
  - (b) is derived, directly or indirectly, from a loan made by D to the trustees of the settlement,
- shall be treated for the purposes of sub-paragraph (2) above as derived from property originally comprised in the gift.
- (4) If the settlement comes to an end at some time before the material date as respects all or any of the property which, if D had died immediately before that time, would be treated as comprised in the gift,—
- (a) the property in question, other than property to which D then becomes absolutely and beneficially entitled in possession, and
  - (b) any consideration (not consisting of rights under the settlement) given by D for any of the property to which D so becomes entitled,
- shall be treated as comprised in the gift (in addition to any other property so comprised).

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*Status: This is the original version (as it was originally enacted).*

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- (5) Where, under any trust or power relating to settled property, income arising from that property after the material date is accumulated, the accumulations shall not be treated for the purposes of sub-paragraph (2) above as derived from that property.”
- (4) Sub-paragraphs (1) to (3) shall be deemed to have come into force on 22nd March 2006, but only as respects cases where an interest in possession comes to an end on or after that day.

## PART 6

### CONDITIONAL EXEMPTION: RELIEF FROM CHARGES

- 34 (1) Section 79 of IHTA 1984 (subsection (3) of which provides for charges to tax where, in the case of settled property designated under section 31 on a claim under section 79, an event occurs that would be chargeable under section 32 or 32A if the claim had been under section 30) is amended as follows.
- (2) After subsection (5) (amount on which tax charged under subsection (3)) insert—
- “(5A) Where the event giving rise to a charge to tax under subsection (3) above is a disposal on sale, and the sale—
- (a) was not intended to confer any gratuitous benefit on any person, and
- (b) was either a transaction at arm’s length between persons not connected with each other or a transaction such as might be expected to be made at arm’s length between persons not connected with each other,
- the value of the property at the time of that event shall be taken for the purposes of subsection (5) above to be equal to the proceeds of the sale.”
- (3) For subsection (7) (which provides that the “relevant period” mentioned in subsection (6) begins with the latest of certain listed days and ends with the day before the event giving rise to the charge under subsection (3)) substitute—
- “(7) In subsection (6) above “the relevant period” means the period given by subsection (7A) below or, if shorter, the period given by subsection (7B) below.
- (7A) The period given by this subsection is the period beginning with the latest of—
- (a) the day on which the settlement commenced,
- (b) the date of the last ten-year anniversary of the settlement to fall before the day on which the property became comprised in the settlement,
- (c) the date of the last ten-year anniversary of the settlement to fall before the day on which the property was designated under section 31 above on a claim under this section, and
- (d) 13th March 1975,
- and ending with the day before the event giving rise to the charge.
- (7B) The period given by this subsection is the period equal in length to the number of relevant-property days in the period—



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*Status: This is the original version (as it was originally enacted).*

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(a) beginning with the day that is the latest of those referred to in paragraphs (a) to (d) of subsection (7A) above, and

(b) ending with the day before the event giving rise to the charge.

(7C) For the purposes of subsection (7B) above, a day is a “relevant-property day” if at any time on that day the property was relevant property.”

(4) After subsection (9) insert—

“(9A) Subsection (9B) below applies where the same event gives rise—

(a) to a charge under subsection (3) above in relation to any property,  
and

(b) to a charge under section 32 or 32A above in relation to that property.

(9B) If the amount of each of the charges is the same, each charge shall have effect as a charge for one half of the amount that would be charged apart from this subsection; otherwise, whichever of the charges is lower in amount shall have effect as if it were a charge the amount of which is nil.”