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

## SCHEDULES

### SCHEDULE 28

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

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

- C1** Sch. 28 modified by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\) Regulations 2006 \(S.I. 2006/207\)](#), regs. 1(1), **14** (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2012/1795](#), regs. 1(1), **5**)

#### PART 1

##### PENSION RULES

###### *Scheme pension*

- 2 <sup>F1</sup>(1) . . . . .
- (2) [<sup>F2</sup>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 [<sup>F3</sup>at any time during any] relevant 12 month period is not less than the rate payable [<sup>F4</sup>at the relevant time].
- [<sup>F5</sup>(3A) “The relevant time” is—
- (a) in the case of the first relevant 12 month period, the day on which the member becomes entitled to the pension, and
  - (b) in the case of any other relevant 12 month period, immediately before the beginning of that period.]
- (4) None of the following prevent the pension satisfying the condition in sub-paragraph (3)—
- [<sup>F6</sup>(a) the reduction of the pension if the member became entitled to it by reason of the ill-health condition being met,]
  - (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, <sup>F7</sup>...

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- [<sup>F8</sup>(c) a reduction in the rate of the pension, taking effect at a time [<sup>F9</sup>“during the permitted period], which [<sup>F10</sup>together with any previous reductions of the kind referred to in this paragraph (c)] does not exceed the relevant state retirement pension rate at that time (or the pension ceasing to be payable at such a time if at that time that rate is greater than the rate of the pension).]
- [<sup>F11</sup>(d) the reduction of the pension in consequence of a pension sharing order or provision,
- (e) forfeiture of entitlement to the pension in circumstances prescribed by regulations made by the Board of Inland Revenue,
- (f) the reduction of the pension in consequence of an order of a court,
- (g) if the pension is under a public service pension scheme, its reduction by abatement, or
- (h) the reduction of the pension in any other circumstances prescribed by regulations made by the Board of Inland Revenue.]
- [<sup>F12</sup>(4A) In sub-paragraph (4) references to the reduction of a pension include its ceasing to be payable (whether temporarily or permanently).]
- [<sup>F13</sup>(4B) In sub-paragraph (4)(c) “the permitted period” means the period beginning with the day on which the member reaches the age of 60 and ending with the day on which the member reaches the age of 65 or, if later, reaches pensionable age.]
- [<sup>F14</sup>(5) For the purposes of sub-paragraph (4)(c) “the relevant state retirement pension rate” at any time—
- (a) where no employment of the member to which the pension scheme relates is or has been other than contracted-out employment by reference to the pension scheme, is 125% of the rate of the basic pension at that time or such higher percentage of that rate as the Treasury may by regulations prescribe,
- (b) where no such employment of the member is or has been contracted-out employment by reference to the pension scheme, is 250% of the rate of the basic pension at that time or such higher percentage of that rate as the Treasury may by regulations prescribe, and
- (c) otherwise, is such percentage of the rate of the basic pension at that time falling between the percentages for the time being specified under or by virtue of paragraphs (a) and (b) as the Treasury by regulations prescribe;
- and regulations under paragraph (c) may prescribe different percentages for different cases.
- (5A) For the purposes of sub-paragraph (5)—
- (a) for the meaning of “contracted-out employment” see section 8(1) of the Pension Schemes Act 1993 or section 4(1) of the Pension Schemes (Northern Ireland) Act 1993, and
- (b) “the basic pension” means the basic pension specified in section 44 of SSCBA 1992 or section 44 of SSCB(NI)A 1992.]
- (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,
- [<sup>F15</sup>(aa) entering into a civil partnership,]
- (b) reaching the age of 18, or
- (c) ceasing to be in full-time education.

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- [<sup>F16</sup>(6A) The Board of Inland Revenue may by regulations provide that if—
- (a) a scheme pension payable by an insurance company selected by the scheme administrator of a registered pension scheme (“the original scheme pension”) ceases to be payable, and
  - (b) in consequence of the transfer of sums or assets (or both) from the insurance company to another insurance company in connection with the original scheme pension ceasing to be payable, another scheme pension becomes payable by the other insurance company (“the new scheme pension”),
- the new scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original scheme pension.]
- (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.
- [<sup>F17</sup>(8) Regulations under sub-paragraph [<sup>F18</sup>(4)(e) or (h) or (5)] may include provision having effect in relation to times before they are made.]

#### Textual Amendments

- F1** Sch. 28 para. 2(1) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(2\), 64\(1\)](#), [Sch. 11 Pt. 4](#)
- F2** Word in Sch. 28 para. 2(2) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(3\)](#), 64(1)
- F3** Words in Sch. 28 para. 2(3)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(4\)\(a\)](#), 64(1)
- F4** Words in Sch. 28 para. 2(3)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(4\)\(b\)](#), 64(1)
- F5** Sch. 28 para. 2(3A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(5\)](#), 64(1)
- F6** Sch. 28 para. 2(4)(a) substituted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 7\(2\)](#), 24(3)
- F7** Word in Sch. 28 para. 2(4)(b) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(6\)](#), 64(1), [Sch. 11 Pt. 4](#)
- F8** Sch. 28 para. 2(4)(c) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 20\(2\)](#)
- F9** Words in Sch. 28 para. 2(4)(c) substituted (with effect in accordance with s. 51(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 51\(2\)\(a\)\(i\)](#)
- F10** Words in Sch. 28 para. 2(4)(c) inserted (with effect in accordance with s. 51(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 51\(2\)\(a\)\(ii\)](#)
- F11** Sch. 28 para. 2(4)(d)-(h) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(6\)](#), 64(1)
- F12** Sch. 28 para. 2(4A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(7\)](#), 64(1)
- F13** Sch. 28 para. 2(4B) inserted (with effect in accordance with s. 51(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 51\(2\)\(b\)](#)
- F14** Sch. 28 para. 2(5)(5A) substituted for Sch. 28 para. 2(5) (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 20\(3\)](#)
- F15** Sch. 28 para. 2(6)(aa) inserted (22.2.2007) by [The Tax and Civil Partnership Regulations 2007 \(S.I. 2007/493\)](#), regs. 1, [2\(2\)](#)
- F16** Sch. 28 para. 2(6A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(8\)](#), 64(1)
- F17** Sch. 28 para. 2(8) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(9\)](#), 64(1)
- F18** Words in Sch. 28 para. 2(8) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 20\(4\)](#)

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- [<sup>F19</sup>2A (1) Where this paragraph applies in relation to a pension payable to the member, the pension scheme is to be treated as making an unauthorised payment to the member of the appropriate amount.
- (2) This paragraph applies to a pension if it fails to satisfy the condition in sub-paragraph (3) of paragraph 2—
- (a) by reason of not complying with paragraph (a) of that sub-paragraph, or
  - (b) by reason of not complying with paragraph (b) of that sub-paragraph because a substantial reduction occurs in the rate of the pension,
- or if it is a pension [<sup>F20</sup>which is reduced in accordance with paragraph (a) of sub-paragraph (4) of paragraph 2, or the rate of which is reduced in accordance with paragraph (b) of that sub-paragraph, and] the reduction is part of avoidance arrangements.
- (3) For the purposes of sub-paragraph (2)(b) a substantial reduction occurs in the rate of a pension if the rate at which the pension is payable at any time during any relevant 12 month period (within the meaning of paragraph 2(7)) is less than 80% of the rate payable when the member became entitled to the pension.
- (4) For the purposes of sub-paragraph (2) “avoidance arrangements” includes schemes, arrangements and understandings of any kind (whether or not legally enforceable) the main purpose, or one of the main purposes, of which is to increase the member’s entitlement to a lump sum on which there is no liability to income tax.
- (5) “The appropriate amount”, in relation to the pension, is the amount of any lump sum on which there is no liability to tax to which the member became entitled in connection with the pension.
- (6) Once this paragraph has applied in relation to the pension, it does not apply in relation to it again.
- (7) The application of this paragraph in relation to the pension does not prevent any payments of the pension themselves being unauthorised member payments.]

#### Textual Amendments

**F19** Sch. 28 para. 2A inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 12, 64(1)

**F20** Words in Sch. 28 para. 2A(2) substituted (19.7.2007) (with effect in accordance with Sch. 20 para. 24(4) of the amending Act) by Finance Act 2007 (c. 11), Sch. 20 para. 7(3)

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