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SCHEDULES

SCHEDULE 7

PENSION SCHEMES

Liabilities of trustees appointed by Pensions Regulator etc

- 17 In section 255 (assessments under Part) in subsection (1) after paragraph (e) insert—
- “(ea) liability under section 272C (former scheme administrator to retain liability in cases involving independent trustees etc),”.
- 18 In section 272 (trustees etc liable as scheme administrator) in subsection (4) after “applying in relation to the pension scheme” insert “or by reason of section 272C(7) applying in relation to a liability”.
- 19 After section 272 insert—

“272A Liabilities of independent trustee

- (1) This section applies in relation to a person (“P”) who is an independent trustee of a registered pension scheme.
- (2) For the purposes of this section and section 272B an “independent trustee” is a trustee of a pension scheme—
- (a) who is appointed by, or otherwise pursuant to, an order made—
- (i) by the Pensions Regulator under section 7 of the Pensions Act 1995 or Article 7 of the Pensions (Northern Ireland) Order 1995 (appointment of trustees by the Pensions Regulator), or
- (ii) by a court on an application made by the Pensions Regulator, and
- (b) who is not a trustee of the pension scheme at any time before—
- (i) the day on which the trustee's appointment as mentioned in paragraph (a) takes effect, or
- (ii) if the trustee is appointed as mentioned in paragraph (a) on more than one occasion, the day on which the first appointment takes effect.
- (3) In this section “the relevant day” means—
- (a) the day on which P's appointment as trustee of the pension scheme as mentioned in subsection (2)(a) takes effect, or
- (b) if P is appointed as trustee of the pension scheme as mentioned in subsection (2)(a) on more than one occasion, the day on which P's first appointment takes effect.

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- (4) If P is, or is one of the persons who are, the scheme administrator, P does not assume any liability falling within subsection (7) which P would otherwise assume (including by reason of section 272C(3) or (4)).
- (5) Subsection (4) does not apply if P is, or is one of the persons who are, the scheme administrator at any time before the relevant day.
- (6) In relation to any liability falling within subsection (7), in section 272(4) references to trustees or to persons who control the management of the pension scheme do not include P.
- (7) The liabilities falling within this subsection are—
- (a) liabilities for the following in respect of payments made (or treated as having been made) by the pension scheme on or before the relevant day—
 - (i) the short service refund lump sum charge;
 - (ii) the serious ill-health lump sum charge;
 - (iii) the special lump sum death benefits charge;
 - (iv) the authorised surplus payments charge;
 - (v) the scheme sanction charge in respect of scheme chargeable payments falling within section 241(1)(a) or (b);
 - (b) liabilities for the lifetime allowance charge in respect of benefit crystallisation events occurring on or before the relevant day;
 - (c) liabilities for the scheme sanction charge in respect of scheme chargeable payments treated under section 185A or 185F as having been made by the pension scheme in tax years earlier than the one in which the relevant day falls;
 - (d) any liability for the scheme sanction charge in respect of the relevant fraction of any scheme chargeable payment treated under section 185A as having been made by the pension scheme in the tax year in which the relevant day falls;
 - (e) where the pension scheme is treated under section 185F as having made a scheme chargeable payment in the tax year in which the relevant day falls and there is a relevant net gain, any liability for the scheme sanction charge in respect of the relevant amount;
 - (f) any liability to pay interest in respect of a liability mentioned in paragraphs (a) to (e) arising at any time.
- (8) For the purposes of subsection (7)(d) “the relevant fraction” is—

$$\frac{A}{B}$$

where—

A is the number of days in the tax year up to (and including) the relevant day, and

B is the number of days in the tax year.

- (9) For the purposes of subsection (7)(e)—

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- (a) there is a “relevant net gain” if—
 - (i) the total amount of any gains treated under section 185F as accruing in the tax year on or before the relevant day, exceeds
 - (ii) the total amount of any losses treated under section 185F as so accruing, and
 - (b) “the relevant amount” is—
 - (i) the scheme chargeable payment, or
 - (ii) if that payment is greater than the excess of gains over losses mentioned in paragraph (a), the amount of that excess.
- (10) Subsection (11) applies if—
- (a) apart from that subsection, losses in relation to which section 185G(10) applies would be included in the total amount mentioned in subsection (9)(a)(ii), and
 - (b) the losses exceed the gains—
 - (i) which are included in the total amount mentioned in subsection (9)(a)(i), and
 - (ii) from which the losses can be deducted in accordance with section 185G(10).
- (11) The losses are not to be included in the total amount mentioned in subsection (9)(a)(ii) so far as they exceed the gains.

272B Liabilities of scheme administrator appointed by independent trustee etc

- (1) This section applies in relation to a person (“Q”) who is, or is one of the persons who are, the scheme administrator of a registered pension scheme where Q’s appointment as such takes effect at a time when the pension scheme has one or more independent trustees.
- (2) Q does not assume any liability falling within section 272A(7) which Q would otherwise assume.
- (3) In relation to any liability falling within section 272A(7), in section 272(4) references to persons who control the management of the pension scheme do not include Q.
- (4) Subsections (2) and (3) do not apply if Q is, or is one of the persons who are, the scheme administrator at any time before the relevant day.
- (5) In this section, and in section 272A as it applies for the purposes of this section, “the relevant day” means the first day on which the pension scheme has an independent trustee (whether or not there are days between that day and the day on which Q’s appointment takes effect on which the pension scheme has no independent trustees).

272C Former scheme administrator etc to retain liability

- (1) This section applies in relation to a liability which, by reason of section 272A(4), is not assumed by P (in which case “the relevant day” is to be read in accordance with section 272A(3)).

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- (2) This section also applies in relation to a liability which, by reason of section 272B(2), is not assumed by Q (in which case “the relevant day” is to be read in accordance with section 272B(5)).
- (3) The liability is to be retained or assumed by the person who is, or the persons who are, the scheme administrator immediately before the relevant day (unless dead or having ceased to exist).
- (4) If there is no scheme administrator immediately before the relevant day, the liability is to be retained or assumed by the person who was, or the persons who were, the scheme administrator when there last was a scheme administrator before the relevant day (unless dead or having ceased to exist).
- (5) Nothing in section 271 prevents a person from having (and continuing to have) the liability by reason of subsection (3) or (4).
- (6) Subsection (7) applies if—
 - (a) no-one has the liability by reason of subsection (3) or (4),
 - (b) no-one who has the liability by reason of subsection (3) or (4) can be traced, or
 - (c) the person who has, or all the persons who have, the liability by reason of subsection (3) or (4) are in serious default (as determined in accordance with section 272(6)).
- (7) The liability is to be assumed by the person or persons determined in accordance with section 272(4).
- (8) Section 272(5) applies in relation to a person who assumes the liability by reason of subsection (7) as it applies in relation to a person who assumes a liability by reason of section 272.
- (9) Nothing in this section prevents any person from being subject to the liability apart from this section (in addition to any person who is subject to the liability by reason of this section), and in particular the liability continues to be a liability of the scheme administrator for the purposes of section 271(2).
- (10) If a person assumes the liability under section 271(2) at a time after P or Q's appointment as, or as one of the persons who are, the scheme administrator has ceased, the person who has, or the persons who have, the liability by reason of subsection (3) or (4) is, or are, released from the liability.
- (11) A person who has, or persons who have, the liability by reason of subsection (3) or (4) may apply to an officer of Revenue and Customs to be released from the liability.
- (12) Section 271(6) to (13) applies in relation to an application under subsection (11) as it applies in relation to an application under section 271(5).”

20 In section 273 (members liable as scheme administrator) after subsection (1) insert—

- “(1A) This section also applies in relation to a registered pension scheme if—
- (a) a person has, or persons have, by reason of section 272C(7) assumed a liability to pay tax (or interest on tax) by virtue of section 239 (scheme sanction charge) in respect of the whole or a part of a

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- scheme chargeable payment falling within section 241(1)(b) or (c) made (or treated as having been made) by the pension scheme,
- (b) that person, or each of those persons, has failed (in whole or in part) to satisfy the liability, and
 - (c) that person, or each of those persons, has either died or ceased to exist or is a person in whose case an officer of Revenue and Customs considers the person's failure to satisfy the liability to be of a serious nature.”
- 21 (1) Section 274 (supplementary) is amended as follows.
- (2) In subsection (1)—
 - (a) after “(trustees etc)” insert “, section 272C(7)”, and
 - (b) in paragraph (b) after “administrator” insert “, section 272C(3) or (4)”.
 - (3) In subsection (3)(b) after “272” insert “, 272C”.
- 22 Sections 272A to 272C (as inserted by paragraph 19) have effect for cases where the relevant day falls on or after 1 September 2014.

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