

## SCHEDULES

### SCHEDULE 19

Section 69

#### ALTERNATIVELY SECURED PENSIONS AND TRANSFER LUMP SUM DEATH BENEFIT ETC

##### *Introduction*

1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.

##### *Alternatively secured pension: guaranteed pension and maximum*

- 2 (1) In section 165(1) (pension rules) is amended as follows.
- (2) In pension rule 2 (guaranteed pensions)—
- (a) for “, an annuity or alternatively secured pension” substitute “or an annuity”,  
and
  - (b) for “, annuity or alternatively secured pension” substitute “or annuity”.
- (3) In pension rule 7 (maximum alternatively secured pension), for “70%” substitute “90%”.
- 3 In paragraph 12 of Schedule 28 (pension rules: alternatively secured pension year), omit sub-paragraphs (3) and (4) (guaranteed pensions).

##### *Maximum dependants' alternatively secured pension*

4 In section 167(1) (pension death benefit rules), in pension death benefit rule 6 (maximum dependants' alternatively secured pension), for “70%” substitute “90%”.

##### *Abolition of transfer lump sum death benefit*

- 5 In section 168(1) (lump sum death benefit rule), omit paragraph (g) (transfer lump sum death benefit).
- 6 Omit section 172B(5)(a) (reduction for transfer lump sum death benefit).
- 7 In section 188(5) (amounts not to be treated as contributions), omit paragraph (b) and the word “and” before it.
- 8 In section 280(2) (index), omit the entry relating to transfer lump sum death benefit.
- 9 In Schedule 29, omit paragraph 19 (transfer lump sum death benefit).
- 10 In paragraph 17A of Schedule 36 (“enhanced protection”)—
- (a) in sub-paragraph (1), insert “or” after paragraph (a) and omit paragraph (c) and the word “or” before it, and
  - (b) in sub-paragraph (2), omit “, or to a transfer lump sum death benefit being paid.”.

### *Untraceable members*

- 11 In paragraph 11 of Schedule 28 (member’s alternatively secured pension fund), insert at the end—
- “(6) Sub-paragraph (7) applies if—
- (a) at the time when the member reaches the age of 75, the scheme administrator has been unable to ascertain the member’s whereabouts after having taken all reasonable steps to do so, and
- (b) paragraph 8(2) applies in relation to the member and the arrangement and none of the sums or assets held for the purposes of the arrangement are member-designated funds immediately before it applies.
- (7) In that case the references in sub-paragraphs (2) and (3) to the time when the member reached the age of 75 are to be read as referring to the end of the period of six months beginning with any later date on which the member’s whereabouts are subsequently ascertained by the scheme administrator.”

### *Increase in rights on death*

- 12 (1) Section 172B (increase in rights of connected person on death) is amended as follows.
- (2) In subsection (2)(b), for “, alternatively secured pension fund, dependant’s unsecured pension fund or dependant’s alternatively secured” substitute “or dependant’s unsecured”.
- (3) In subsection (4), for “(6)” substitute “(5)”.
- (4) In subsection (7)(a), after “there” insert “are”.
- (5) After subsection (8) insert—
- “(8A) Nothing in this section applies in relation to the rights representing the member’s unsecured pension fund if those rights would represent the member’s alternatively secured pension fund but for paragraph 11(6) and (7) of Schedule 28.”

- 13 After that section insert—

#### **“172BA Increase in rights on death arising from alternatively secured pension fund etc**

- (1) This section applies if, at any time (“the relevant time”) after the death of a member of a registered pension scheme, another member of the pension scheme becomes entitled to alternatively secured rights.
- (2) “Alternatively secured rights” are rights representing the whole or part of the dead member’s alternatively secured pension fund, or dependant’s alternatively secured pension fund, in respect of an arrangement under the pension scheme.
- (3) The pension scheme is to be treated as making an unauthorised payment to the other member (or to the other member’s personal representatives).

- (4) Subject to subsection (5), the amount of the unauthorised payment is the amount by which—
- (a) the consideration which might be expected to be received in respect of an assignment (or assignation) of the benefits to which the other member is actually or prospectively entitled under the pension scheme immediately after the relevant time, exceeds
  - (b) the consideration which might be expected to be received in respect of such an assignment (or assignation) immediately before the relevant time.
- (5) But that amount is to be reduced by so much (if any) of the excess as arises from the other member becoming entitled to pension death benefits or lump sum death benefits in respect of the dead member.
- (6) This section does not apply if the other member's entitlement to the alternatively secured rights is brought about by an assignment (or agreement to assign) within section 172.
- (7) Rights representing the member's unsecured pension fund are alternatively secured rights for the purposes of this section if they would be rights representing the member's alternatively secured pension fund but for paragraph 11(6) and (7) of Schedule 28."

*Minimum alternatively secured pension and dependants' alternatively secured pension*

14 After section 181 insert—

*“Alternatively secured pensions*

**181A “Minimum level of payment**

- (1) The total amount of alternatively secured pension paid to a member of a registered pension scheme in each alternatively secured pension year in respect of a money purchase arrangement under the pension scheme must be at least 55% of the basis amount for the alternatively secured pension year (but subject to subsection (5)).
- (2) The total amount of dependants' alternatively secured pension paid to a dependant of a member of a registered pension scheme in each alternatively secured pension year in respect of a money purchase arrangement under the pension scheme must be at least 55% of the basis amount for the alternatively secured pension year (but subject to subsection (5)).
- (3) If subsection (1) or (2) is not complied with in an alternatively secured pension year in the case of any arrangement under a registered pension scheme, the pension scheme is to be treated as having made a scheme chargeable payment when the alternatively secured pension year ends.
- (4) The amount of the scheme chargeable payment is the difference between—
  - (a) the total amount of alternatively secured pension paid to the member, or of the dependants' alternatively secured pension paid to the dependant, in respect of the arrangement in the alternatively secured pension year, and

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- (b) 55% of the basis amount for the alternatively secured pension year, (or, if nothing is so paid, 55% of the basis amount for the alternatively secured pension year).
  - (5) Subsection (1) or (2) does not apply in relation to an alternatively secured pension year if—
    - (a) it is the alternatively secured pension year ending immediately before the death of the member or dependant, or
    - (b) in the alternatively secured pension year the member’s alternatively secured pension fund, or the dependant’s alternatively secured pension fund, in respect of the arrangement is applied on pension or annuity provision (see subsection (6)).
  - (6) The member’s alternatively secured pension fund, or the dependant’s alternatively secured pension fund, in respect of the arrangement is applied on pension or annuity provision if all of the sums and assets representing it are applied in one or more of the following ways—
    - (a) towards the provision of a scheme pension or dependants' scheme pension;
    - (b) to purchase a scheme pension or dependants' scheme pension;
    - (c) to purchase a lifetime annuity or dependants' annuity.
  - (7) Part 1 of Schedule 28 gives the meaning of expressions used in this section so far as it relates to alternatively secured pension; and Part 2 of that Schedule gives the meaning of expressions used in this section so far as it relates to dependants' alternatively secured pension.”
- 15 In section 241(1) (scheme chargeable payment), after paragraph (a) insert—
- “(aa) a scheme chargeable payment which the pension scheme is to be treated as having made by section 181A (minimum alternatively secured pension etc), and”.

*Charity lump sum death benefit*

- 16 (1) Paragraph 18 of Schedule 29 (charity lump sum death benefit) is amended as follows.
- (2) In sub-paragraph (1)(c), for “income withdrawal to which the member was entitled” substitute “the member’s alternatively secured pension fund (or what would be the member’s alternatively secured pension fund but for paragraph 11(6) and (7) of Schedule 28)”.
  - (3) In sub-paragraph (1)(d), insert at the end “(or, if the member made no nomination, selected by the scheme administrator).”
  - (4) In sub-paragraph (2)(d), for “dependants' income withdrawal to which the member was entitled” substitute “the dependant’s alternatively secured pension fund”.
  - (5) In sub-paragraph (2)(e), for “(or, if the member made no nomination, by the dependant).” substitute “or, if the member made no nomination, by the dependant (or, if neither the member nor the dependant made a nomination, selected by the scheme administrator).”
  - (6) In sub-paragraph (4), after “representing” insert “what is (or but for paragraph 11(6) and (7) of Schedule 28 would be)”.

*Discharge of liability to scheme chargeable payment*

- 17 In section 268(6) (unauthorised payments surcharge and scheme chargeable payments), for “(assignment)” substitute “, 172A, 172B, 172BA, 172C or 172D or arises under section 181A”.

*Non-UK schemes*

- 18 (1) Schedule 34 (non-UK schemes application of certain charges) is amended as follows.
- (2) In paragraph 1(6), omit the words from “but also” to the end.
- (3) In paragraph 4(3), omit the words from “but also” to the end.
- (4) After paragraph 7 insert—

*“Unauthorised payment charge: alternatively secured pension etc*

7ZA The Commissions for Her Majesty’s Revenue and Customs may by regulations make provision for—

- (a) a relieved member of a relevant non-UK scheme, or
- (b) a transfer member of such a scheme,

to be liable to the unauthorised payment charge in circumstances which are the same as or similar to those in which the scheme administrator of such a scheme is liable to the scheme sanction charge by virtue of section 181A (minimum alternatively and dependants’ alternatively secured pension).”

*Inheritance tax*

- 19 IHTA 1984 is amended as follows.
- 20 (1) Section 151A (person dying with alternatively secured pension fund) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) Tax shall be charged on the relevant amount as if it were part of the value transferred by the transfer of value made on the member’s death at the rate or rates at which it would be charged if it formed the highest part of that value.”
- (3) In subsection (3)(a), after “death” insert “but reduced by the amount of any previously charged income tax”.
- (4) After subsection (4) insert—
- “(4A) In subsection (3)(a) above “the amount of any previously charged income tax” means the amount of any liability to income tax which (after the member’s death but before the time when tax is charged on the transfer of value treated as made by the member on death) has arisen by virtue of the making of an unauthorised member payment under Part 4 of the Finance Act 2004 relating to the member’s alternatively secured pension fund.
- (4B) Subsection (4C) below applies where the maximum that could be transferred by the chargeable transfer made (under section 4 above) on the member’s

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death if it were to be wholly chargeable to tax at the rate of nil per cent. exceeds—

- (a) the value actually transferred by that chargeable transfer (or nil if there is no such chargeable transfer), less
  - (b) any previously untaxed alternatively secured pension fund amount.
- (4C) Where this subsection applies, tax is to be charged on the previously untaxed alternatively secured pension fund amount as if the nil rate band maximum were—

$$\frac{\text{UNRB} \times 100}{100 - \text{MUPR}}$$

where—

UNRB is the unused nil-rate band, that is the excess mentioned in subsection (4B) above, and

MUPR is the maximum unauthorised payment rate, that is the maximum aggregate rate at which tax is chargeable under Part 4 of the Finance Act 2004 in respect of an unauthorised member payment.”

- (5) In subsection (5), at the end of the definition of “dependants' unsecured pension” (but before “and”) insert—

“previously untaxed alternatively secured pension fund amount” means so much of the aggregate mentioned in subsection (3)(a) above as has not given rise to any liability to tax by virtue of Part 4 of the Finance Act 2004 before tax is charged on the transfer treated as made by the member on death.”

- (6) After that subsection insert—

“(6) This section applies in relation to a member who would have an alternatively secured pension fund immediately before death but for sub-paragraphs (6) and (7) of paragraph 11 of Schedule 28 to the Finance Act 2004 as if those sub-paragraphs were omitted (but subject as follows).

(7) In the case of such a member the references in subsection (3)(a) and (b) to the member’s death are to the date on which the scheme administrator becomes aware of the member’s death.”

- 21 (1) Section 151B (relevant dependant with pension fund inherited from member over 75) is amended as follows.
- (2) In subsection (1)(b), after “before his death” insert “(or would have but for paragraph 11(6) and (7) of Schedule 28 to the Finance Act 2004)”.
- (3) Omit subsection (5).

- 22 After that section insert—

**“151BA Rate or rates of charge under section 151B**

- (1) Tax charged under section 151B above shall be charged at the rate or rates at which it would be charged on the death of the member if the amount mentioned in subsection (3) of that section (as reduced under subsection (4) of that section) (“the taxable amount”) had been included in the aggregate mentioned in section 151A(3)(a) above (but subject as follows).

- (2) The rate or rates at which tax is charged on the taxable amount shall be determined as if the taxable amount had formed the very highest part of the value of the member's estate immediately before the member's death (above any amount which is part of that value apart from this section).
- (3) The rate or rates at which tax is charged on the taxable amount shall be determined on the assumptions that—
- (a) subsection (3)(b) of section 151A above were omitted, and
  - (b) the references in subsections (4A) and (5) of that section to the time when tax is charged on the transfer treated as made by the member on death were to the time when tax is charged under this section.
- (4) Subsection (5) below applies where, before the time when the dependant dies or ceases to be a relevant dependant, there have been one or more reductions of tax by virtue of the coming into force of a substitution of a new Table in Schedule 1 to this Act since the member's death.
- (5) The rate or rates at which tax is charged under section 151B above is to be determined as if the new Table effecting the reduction of tax (or the most recent reduction of tax) had been in force at the time of the member's death."
- 23 (1) Section 151C (dependant dying with other pension fund) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) Tax shall be charged on the relevant amount as if it were part of the value transferred by the transfer of value made on the dependant's death at the rate or rates at which it would be charged if it formed the highest part of that value.”
- (3) In subsection (3)(a), after “death” insert “but reduced by the amount of any previously charged income tax”.
- (4) After that subsection insert—
- “(3A) In subsection (3)(a) above “the amount of any previously charged income tax” means the amount of any liability to income tax which (after the dependant's death but before the time when tax is charged on the transfer of value treated as made by the dependant on death) has arisen by virtue of the making of an unauthorised member payment under Part 4 of the Finance Act 2004 relating to the dependant's alternatively secured pension fund.
- (3B) Subsection (3C) below applies where the maximum that could be transferred by the chargeable transfer made (under section 4 above) on death if it were to be wholly chargeable to tax at the rate of nil per cent. exceeds—
- (a) the value actually transferred by that chargeable transfer, less
  - (b) any previously untaxed dependant's alternatively secured pension fund amount.
- (3C) Where this subsection applies, tax is to be charged on the previously untaxed dependant's alternatively secured pension fund amount as if the nil rate band maximum were—

$$\frac{\text{UNRB} \times 100}{100 \text{ MUPR}}$$

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where—

UNRB is the unused nil rate band, that is the excess mentioned in subsection (3B) above; and

MUPR is the maximum unauthorised payment rate, that is the maximum aggregate rate at which tax is chargeable under Part 4 of the Finance Act 2004 in respect of an unauthorised member payment.

(3D) The relevant amount is to be reduced by the aggregate of so much of the sums and the value of the assets of the dependant’s alternatively secured pension fund as arises, or (directly or indirectly) derives, from sums or assets forming part of an alternatively secured pension fund of the member which were designated as available for the payment of—

- (a) dependants' unsecured pension, or
  - (b) dependants' alternatively secured pension,
- to the dependant under the arrangement.”

(5) In subsection (4), omit “and” at the end of the definition of “dependant” and insert at the end—

““previously untaxed dependant’s alternatively secured pension fund amount” means so much of the aggregate mentioned in subsection (3)(a) above as has not given rise to any liability to tax by virtue of Part 4 of the Finance Act 2004 before tax is charged on the transfer treated as made by the dependant on death.”

24 In section 216(6)(ac) (delivery of account)—

- (a) after “occurs” insert “, the scheme administrator becomes aware of the death”, and
- (b) insert at the end “(depending on which occasions the charge)”.

25 In section 226(4) (payment), after “Act” insert “, or under section 151A above by virtue of subsection (6) of that section,”.

26 In section 233(1)(c) (interest on unpaid tax), after “Act” insert “, or under section 151A above by virtue of subsection (6) of that section,”.

27 In Schedule 2 (provisions applying on reduction of tax), omit paragraph 6A.

#### *Consequential amendment*

28 (1) Section 636A of ITEPA 2003 (exemption for certain lump sums under registered pension schemes) is amended as follows.

(2) In subsection (1)—

- (a) insert “or” at the end of paragraph (d), and
- (b) omit paragraph (f) and the word “or” before it.

(3) In subsection (7), omit ““transfer lump sum death benefit”,”.

#### *Commencement*

29 (1) The amendments made by paragraphs 2(2) and 3 have effect in relation to deaths of members of registered pension schemes occurring on or after 6th April 2007.



- (2) The amendments made by paragraphs 2(3), 4, 14 and 15 have effect for alternatively secured pension years beginning on or after 6th April 2007.
- (3) The amendments made by paragraphs 5 to 10, 18(2) and (3) and 28 have effect in relation to lump sum death benefits paid in respect of members of schemes whose deaths occur on or after 6th April 2007.
- (4) The amendments made by paragraphs 11, 12(5) and 16(2), (4) and (6) are deemed to have come into force on 6th April 2006.
- (5) The amendments made by paragraphs 12(2) and 13 have effect in relation to members of registered pension schemes becoming entitled to alternatively secured rights on or after 6th April 2007 in respect of members whose deaths occur on or after that date.
- (6) The amendments made by paragraph 16(3) and (5) have effect in relation to charity lump sum death benefits paid on or after 6th April 2007.
- (7) The amendment made by paragraph 17 is deemed to have come into force on 6th April 2007.
- (8) The amendments made by paragraphs 19 to 27 have effect in relation to deaths, cases where scheme administrators become aware of deaths and cessations of dependency occurring on or after 6th April 2007.