

Status: Point in time view as at 06/04/2007.

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

SCHEDULES

SCHEDULE 36

PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

PART 2

PRE-COMMENCEMENT RIGHTS: LIFETIME ALLOWANCE CHARGE

"Primary protection"

- 7 (1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where—
- (a) the amount of the relevant pre-commencement pension rights of the individual exceeds £1,500,000 (the standard lifetime allowance for the tax year 2006-07), and
 - (b) notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
- (2) The lifetime allowance enhancement factor is the primary protection factor.
- (3) The primary protection factor is—

$$\frac{RR - SLA}{SLA}$$

where—

RR is the amount of the relevant pre-commencement pension rights of the individual, and

SLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (4) Sub-paragraph (3) is subject to paragraph 11 (pension debit on or after 6th April 2006).
- (5) The amount of the relevant pre-commencement pension rights of the individual is the aggregate of—
- (a) the value of the individual's relevant uncrystallised pension rights on 5th April 2006 (calculated in accordance with paragraphs 8 and 9), and
 - (b) the value of the individual's relevant crystallised pension rights on that date (calculated in accordance with paragraph 10).

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Modifications etc. (not altering text)

- C1** Sch. 36 para. 7 applied (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **29(1)**
- C2** Sch. 36 para. 7 construed as one with reg. 29 (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **29(3)**

- 8 (1) The value of the individual's relevant uncrystallised pension rights on 5th April 2006 is the aggregate value of the individual's uncrystallised rights on that date under each relevant pension arrangement relating to the individual.
- (2) An arrangement is a "relevant pension arrangement" if it is an arrangement under a pension scheme within paragraph 1(1).
- (3) For the purposes of this paragraph the individual's rights are "uncrystallised" if the individual has not, on 5th April 2006, become entitled to the present payment of benefits in respect of the rights.
- (4) And the individual is to be treated as entitled to the present payment of benefits in respect of any accrued rights in relation to which the individual has (under section 634A (1) of ICTA) made an election to defer the purchase of an annuity.
- (5) For the purposes of this paragraph the value of the individual's uncrystallised rights on 5th April 2006 under an arrangement is to be calculated in accordance with section 212 (valuation of uncrystallised rights for purposes of section 210) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.
- (6) Section 212 has effect for the purposes of sub-paragraph (5) as if the reference to such age (if any) as must have been reached to avoid any reduction in benefits on account of age in paragraph (a) of section 277 were to the relevant age; and for this purpose "the relevant age" is—
- (a) if on 10th December 2003 the terms of the arrangement made provision for a reduction in the amount of benefits payable in respect of rights under the arrangement on account of the holder of the rights being below a particular age, that age, and
 - (b) otherwise, 60.

Modifications etc. (not altering text)

- C3** Sch. 36 para. 8(5) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **9, 11**

- 9 (1) This paragraph applies if any of the individual's uncrystallised rights on 5th April 2006 are rights under one or more arrangements under a pension scheme or schemes within paragraph 1(1)(a) to (d).
- (2) The value of the individual's uncrystallised rights on 5th April 2006 under the arrangement, or the aggregate of the values of the individual's uncrystallised rights on 5th April 2006 under such of the arrangements as relate to a particular employment, is ^{F1}...—
- (a) the value, or the aggregate of the values, calculated under paragraph 8, [^{F2}or (if lower)]

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(b) the amount arrived at in accordance with sub-paragraph (3).

(3) The amount arrived at in accordance with this sub-paragraph is—

20 × MPP

where MPP is the maximum permitted pension [^{F3}as increased, in a case where sub-paragraph (5A) applies, in accordance with sub-paragraph (5B)].

(4) “The maximum permitted pension” means

[^{F4}(a) in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section [^{F5}611A(1)(a)] of ICTA, the maximum annual pension that could be paid to the individual under the pension scheme on 5th April 2006, and

(b) in any other case,] the maximum annual pension that could be paid to the individual on 5th April 2006 under the arrangement or arrangements if it or they were made under a pension scheme within paragraph 1(1)(a) without giving the Board of Inland Revenue grounds for withdrawing approval of the pension scheme under section 591B of ICTA.

(5) For the purposes of sub-paragraph (4) it is to be assumed—

(a) [^{F6}in the case of any arrangement, that] if the individual was in the employment to which the arrangement or arrangements relates or relate on 5th April [^{F7}2006] the individual left the employment on that date, and

[^{F8}(aa) in the case of an arrangement within sub-paragraph (4)(a), that the valuation assumptions apply (see section 277),]

(b) [^{F9}in the case of any other arrangement, that] if the individual had not reached the lowest age at which a pension may be paid under a pension scheme within paragraph 1(1)(a) to a person in good health without giving the Board of Inland Revenue grounds for withdrawing the approval of the pension [^{F10}scheme] that fact would not give the Board such grounds.

[^{F11}(5A) This sub-paragraph applies where, in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section 611A(1)(a) of ICTA—

(a) a lump sum could be paid to the individual on 5th April 2006 under the pension scheme otherwise than by commutation of pension, and

(b) that lump sum could not be exchanged (in whole or in part) for an increased pension.

(5B) Where sub-paragraph (5A) applies, the amount arrived at under sub-paragraph (3) is the aggregate of what it otherwise would be and so much of the amount of the lump sum as could not be so exchanged.]

(6) For the purposes of this paragraph an arrangement relating to an individual relates to an employment if—

(a) the earnings by reference to which benefits under the arrangement are calculated are earnings from the employment, or

(b) the person who is the employer in relation to the employment pays contributions under the arrangement in respect of the individual.

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Textual Amendments

- F1** Words in Sch. 36 para. 9(2) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(3\)\(a\), 64\(1\)](#), [Sch. 11 Pt. 4](#)
- F2** Words in Sch. 36 para. 9(2)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(3\)\(b\), 64\(1\)](#)
- F3** Words in Sch. 36 para. 9(3) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 36\(2\)](#)
- F4** Words in Sch. 36 para. 9(4) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(4\)](#), 64(1)
- F5** Word in Sch. 36 para. 9(4)(a) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 45](#)
- F6** Words in Sch. 36 para. 9(5)(a) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(a\)](#), 64(1)
- F7** Word in Sch. 36 para. 9(5)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(a\)](#), 64(1)
- F8** Sch. 36 para. 9(5)(aa) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(b\)](#), 64(1)
- F9** Words in Sch. 36 para. 9(5)(b) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(c\)](#), 64(1)
- F10** Word in Sch. 36 para. 9(5)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(c\)](#), 64(1)
- F11** Sch. 36 para. 9(5A)(5B) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 36\(3\)](#)

- 10 (1) The value of the individual's relevant crystallised pension rights on 5th April 2006 is—

$$25 \times \text{ARP}$$

where ARP is an amount equal to the annual rate at which any relevant existing pension is payable to the individual on 5th April 2006 or, if more than one relevant existing pension is payable to the individual on that date, to the aggregate of the annual rates at which each of the relevant existing pensions is so payable.

- (2) "Relevant existing pension" means—
- (a) a pension under a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
 - (b) a pension under a former approved superannuation fund (defined as for the purposes of paragraph 1(1)(b)),
 - (c) a pension under a relevant statutory scheme, as defined in section 611A of ICTA, or a pension scheme treated by the Inland Revenue as if it were such a relevant statutory scheme,
 - (d) an annuity (or pension in the form of income drawdown) under an annuity contract by means of which benefits provided under a pension scheme within paragraph (a), (b) or (c) have been secured,
 - (e) a pension under a scheme or fund mentioned in section 613(4)(b) to (d) of ICTA (Parliamentary pension schemes or funds),
 - (f) an annuity under an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA,

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- (g) an annuity acquired using funds held for the purposes of a personal pension scheme approved under Chapter 4 of Part 14 of ICTA, or
 - (h) a right to make income withdrawals under section 634A of ICTA.
 - (3) But a pension, annuity or right is not a relevant existing pension if entitlement to it was attributable to the death of any person.
 - (4) In the case of a pension within sub-paragraph (2) taking the form of income drawdown, the annual rate at which the pension is payable on 5th April 2006 is the amount which, on that date, is the maximum annual amount that may be drawn down by the individual as income in accordance with the pension scheme or contract concerned.
 - (5) In the case of a right which is a relevant existing pension by virtue of sub-paragraph (2)(h), the annual rate at which the pension is payable on 5th April 2006 is the maximum amount of income withdrawals that may be made by the individual in the period of 12 months referred to in section 634A(4) of ICTA during which 5th April 2006 falls.
- 11 (1) This paragraph applies where—
- (a) paragraph 7 makes provision for the operation of a lifetime allowance enhancement factor in relation to an individual, and
 - (b) on or after 6th April 2006, the rights of the individual under a relevant pension arrangement (see paragraph 8(2)) relating to the individual are reduced by becoming subject to a pension debit.
- (2) The primary protection factor (see paragraph 7(3)) is to be recalculated.
- (3) The recalculation involves reducing RR (see paragraph 7(3)) by the amount by which the individual's rights are reduced and arriving at a revised primary protection factor.
- (4) The revised primary protection factor operates in relation to any benefit crystallisation event occurring in relation to the individual after the time when the individual's rights are reduced by becoming subject to the pension debit.
- [^{F12}11A(1) This paragraph applies where—
- (a) paragraph 7 makes provision for the operation of a lifetime allowance enhancement factor in relation to an individual immediately before the individual's death (and any calculation required by paragraph 11 does not mean that there is then no longer a primary protection factor),
 - (b) a person is paid a defined benefits lump sum death benefit or an uncrystallised funds lump sum death benefit in respect of the individual, and
 - (c) notice of intention to rely on this paragraph is given to an officer of Revenue and Customs by that person in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs.
- (2) If the value of the individual's pre-commencement rights to death benefits (see paragraphs 11B to 11D) exceeds RR (as adjusted under paragraph 11, where that paragraph applies), the primary protection factor is to be recalculated.
- (3) The re-calculation involves taking RR to be the value of the individual's pre-commencement rights to death benefits and arriving at a revised primary protection factor.
- (4) The revised primary protection factor operates in relation to—

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- (a) the benefit crystallisation event consisting of the payment of the lump sum death benefit, and
- (b) any other benefit crystallisation event consisting of the payment of a lump sum death benefit in respect of the individual.

Textual Amendments

F12 Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 38](#)

- 11B (1) This paragraph and paragraphs 11C and 11D specify the value of the individual's pre-commencement rights to death benefits.
- (2) Subject to paragraphs 11C and 11D, the value of the individual's pre-commencement rights to death benefits is the aggregate of the maximum amounts that could have been paid—
- (a) in respect of the individual as uncrystallised rights lump sum death benefits, and
 - (b) under relevant pension arrangements relating to the individual, if the individual had died on 5th April 2006.
- (3) Lump sum death benefits are “uncrystallised rights lump sum death benefits” if they are attributable to rights in respect of which the individual had not, on 5th April 2006, become entitled to the present payment of benefits.
- (4) An arrangement is a “relevant pension arrangement” if it is an arrangement under a pension scheme within paragraph 1(1).

Textual Amendments

F12 Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 38](#)

- 11C (1) In arriving at the aggregate mentioned in paragraph 11B(2) the following amounts are to be left out of account—
- (a) in the case of any lump sum death benefit which could have been paid under a pension scheme in the case of which approval could have been withdrawn under section 591B, 620(7) or 650 of ICTA, any amount in excess of the permitted limit (see sub-paragraph (2)), and
 - (b) in the case of any lump sum death benefit which could have been paid under an arrangement in the case of which rights to such a benefit are commuted into prospective rights to receive dependants' pensions, any dependants' pension proportion amount (see sub-paragraphs (3) and (4)).
- (2) An “amount in excess of the permitted limit” is so much (if any) of the maximum amount of any lump sum death benefit as could not have been paid without having given grounds for withdrawing approval of the pension scheme under section 591B, 620(7) or 650 of ICTA.
- (3) A “dependants' pension proportion amount” is so much (if any) of the maximum amount of any lump sum death benefit which could have been paid under the arrangement as is the dependants' pension proportion of the lump sum death benefit.

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(4) The dependants' pension proportion is—

UTATAUTA

where—

TA is the amount which, at the time when a defined benefits lump sum death benefit or uncrystallised funds lump sum death benefit is first paid in respect of the individual, is the aggregate of the maximum amounts of any defined benefits lump sum death benefits or uncrystallised funds lump sum death benefits which could be paid under the arrangement in respect of the individual, and

UTA is what TA would be if no prospective rights to the payment of any of those lump sum death benefits had been commuted into prospective rights to receive dependants' pensions.

Textual Amendments

F12 Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\)](#), [Sch. 23 para. 38](#)

- 11D (1) Sub-paragraph (2) applies where any of the lump sum death benefits mentioned in sub-paragraph (2) of paragraph 11B would have been payable under a policy of life insurance held for the purposes of a pension scheme and on 5th April 2006 the pension scheme either—
- (a) was not an occupational pension scheme, or
 - (b) was an occupational pension scheme with fewer than 20 members.
- (2) The lump sum death benefit is only to be taken into account in arriving at the aggregate mentioned in that sub-paragraph if—
- (a) a sum was paid under the policy when the individual actually died, and
 - (b) the terms of the policy had not been varied significantly during the period beginning with 5th April 2006 and ending with the death;
- and any exercise of rights conferred by the policy is to be regarded for this purpose as a variation.
- [A variation of the terms of a policy of life insurance made in order to comply with
- ^{F13}(2A) the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them) is to be ignored for the purposes of sub-paragraph (2).
- (2B) Where a policy of life insurance held on 5th April 2006 for the purposes of an occupational pension scheme is surrendered and a new one is taken out—
- (a) as part of a retirement-benefit activities compliance exercise, or
 - (b) to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them),
- the new policy is to be treated for the purposes of sub-paragraph (2) as if it were the same as the old.
- (2C) For this purpose a policy of life insurance is surrendered and a new one is taken out as part of a retirement-benefit activities compliance exercise if—

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- (a) the surrender of the old policy and taking out of the new policy constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
 - (b) the rights under the old policy and the new policy are not significantly different.]
- (3) Sub-paragraph (4) applies where any of the lump sum death benefits mentioned in sub-paragraph (2) of paragraph 11B would have been payable under an occupational pension scheme.
- (4) The lump sum death benefit is only to be taken into account in arriving at the aggregate mentioned in that sub-paragraph if—
- (a) the individual was employed by a person on 5th April 2006 and continued to be employed by that person or a person connected with that person until the time when the individual died,
 - (b) that person was a sponsoring employer in relation to the pension scheme on 5th April 2006, and
 - (c) the individual had not become entitled to the present payment of benefits in respect of rights under the pension scheme before the time when the individual died.
- [^{F14}(5) For the purposes of this paragraph whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]]

Textual Amendments

- F12** Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 38](#)
- F13** Sch. 36 paras. 11D(2A)-(2C) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 15, 24\(3\)](#)
- F14** Sch. 36 para. 11D(5) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 485](#) (with [Sch. 2](#))

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