

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 28. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 28

Sections 165 and 167

#### REGISTERED PENSION SCHEMES: AUTHORISED PENSIONS—SUPPLEMENTARY

#### PART 1

#### PENSION RULES

##### *Defined benefits and money purchase arrangements*

##### *Ill-health condition*

- 1 For the purposes of this Part the ill-health condition is met if—
- (a) the scheme administrator has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, and
  - (b) the member has in fact ceased to carry on the member's occupation.

##### *Scheme pension*

- 2 (1) In the case of a pension scheme with fewer than 50 members, a pension payable to the member is a scheme pension for the purposes of this Part if—
- (a) it is payable by an insurance company selected by the scheme administrator or, where the scheme administrator is an insurance company, by the scheme administrator, and
  - (b) it satisfies the condition in sub-paragraph (3).
- (2) In the case of a pension scheme with 50 or more members, a pension payable to the member is a scheme pension for the purposes of this Part if—
- (a) it is payable by the scheme administrator or by an insurance company selected by the scheme administrator, and
  - (b) it satisfies the condition in sub-paragraph (3).
- (3) The condition is that (subject to sub-paragraph (4)—
- (a) the pension is payable (at least annually) until the member's death or until the later of the member's death and the end of a term certain not exceeding ten years, and
  - (b) the rate of pension payable in respect of any relevant 12 month period is not less than the rate payable in respect of the previous 12 month period.
- (4) None of the following prevent the pension satisfying the condition in sub-paragraph (3)—
- [<sup>F1</sup>(a) the reduction of the pension if the member became entitled to it by reason of the ill-health condition being met,]

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- (b) a reduction in the rate of the pension which applies to all the scheme pensions being paid to or in respect of members of the pension scheme, or
  - (c) if the member becomes entitled to state retirement pension, a reduction in the rate of the pension which does not exceed the rate at which state retirement pension is payable (or, if the rate at which state retirement pension is payable is greater than the rate of the pension, the pension ceasing to be payable).
- (5) For the purposes of sub-paragraph (4)(c) the following constitute “state retirement pension—
- (a) retirement pension under SSCBA 1992 or SSCB(NI)A 1992, and
  - (b) graduated retirement benefit under NIA 1965 or NIA(NI) 1966.
- (6) A pension is payable until the end of a term certain even if it may, after the death of the member during the term, end on the pensioner—
- (a) marrying,
  - (b) reaching the age of 18, or
  - (c) ceasing to be in full-time education.
- (7) A relevant 12 month period is any 12 month period which—
- (a) begins on or after the first anniversary of the day on which the member becomes entitled to the pension, and
  - (b) ends before the day on which the pension ceases to be payable.

#### **Textual Amendments**

**F1** Sch. 28 para. 2(4)(a) substituted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 7\(2\), 24\(3\)](#)

### *Money purchase arrangements*

#### *Lifetime annuity*

- 3 (1) For the purposes of this Part an annuity payable to the member is a lifetime annuity if—
- (a) it is payable by an insurance company,
  - (b) the member had an opportunity to select the insurance company,
  - (c) it is payable until the member’s death or until the later of the member’s death and the end of a term certain not exceeding ten years, and
  - (d) it is a level annuity, an increasing annuity or a relevant linked annuity.
- (2) An annuity is payable until the end of a term certain even if it may, after the death of the member during the term, end on the annuitant—
- (a) marrying,
  - (b) reaching the age of 18, or
  - (c) ceasing to be in full-time education.
- (3) An annuity is a level annuity if its amount does not vary from year to year.
- (4) An annuity is an increasing annuity if its amount increases from year to year.
- (5) An annuity is a relevant linked annuity if its amount varies from year to year but only in line with changes in (or by an amount which does not exceed the amount by which it would vary if it varied in line with changes in)—

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- (a) the retail prices index,
  - (b) the market value of freely marketable assets, or
  - (c) an index reflecting the market value of freely marketable assets.
- (6) “Freely marketable assets” means assets which are sold on the open market at a price not determined by the member.

*Unsecured pension and alternatively secured pension*

- 4 “Unsecured pension” means—
- (a) a short-term annuity, or
  - (b) income withdrawal.

- 5 “Alternatively secured pension” means income withdrawal.

*Short-term annuity*

- 6 (1) An annuity payable to the member is a short-term annuity if—
- (a) it is purchased by the application of sums or assets representing the whole or any part of the member’s unsecured pension fund in respect of an arrangement,
  - (b) it is payable by an insurance company,
  - (c) the member had an opportunity to select the insurance company,
  - (d) it is payable for a term which does not exceed five years and ends before the member reaches the age of 75, and
  - (e) it is either a level annuity, an increasing annuity or a relevant linked annuity.
- (2) “Level annuity”, “increasing annuity” and “relevant linked annuity” have the same meaning as in paragraph 3.

*Income withdrawal*

- 7 “Income withdrawal” means—
- (a) if the member has not reached the age of 75, an amount (other than a payment of an annuity) which the member is entitled to be paid from the member’s unsecured pension fund in respect of an arrangement, and
  - (b) if the member has reached the age of 75, an amount which the member is entitled to be paid from the member’s alternatively secured pension fund in respect of an arrangement.

*Member’s unsecured pension fund*

- 8 (1) For the purposes of this Part the member’s unsecured pension fund in respect of an arrangement consists of such of the sums or assets held for the purposes of the arrangement—
- (a) as have at any time been designated under the arrangement as available for the payment of unsecured pension, and
  - (b) have not been applied for purchasing a scheme pension, a lifetime annuity or a short-term annuity or paid as income withdrawal.

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- (2) When the member reaches the age of 75, any relevant uncrystallised funds are to be treated as having been designated under the arrangement as available for the payment of unsecured pension immediately before the member reached that age.
- (3) “Relevant uncrystallised funds” means the sums and assets held for the purposes of the arrangement which—
- (a) have not been applied for purchasing a scheme pension, a lifetime annuity, a dependants' scheme pension or a dependants' annuity, and
  - (b) have not previously been designated under the arrangement as available for the payment of unsecured pension.

*Unsecured pension year and basis amount for unsecured pension year*

- 9 (1) “Unsecured pension year” means—
- (a) the period of 12 months beginning with the day on which the member first becomes entitled to unsecured pension in respect of the arrangement, and
  - (b) each succeeding period of 12 months.
- (2) But when the member reaches the age of 75 or dies before reaching that age, the current unsecured pension year is the last unsecured pension year and ends immediately before the member’s death or 75th birthday.

*Unsecured pension year and basis amount for unsecured pension year*

- 10 (1) The period of five unsecured pension years beginning with the first unsecured pension year, and each succeeding period of five unsecured pension years, is a “reference period”; and the first day of each reference period is, in relation to that period, “the reference date”.
- (2) For the first unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member’s unsecured pension fund on the nominated date (but subject to sub-paragraph (5)).
- (3) “The nominated date”—
- (a) in relation to the first reference period, is the reference date, and
  - (b) in relation to any subsequent reference period, is such day, within the period of 60 days ending with the reference date, as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, is the reference date).
- (4) For each other unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member’s unsecured pension fund—
- (a) if there has been no recent annuity purchase or recent additional fund designation, on the nominated date, and
  - (b) otherwise, immediately after the last annuity purchase or additional fund designation,
- (but subject to sub-paragraph (5)).

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- (5) On the occasion of each additional fund designation during an unsecured pension year, the basis amount for that unsecured pension year is to be recalculated in accordance with sub-paragraph (6).
- (6) The basis amount for the unsecured pension year is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's unsecured pension fund immediately after the additional fund designation.
- (7) "Annuity purchase" means the purchase of a scheme pension or a lifetime annuity by the application of sums or assets representing the whole or part of the member's unsecured pension fund.
- (8) "Additional fund designation" means the designation under the arrangement of further sums or assets held for the purposes of the arrangement as available for the payment of unsecured pension.
- (9) An annuity purchase or additional fund designation is "recent" if it took place during the period—
  - (a) beginning with the reference date, and
  - (b) ending with the last day of the immediately preceding unsecured pension year.
- (10) Paragraph 14 defines "relevant annuity".

*Member's alternatively secured pension fund*

- 11 (1) For the purposes of this Part the member's alternatively secured pension fund in respect of an arrangement consists of such of the sums and assets held for the purposes of the arrangement as—
  - (a) meet condition A or condition B, and
  - (b) have not been subsequently applied for purchasing a scheme pension or a lifetime annuity or paid as income withdrawal.
- (2) Condition A is that the sums and assets were part of the member's unsecured pension fund in respect of the arrangement when the member reached the age of 75.
- (3) Condition B is that the sums and assets—
  - (a) became held for the purposes of the arrangement after the member reached the age of 75, or
  - (b) if the arrangement is a relevant arrangement, have at any time since the member reached that age been designated as available for the payment of alternatively secured pension to the member.
- (4) A relevant arrangement is an arrangement which became a money purchase arrangement after the member reached the age of 75 (having previously been a hybrid arrangement under which, in certain circumstances, defined benefits were payable).

*Alternatively secured pension year and basis amount for alternatively secured pension year*

- 12 (1) "Alternatively secured pension year" means—
  - (a) the period of 12 months beginning with the day on which the member first becomes entitled to alternatively secured pension in respect of the arrangement, and

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- (b) each succeeding period of 12 months.
- (2) When the member dies, the current alternatively secured pension year is the last alternatively secured pension year and ends immediately before the member's death.
- (3) But if by virtue of pension rule 2 alternatively secured income is to be paid to a person after the member's death, sub-paragraph (4) applies instead of sub-paragraph (2).
- (4) The last alternatively secured pension year is the earlier of—
  - (a) the tenth alternatively secured pension year, and
  - (b) the last alternatively secured pension year in which, under the arrangement, alternatively secured pension is to be paid.

*Alternatively secured pension year and basis amount for alternatively secured pension year*

- 13
- (1) For the first alternatively secured pension year, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's alternatively secured pension fund on the date on which the member first became entitled to alternatively secured pension in respect of the arrangement.
  - (2) For each other alternatively secured pension year, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's alternatively secured pension fund on the nominated date.
  - (3) "The nominated date" is such day within the period of 60 days ending with the first day of the alternatively secured pension year as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, is the first day of the alternatively secured pension year).
  - (4) Paragraph 14 defines "relevant annuity".

*Relevant annuity*

- 14
- (1) A "relevant annuity" is an annuity of a description prescribed by regulations made by the Board of Inland Revenue.
  - (2) The annual amount of a relevant annuity is to be ascertained in accordance with regulations made by the Board of Inland Revenue.
  - (3) The regulations may in particular provide for the annual amount to be ascertained by reference to—
    - (a) comparative annuity tables published by the Financial Services Authority, or
    - (b) material published by any other person.

**PART 2**

PENSION DEATH BENEFIT RULES

*Defined benefits and money purchase arrangements*  
*Meaning of "dependant"*

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- 15 (1) A person who was married to the member at the date of the member's death is a dependant of the member.
- (2) A child of the member is a dependant of the member if the child—
- (a) has not reached the age of 23, or
  - (b) has reached that age and, in the opinion of the scheme administrator, was at the date of the member's death dependant on the member because of physical or mental impairment.
- (3) A person who was not married to the member at the date of the member's death and is not a child of the member is a dependant of the member if, in the opinion of the scheme administrator, at the date of the member's death—
- (a) the person was financially dependant on the member,
  - (b) the person's financial relationship with the member was one of mutual dependence, or
  - (c) the person was dependant on the member because of physical or mental impairment.

*Dependants' scheme pension*

- 16 (1) In the case of a pension scheme with fewer than 50 members, a pension payable to a dependant is a dependants' scheme pension for the purposes of this Part if—
- (a) it is payable by an insurance company selected by the scheme administrator or, where the scheme administrator is an insurance company, by the scheme administrator, and
  - (b) it satisfies the condition in sub-paragraph (3).
- (2) In the case of a pension scheme with 50 or more members, a pension payable to a dependant is a dependants' scheme pension if—
- (a) it is payable by the scheme administrator or by an insurance company selected by the scheme administrator, and
  - (b) it satisfies the condition in sub-paragraph (3).
- (3) The condition is that (subject to sub-paragraph (4))—
- (a) if the dependant is not the member's child, the pension is payable until the dependant's death or until the earlier of the dependant's marrying or dying,
  - (b) if the dependant is the member's child, the pension is payable until the earlier of the dependant's ceasing to be a dependant or dying, or until the earliest of the dependant's marrying, ceasing to be a dependant or dying, and
  - (c) the rate of pension payable in respect of any relevant 12 month period is not less than the rate payable in respect of the previous 12 month period.
- (4) Neither of the following prevents the pension satisfying the condition in sub-paragraph (3)—
- (a) a reduction in the rate of the pension which applies to all the dependants' scheme pensions being paid in respect of members of the pension scheme, or
  - (b) if the dependant becomes entitled to state retirement pension, a reduction in the rate of the pension which does not exceed the rate at which state retirement pension is payable (or, if the rate at which state retirement pension is payable is greater than the rate of the pension, the pension ceasing to be payable).
- (5) For the purposes of sub-paragraph (4)(b) the following constitute “state retirement pension”—

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- (a) retirement pension under SSCBA 1992 or SSCB(NI)A 1992, and
  - (b) graduated retirement benefit under NIA 1965 or NIA(NI) 1966.
- (6) A relevant 12 month period is any 12 month period which—
- (a) begins on or after the first anniversary of the member’s death, and
  - (b) ends before the day on which the pension ceases to be payable.

*Money purchase arrangements*

*Dependants' annuity*

- 17 (1) An annuity payable to a dependant is a dependants' annuity if—
- (a) it is payable by an insurance company,
  - (b) the member or dependant had an opportunity to select the insurance company,
  - (c) it is a level annuity, an increasing annuity or a relevant linked annuity,
  - (d) where the dependant is not the member’s child, it is payable until the dependant’s death or until the earlier of the dependant’s marrying or dying, and
  - (e) where the dependant is the member’s child, it is payable until the earlier of the dependant’s ceasing to be a dependant or dying, or until the earliest of the dependant’s marrying, ceasing to be a dependant or dying.
- (2) “Level annuity” and “increasing annuity” have the same meaning as in paragraph 3 and “relevant linked annuity” has the meaning that it would have in that paragraph if the reference to the member in sub-paragraph (6) were to the dependant.

*Dependants' unsecured pension and dependants' alternatively secured pension*

- 18 “Dependants' unsecured pension” means—
- (a) a dependants' short-term annuity, or
  - (b) dependants' income withdrawal.
- 19 “Dependants' alternatively secured pension” means dependants' income withdrawal.

*Dependants' short-term annuity*

- 20 (1) An annuity payable to a dependant is a dependants' short-term annuity if—
- (a) it is purchased by the application of sums or assets representing the whole or any part of the dependant’s unsecured pension fund in respect of an arrangement,
  - (b) it is payable by an insurance company,
  - (c) the dependant had an opportunity to select the insurance company,
  - (d) it is payable for a term which does not exceed five years and ends before the dependant reaches the age of 75 or dies, and
  - (e) it is either a level annuity, an increasing annuity or a relevant linked annuity.
- (2) “Level annuity”, “increasing annuity” and “relevant linked annuity” have the same meaning as in paragraph 17.

*Dependants' income withdrawal*

- 21 Dependants' income withdrawal means—
- (a) if the dependant has not reached the age of 75, an amount (other than an annuity) which the dependant is entitled to be paid from the dependant’s unsecured pension fund in respect of an arrangement, and



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- (b) if the dependant has reached the age of 75, an amount which the dependant is entitled to be paid from the dependant's alternatively secured pension fund in respect of an arrangement.

*Dependant's unsecured pension fund*

- 22 (1) For the purposes of this Part a dependant's unsecured pension fund in respect of an arrangement consists of such of the sums and assets held for the purposes of the arrangement—
- (a) as have at any time been designated under the arrangement as available for the payment of dependants' unsecured pension to the dependant, and
  - (b) have not been applied for purchasing a dependants' scheme pension, a dependants' annuity or a dependants' short-term annuity or paid as dependants' income withdrawal.

*Unsecured pension year and basis amount for unsecured pension year*

- 23 (1) "Unsecured pension year" means—
- (a) the period of 12 months beginning with the day on which the dependant first becomes entitled to dependants' unsecured pension in respect of the arrangement, and
  - (b) each succeeding period of 12 months.
- (2) But when the dependant reaches the age of 75 or dies before reaching that age, the current unsecured pension year is the last unsecured pension year and ends immediately before the dependant's death or 75th birthday.
- 24 (1) The period of five unsecured pension years beginning with the first unsecured pension year, and each succeeding period of five unsecured pension years, is a "reference period"; and the first day of each reference period is, in relation to that period, "the reference date".
- (2) For the first unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's unsecured pension fund on the nominated date (but subject to sub-paragraph (5)).
- (3) "The nominated date"—
- (a) in relation to the first reference period, is the reference date, and
  - (b) in relation to any subsequent reference period, is such day, within the period of 60 days ending with the reference date, as is nominated by the scheme administrator (or if no day is nominated by the scheme administrator, is the reference date).
- (4) For each other unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's unsecured pension fund—
- (a) if there has been no recent annuity purchase or recent additional fund designation, on the nominated date, and
  - (b) otherwise, immediately after the last annuity purchase or additional fund designation,
- (but subject to sub-paragraph (5))
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- (5) On the occasion of each additional fund designation during an unsecured pension year, the basis amount for that unsecured pension year is to be recalculated in accordance with sub-paragraph (6).
- (6) The basis amount for the unsecured pension year is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant’s unsecured pension fund immediately after the additional fund designation.
- (7) “Annuity purchase” means the purchase of a dependants' scheme pension or dependants' annuity by the application of sums or assets representing the whole or part of the dependant’s unsecured pension fund.
- (8) “Additional fund designation” means the designation under the arrangement of further sums and assets held for the purposes of the arrangement as available for the payment of unsecured dependants' pension to the dependant.
- (9) An annuity purchase or additional fund designation is “recent” if it took place during the period—
- (a) beginning with the reference date, and
  - (b) ending with the last day of the immediately preceding unsecured pension year.
- (10) Paragraph 14 defines “relevant annuity”.
- Dependant’s alternatively secured pension fund*
- 25 (1) For the purposes of this Part a dependant’s alternatively secured pension fund in respect of an arrangement consists of such of the sums and assets held for the purposes of the arrangement as—
- (a) meet condition A or B, and
  - (b) have not been subsequently applied for purchasing a dependants' scheme pension or a dependants' annuity or paid as dependants' income withdrawal.
- (2) Condition A is that the sums and assets were part of the dependant’s unsecured pension fund in respect of the arrangement when the dependant reached the age of 75.
- (3) Condition B is that the sums and assets have at any time since the dependant reached that age been designated as available for the payment of alternatively secured dependants' pension to the dependant.
- Alternatively secured pension year and basis amount for alternatively secured pension year*
- 26 (1) “Alternatively secured pension year” means—
- (a) the period of 12 months beginning with the day on which the dependant first becomes entitled to alternatively secured pension in respect of the arrangement, and
  - (b) each succeeding period of 12 months.
- (2) When the dependant dies, the current alternatively secured pension year is the last alternatively secured pension year and ends immediately before the dependant’s death.
- 27 (1) For the first alternatively secured pension year, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant’s alternatively secured pension fund on

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the date on which the dependant first became entitled to dependants' alternatively secured pension in respect of the arrangement.

- (2) For each other alternatively secured pension year, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's alternatively secured pension fund on the nominated date.
- (3) "The nominated date" is such day within the period of 60 days ending with the first day of the alternatively secured pension year as is nominated by the scheme administrator (but if no day is nominated by the scheme administrator, is the first day of the alternatively secured pension year).
- (4) Paragraph 14 defines "relevant annuity".

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