SCHEDULES

SCHEDULE 36

PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

Modifications etc. (not altering text)

C1 Sch. 36 modified by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), art. 23D (as inserted (1.6.2009) by S.I. 2009/1172, arts. 1, **3**)

PART 4

OTHER PROVISIONS

Pre-commencement ill-health insurance contracts

37 (1) Payments under protected ill-health insurance contracts are not unauthorised member payments.

(2) Ill-health insurance contracts are contracts providing insurance against a risk relating to non-payment by a member of a pension scheme of contributions under the pension scheme.

(3) An ill-health insurance contract is protected if it was made before 6th April 2006 under—

(a) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA before 6th April 2001, or

(b) 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.

[F1 Pre-commencement holdings of taxable property

Textual Amendments

F1 Sch. 36 paras. 37A-37I and cross-headings inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 158(2), **Sch. 21 para. 15**

37A (1) This paragraph applies in relation to an investment-regulated pension scheme if—

(a) on 6th April 2006 the pension scheme holds an interest in taxable property which it acquired before that date, and

(b) immediately before that date the pension scheme was not prohibited from holding the interest in the property, and, in a case where immediately before that date the interest in the property was held directly by a person other than the pension scheme, if the pension scheme was not prohibited from holding the interest it held in that person at that time.

(2) This paragraph also applies in relation to an investment-regulated pension scheme if—

(a) before 6th April 2006 a contract to acquire an interest in property was entered into by the pension scheme or a person in whom the pension scheme directly or indirectly held an interest when the contract was entered into,

(b) the pension scheme does not acquire the interest in the property before that date,

(c) the property is taxable property on that date, and

(d) immediately before that date the pension scheme would not have been prohibited from holding the interest in the property,

and, in a case where the contract to acquire the interest in the property was entered into by a person in whom the pension scheme directly or indirectly held an interest, if the pension scheme was not prohibited from holding the interest it held in that person immediately before that date.

(3) The taxable property provisions (apart from this paragraph and paragraphs 37B to 37E) do not apply in relation to the pension scheme and the interest in the property.

(4) For the purposes of this Schedule a pension scheme is to be treated as having been prohibited from holding an interest in property, or in a person, immediately before 6th April 2006 if approval could have been withdrawn under section 591B, 620(7) or 650 of ICTA on the basis of the holding of the interest at that time.

(5) This paragraph is subject to paragraphs 37B to 37E.

37B (1) Paragraph 37A ceases to apply to an investment-regulated pension scheme and an interest in taxable property on the relevant date if Condition A, B or C is met.

(2) Condition A is that there is a change in the occupation or use of the property such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the property at that time.

(3) Condition B is that—

(a) the taxable property is residential property on 6th April 2006, and

(b) improvement works on the property are begun on or after that date.

(4) Condition C is that there is a change in the pension scheme's interest in—

(a) any person who holds the interest in the property directly, or

(b) any person who has entered into a contract to acquire the interest in the property,

such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the person at that time.

(5) For the purposes of this paragraph the relevant date is—

(a) where Condition A is met, the date on which the change in the occupation or use of the taxable property takes place,

(b) where Condition B is met, the date on which the improvement works are substantially completed, or

(c) where Condition C is met, the date on which the change in the pension scheme's interest in the person takes place,

but where the pension scheme has not acquired the interest in the property by what would otherwise be the relevant date, the relevant date is the date on which it acquires the interest.

(6) Where Condition A, B or C is met the pension scheme is to be treated for the purposes of the taxable property provisions as acquiring the interest in the property on the relevant date.

(7) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of the acquisition is—

(a) the market value on the relevant date of the interest in the property held by the person who holds it directly, or

(b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 of Schedule 29A if it were assigned to the person on that date.

(8) Where—

(a) the pension scheme holds the interest in the property directly, and

(b) the interest is not a lease at a rent,

for the purposes of section 185G (gains from taxable property: disposal by person holding directly) the pension scheme is to be treated as having acquired the interest for a consideration equal to its market value on 6th April 2006.

(9) For the purposes of sub-paragraph (3)(b) improvement works are to be taken to have been begun before 6th April 2006 only if—

(a) a binding contract for the works was entered into before that date, or

(b) a substantial amount of the works has been carried out before that date.

(10) For the purposes of this Schedule "improvement works" means, in relation to a property, works which—

(a) materially improve the property, and

(b) are not carried out wholly for the purposes of complying with a statutory requirement or a requirement imposed by a government department, a statutory body or a person holding a statutory office.

(11) For the purposes of sub-paragraph (10)(a) a property is materially improved by works only if—

(a) its market value on the date the works are substantially completed ("MVW") exceeds what would have been its market value on that date if the works had not been carried out ("MV"), and

(b) the amount by which MVW exceeds MV is greater than 20% of MV.

(12) For the purposes of sub-paragraph (10)(b)—

"statutory body" means a body set up by or under an enactment (including an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament);

"statutory office" means a body set up by or under such an enactment; and

"statutory requirement" means a requirement imposed by provision made by or under such an enactment.

(13) This paragraph is subject to paragraph 37D.

37C (1) This paragraph applies where—

(a) on 6th April 2006 an investment-regulated pension scheme holds an interest in taxable property which it acquired before that date, and

(b) immediately before that date the pension scheme was prohibited from holding the interest.

(2) This paragraph also applies where—

(a) on 6th April 2006 an investment-regulated pension scheme holds an interest in taxable property indirectly which it acquired before that date, and

(b) immediately before that date the pension scheme was prohibited from holding the interest it held in the person that held the interest in the property directly at that time.

(3) The pension scheme is to be treated for the purposes of the taxable property provisions as acquiring the interest in the property on 6th April 2006.

(4) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of the acquisition is—

(a) the market value on 6th April 2006 of the interest in the property held by the person who holds it directly, or

(b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 of Schedule 29A if it were assigned to the person on that date.

(5) Where—

(a) the pension scheme holds the interest in the property directly, and

(b) the interest is not a lease at a rent,

for the purposes of section 185G (gains from taxable property: disposal by person holding directly) the pension scheme is to be treated as having acquired the interest for a consideration equal to its market value on 6th April 2006.

37D (1) This paragraph applies where—

(a) sub-paragraph (1) or (2) of paragraph 37A applies in relation to a pension scheme and an interest in property,

(b) immediately before 6th April 2006 the pension scheme was a self-invested personal pension scheme or a small self-administered scheme,

(c) on that date the pension scheme holds the interest in the property indirectly or (if sub-paragraph (2) of paragraph 37A applies in relation to the pension scheme and the interest in the property) the pension scheme will hold the interest indirectly once it has been acquired pursuant to the contract,

(d) the property is residential property on that date, and

(e) improvement works on the property were begun after 5th December 2005.

(2) This paragraph also applies where—

(a) sub-paragraph (1) or (2) of paragraph 37A applies in relation to a pension scheme and an interest in property,

(b) immediately before 6th April 2006 the pension scheme was a small self-administered scheme,

(c) on that date the pension scheme holds the interest in the property directly,

(d) the pension scheme acquired the interest before 5th August 1991,
(e) the property is residential property on 6th April 2006, and
(f) improvement works on the property were begun after 5th December 2005.

(3) If the works are completed on or after 6th April 2006, paragraph 37B applies in relation to the pension scheme and the interest in the property as if the works were begun on or after that date.

(4) If the works are completed before that date—
(a) paragraph 37A does not apply in relation to the pension scheme and the interest in the property, and
(b) unless the pension scheme has still to acquire the interest in the property on that date, sub-paragraphs (3) to (5) of paragraph 37C apply in relation to the pension scheme and the interest.

(5) For the purposes of this paragraph improvement works are to be taken to have been begun before 6th December 2005 only if—
(a) a binding contract for the works was entered into before that date, or
(b) a substantial amount of the works has been carried out before that date.

37E (1) This paragraph applies where—
(a) paragraph 37A would otherwise apply in relation to a pension scheme and an interest in property,
(b) immediately before 6th April 2006 the pension scheme was a retirement benefits scheme approved under section 590 of ICTA, and
(c) the pension scheme was approved under that section after 5th December 2005.

(2) Paragraph 37A does not apply in relation to the pension scheme and the interest in the property.

(3) Unless the pension scheme has still to acquire the interest in the property on 6th April 2006, sub-paragraphs (3) to (5) of paragraph 37C apply in relation to the pension scheme and the interest.

Post-commencement acquisitions of taxable property

37F (1) This paragraph applies where on or after 6th April 2006 an investment-regulated pension scheme acquires an interest in taxable property consisting of tangible moveable property because a person in whom the pension scheme directly or indirectly holds an interest comes to hold the interest in the property directly.

(2) The taxable property provisions (apart from this paragraph and paragraph 37G) do not apply in relation to the pension scheme and the interest in the property if the conditions in sub-paragraph (3) are met.

(3) Those conditions are that—
(a) on 6th April 2006 the pension scheme held the interest in the person by virtue of acquiring it before that date,
(b) immediately before that date the pension scheme was not prohibited from holding the interest in the person,
(c) at no time during the period beginning with that date and ending immediately before the acquisition of the interest in the property has the pension scheme's

interest in the person been such that, if it had held that interest in the person immediately before 6th April 2006, it would have been prohibited from holding that interest at that time, and

(d) the person acquires the interest in the property so that the property may be used for the purposes of a trade, profession or vocation carried on by the person or for the purposes of its administration or management.

(4) This paragraph is subject to paragraph 37G.

37G (1) Where Condition A or B is met in relation to the pension scheme and an interest in property to which paragraph 37F has applied, the pension scheme is to be treated for the purposes of the taxable property provisions as acquiring the interest in the property on the date on which the Condition is met.

(2) Condition A is that there is a change in the pension scheme's interest in the person who holds the interest in the property directly such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the person at that time.

(3) Condition B is that the property ceases to be used for the purposes of—

(a) a trade, profession or vocation carried on by the person, or

(b) its administration or management.

(4) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of the acquisition is the market value on the relevant date of the interest in the property held by the person.

37H (1) This paragraph applies where on or after 6th April 2006 an investment-regulated pension scheme acquires an interest in taxable property consisting of residential property because a person in whom the pension scheme directly or indirectly holds an interest comes to hold the interest in the property directly.

(2) The taxable property provisions (apart from this paragraph and paragraph 37I) do not apply in relation to the pension scheme and the interest in the property if the conditions in sub-paragraph (3) are met.

(3) Those conditions are that—

(a) on 6th April 2006 the pension scheme held the interest in the person by virtue of acquiring it before that date,

(b) immediately before that date the pension scheme was not prohibited from holding the interest in the person,

(c) immediately before that date the person had a business involving the holding and letting of residential property and held directly five or more assets consisting of interests in residential property for the purposes of that business,

(d) at no time during the period beginning with that date and ending immediately before the acquisition of the interest in the property has the pension scheme's interest in the person been such that, if it had held that interest in the person immediately before 6th April 2006, it would have been prohibited from holding that interest at that time,

(e) the person acquires the interest in the property for the purposes of its property rental business, and

(f) after the acquisition of the interest in the property, the property is not occupied or used by a member of the pension scheme or a person connected with such a member.

(4) This paragraph is subject to paragraph 37I.

(5) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.

37I (1) Where Condition A, B or C is met in relation to the pension scheme and an interest in property to which paragraph 37H has applied, the pension scheme is to be treated for the purposes of the taxable property provisions as acquiring, on the date on which the Condition is met, each interest in property—

(a) which it holds on that date, and

(b) to which paragraph 37H has applied before that date.

(2) Condition A is that there is a change in the pension scheme's interest in the person who holds the interest in the property directly such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the person at that time.

(3) Condition B is that the property ceases to be used for the purposes of the person's property rental business.

(4) Condition C is that the property is occupied or used by a member of the pension scheme or a person connected with such a member.

(5) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of an acquisition of an interest in property treated as made by virtue of this paragraph is—

(a) the market value on the relevant date of the interest in the property held by the person who holds it directly, or

(b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 of Schedule 29A if it were assigned to the person on that date.**]**

Pre-commencement loans to sponsoring employers

38 (1) This paragraph applies to a loan if—

(a) the loan was made before 6th April 2006 by an occupational pension scheme which becomes a registered pension scheme on that date,

(b) had this Part had been in force and had the pension scheme been a registered pension scheme at the time when the loan was made, it would have been a loan to a sponsoring employer, and

(c) the date by which the total amount owing (including interest) must be paid is on or after 6th April 2006.

(2) If on or after 6th April 2006 there is no alteration in the repayment terms, section 179 (authorised employer loan) does not apply in relation to the loan.

(3) If on or after 6th April 2006 there is an alteration in the repayment terms, section 179 applies as if, on the date of the alteration, the pension scheme made a loan to the sponsoring employer of an amount equal to the amount owing (including interest) on that date.

(4) The postponement of the date by which the total amount owing (including interest) must be paid is not an alteration in the repayment terms if—

(a) an amount is outstanding on the date by which the total amount owing should have been paid,

(b) the postponement is for a period not exceeding five years, and

(c) there has been no previous postponement on or after 6th April 2006.

Retirement annuity contracts: carry-back of pre-commencement contributions

39 The repeal by this Act of section 619(4) of ICTA (election on or before 31st January following tax year in which retirement annuity contract premium is paid to treat premium as paid in earlier tax year) does not prevent the making of an election under that provision (in relation to a premium paid in the tax year 2005-06) at any time on or before 31st January 2007.

Members' contributions to pre-commencement retirement annuity contracts

40 (1) Relief in respect of contributions made by a member under pre-commencement retirement annuity arrangements is not required to be given in accordance with section 192 (relief at source).

(2) If relief in respect of contributions made by a member under pre-commencement retirement annuity arrangements is not given in accordance with section 192, relief in respect of the contributions is to be given in accordance with section 194 (relief on making of claim).

(3) "Pre-commencement retirement annuity arrangements" means—

(a) an annuity contract or trust scheme approved under section 620 or 621 of ICTA, or

(b) a substituted contract within the meaning of section 622(3) of ICTA.

Modifications etc. (not altering text)

C2 Sch. 36 para. 40(3) modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), **27(1)**(2)(5)

Employers' contributions relieved before 6th April 2006

41 To the extent that any contribution paid by an employer under a registered pension scheme was—

(a) allowed to be deducted for the purposes of **[**[F2] Part 2 of ITTOIA 2005 (trading income) or**]** Case I or II of Schedule D,

(b) deductible under section 75 of ICTA (expenses of management: companies with investment business), or

(c) brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies),

for a period beginning before 6th April 2006, it is not allowed to be so deducted, so deductible, or available to be so brought into account for that or any other period in accordance with section 196 (relief for employers in respect of contributions paid).

Textual Amendments

F2 Words in Sch. 36 para. 41(a) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 656(2)** (with Sch. 2)

Spreading of employer's contributions

42 The power of the Board of Inland Revenue under section 592(6) of ICTA to direct that a sum paid under an exempt approved scheme otherwise than by way of ordinary annual contribution be treated as an expense to be spread over such period of years as the Board think fit continues to apply in relation to sums paid before 6th April 2006.

Taxation of annuities paid under pre-commencement retirement annuity contracts

[F3]43 . . . .

Textual Amendments

F3 Sch. 36 para. 43 repealed (with effect in accordance with s. 1034(1) of the amending Act) by Finance Act 2005 (c. 7), Sch. 10 paras. 61(a), 64(2), **Sch. 11 Pt. 4**

Taxation of pensions accruing (but not taxed) pre-commencement and paid or received post-commencement

44 (1) If an amount which accrued but was not paid before 6th April 2006 would have constituted taxable pension income under Chapter 7 of Part 9 of ITEPA 2003 (former approved superannuation fund annuities) had it been paid before that date, it is to be treated for the purposes of Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) as if it accrues when it is paid.

(2) If an amount which accrued but was not received before 6th April 2006 would have constituted taxable pension income under section 596 of ITEPA 2003 (personal pension annuities) had it been received before that date, it is to be treated for the purposes of Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) as if it accrues when it is received.

Pensions taxed pre-commencement but accruing post-commencement

45 (1) If an amount which was paid but had not accrued before 6th April 2006 constituted taxable pension income under Chapter 7 of Part 9 of ITEPA 2003 (former approved superannuation fund annuities), it does not also constitute taxable pension income under Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) when it accrues.

(2) If an amount which was received but had not accrued before 6th April 2006 constituted taxable pension income under section 596 of ITEPA 2003 (personal pension annuities), it does not also constitute taxable pension income under Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) when it accrues.

Application of PAYE to certain annuities in payment at commencement

[F4]46 . . . .

Textual Amendments

F4 Sch. 36 para. 46 repealed (with effect in accordance with s. 1034(1) of the amending Act) by Finance Act 2005 (c. 7), Sch. 10 paras. 61(b), 64(2), **Sch. 11 Pt. 4**

Authorised surplus payments charge: pre-19th March 1986 winding-up

47 Section 207 (authorised surplus payments charge) does not apply to any payment made in pursuance of the winding-up of a pension scheme if the winding-up commenced before 19th March 1986.

Annual allowance charge: post-commencement contributions to discharge pre-commencement unfunded promises

48 (1) This paragraph applies where, during the period beginning with 6th April 2006 and ending with 7th July 2006, an employer of an individual makes a relevant consolidation contribution in respect of the individual under an arrangement under a registered pension scheme relating to the individual.

(2) The pension input amount in respect of the arrangement during the pension input period of the arrangement ending in the tax year 2006-07 is to be reduced by the amount of the contribution.

(3) "Relevant consolidation contribution" means a contribution made by way of discharge of any liability incurred by the employer before 6th April 2006 to pay any pension or lump sum to or in respect of the individual.

Annual allowance charge: enhanced protection

49 (1) This paragraph applies if notice of intention to rely on paragraph 12 (enhanced protection) is given to the Inland Revenue in accordance with regulations under that paragraph in the case of an individual.

(2) Sections 227 to 238 (annual allowance charge) do not apply in relation to the individual for any tax year if that paragraph applies in relation to the individual throughout the tax year.

[[F5](3) This paragraph does not apply for the purposes of the special annual allowance charge.**]**

Textual Amendments

F5 Sch. 36 para. 49(3) inserted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 35 para. 22**

Saving of sections 605 and 651A of ICTA

50 The repeal by this Act of sections 605 and 651A of ICTA (information powers) does not affect the operation of those sections, or regulations under them, in relation to times before 6th April 2006.

Individuals with pre-commencement entitlement to corresponding relief

51 (1) This paragraph applies where the Board of Inland Revenue allow contributions made by an individual under a pension scheme as deductions under Chapter 2 of Part 5 of ITEPA 2003 for the tax year 2005-06 in accordance with section 355 of that Act (deductions for corresponding payments by non-domiciled employees with foreign employers).

(2) Where the individual makes contributions under the pension scheme for any subsequent tax year, the Board of Inland Revenue may allow the contributions as deductions under Chapter 2 of Part 5 of that Act if, as well as the Board of Inland Revenue being satisfied that the conditions in section 355 of that Act are met, the scheme manager complies with any prescribed benefit crystallisation information requirements imposed on the scheme manager.

(3) Schedule 34 (non-UK schemes: application of certain charges) applies in relation to the pension scheme and the individual as if allowing the contributions as deductions under Chapter 2 of Part 5 of ITEPA 2003 by virtue of sub-paragraph (2) were the giving of relief by virtue of Schedule 33 (overseas pension schemes: migrant member relief).

(4) "Prescribed benefit crystallisation information requirements" means requirements imposed by or under regulations made by the Board of Inland Revenue to provide to the Inland Revenue any information relating to events that are benefit crystallisation events in relation to the individual.

(5) The references in sub-paragraphs (2) and (3) to the pension scheme include a pension scheme **[**[F6]("a transferee pension scheme") if there has been—

(a) a block transfer from the pension scheme within sub-paragraph (1) ("the original pension scheme") to the transferee pension scheme, or

(b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.**]**

(6) "Block transfer" has the same meaning as in paragraph 22(6), but treating the references there to the member as references to the individual.

Textual Amendments

F6 Words in Sch. 36 para. 51(5) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 55(7)**, 64(1)

Continuing operation of section 392 of ITEPA 2003

52 Section 392 of ITEPA 2003 (non-approved schemes: relief where no benefits are paid or payable) continues to have effect in relation to a sum charged to tax by virtue of section 386 of ITEPA 2003 or section 595 of ICTA (charges on payments to schemes) before 6th April 2006.

Benefits taxable under Chapter 2 of Part 6 of ITEPA 2003: contributions taxed pre-commencement

53 (1) Paragraph 54 or 55 has effect where—

(a) section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) operates (or would otherwise operate) by reason of the provision of a lump sum under an employer-financed retirement benefits scheme on or after 6th April 2006, and

(b) before that date an employer has paid any sum or sums, with a view to the provision of benefits under the scheme, in respect of which an employee is taxed.

(2) For the purposes of sub-paragraph (1)(a) section 394 of ITEPA 2003 operates if—

(a) an amount counts as employment income of an individual under that section, or

(b) the person who is, or persons who are, the responsible person in relation to the scheme is or are chargeable **[**F7to income tax under subsection (2) of**]** that section.

(3) For the purposes of sub-paragraph (1)(b) an employee is taxed in respect of a sum or sums if—

(a) the employee is assessed to tax by virtue of section 595 (1) of ICTA (charges on payments) in respect of the sum or sums, or

(b) the sum or sums counts or count as employment income of the employee under section 386 (1) of ITEPA 2003 (charges on payments).

(4) It is to be assumed, unless the contrary is shown, that neither paragraph 54 nor paragraph 55 has effect.

Textual Amendments

F7 Words in Sch. 36 para. 53(2)(b) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 656(3)** (with Sch. 2)

54 (1) This paragraph has effect if—

(a) all of the income and gains accruing to the scheme are brought into charge to tax and the lump sum is provided to the employee, a relative of the employee, the personal representatives of the employee, an ex-spouse **[**F8or former civil partner**]** of the employee or any other individual designated by the employee, or

(b) the scheme was entered into before **[**F91st December 1993**]** and has not been varied on or after that date with a view to the provision of benefits under the scheme.

(2) In a case where the employer has not paid any sum or sums with a view to the provision of benefits under the scheme since before 6th April 2006, section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) does not apply in relation to the lump sum.

(3) In a case where the employer has paid any sum or sums with a view to the provision of benefits under the scheme on or after 6th April 2006—

(a) section 394 of ITEPA 2003 does not apply in relation to so much of the lump sum as does not exceed the appropriate fraction of the amount of the market value of the assets of the scheme on 5th April 2006 as increased under sub-paragraph (4), and

(b) only any sum or sums paid by the employee after that date with a view to the provision of benefits under the scheme is or are to be taken into account under section 395 of ITEPA 2003 (general rules).

(4) For the purposes of sub-paragraph (3)(a)—

(a) "the appropriate fraction" of the amount of the market value of the assets of the scheme on 5th April 2006 is the same fraction as the fraction of the assets of the scheme to which the employee would have been entitled had the scheme been wound up on that date, and

(b) the amount of the market value of the assets of the scheme on that date is to be increased by the percentage by which the retail prices index for the month in which the lump sum is provided is greater than that for April 2006.

(5) In this paragraph—

"ex-spouse", in relation to an employee, means the other party to a marriage with the employee that has been dissolved or annulled, and

[F10"former civil partner", in relation to an employee, means the other party to a civil partnership with the employee that has been dissolved or annulled,**]**

"relative", in relation to an employee, means—

(a) the **[**F11spouse or civil partner**]** of the employee,

(b) the widow or widower **[**F12or surviving civil partner**]** of the employee,

(c) a child of the employee, or

(d) a dependant of the employee.

Textual Amendments

F8 Words in Sch. 36 para. 54(1)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **182(a)**

F9 Words in Sch. 36 para. 54(1)(b) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 46**

F10 Words in Sch. 36 para. 54(5) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **182(b)(i)**

F11 Words in Sch. 36 para. 54(5) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), 182(b)(ii)(aa)

F12 Words in Sch. 36 para. 54(5) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), 182(b)(ii)(bb)

55 (1) This paragraph has effect if paragraph 54 does not.

(2) Section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) does not apply in relation to so much of the lump sum as does not exceed the sum, or the aggregate of the sums, referred to in paragraph 53(1)(b).

(3) And the reference in section 395 of that Act (general rules) to the amount of the lump sum is to the amount of the remainder of the lump sum.

Inheritance tax

56 (1) This paragraph applies in relation to a fund or scheme—

(a) which is not a registered pension scheme **[**F13, a qualifying non-UK pension scheme**]** or a superannuation fund to which section 615(3) of ICTA applies, but

(b) to which section 151 of the Inheritance Tax Act 1984 (c. 51) (treatment of pension rights) applied immediately before 6th April 2006.

(2) If no contributions are made under the fund or scheme on or after that date—

(a) section 151 of the Inheritance Tax Act 1984 continues to apply to the fund or scheme on and after that date for all purposes of that Act, and

(b) property which is part of or held for the purposes of the fund or scheme does not constitute relevant property for the purposes of Chapter 3 of Part 3 of that Act (settlements without interest in possession).

(3) In any other case, paragraphs 57 and 58 apply to the fund or scheme on and after that date.

[F14(4) In this paragraph "qualifying non-UK pension scheme" has the same meaning as in the Inheritance Tax Act 1984 (see section 271A of that Act).**]**

Textual Amendments

F13 Words in Sch. 36 para. 56(1)(a) inserted (retrospective to 6.4.2006) by Finance Act 2008 (c. 9), **Sch. 29 para. 18(7)(a)**(8)

F14 Sch. 36 para. 56(4) inserted (retrospective to 6.4.2006) by Finance Act 2008 (c. 9), **Sch. 29 para. 18(7)(b)**(8)

57 (1) The **[**F15percentage**]** of the assets of the fund or scheme which at any time is the protected **[**F15percentage**]** of those assets does not at that time constitute relevant property for the purposes of Chapter 3 of Part 3 of the Inheritance Tax Act 1984 (settlements without interest in possession).

(2) "The protected **[**F16percentage**]**" of the assets of the fund or scheme at a time is—

$$\frac{ACV}{V} \times 100$$

where—

V is the market value of the assets of the fund or scheme at that time, and

ACV is the adjusted commencement value, that is an amount equal to the market value of the assets of the fund or scheme on 5th April 2006, but subject to the adjustments provided by sub-paragraph (3).

(3) The adjustments are—

(a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for April 2006, and

(b) a reduction by the amount of any relevant payments made under the fund or scheme on or after 6th April 2006 and before that time.

(4) "Relevant payments"are payments other than—

(a) payments of costs or expenses, or

(b) payments which are (or will be) income of any person for any of the purposes of income tax.

Textual Amendments

F15 Word in Sch. 36 para. 57(1) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 58(2)**, 64(1)

F16 Word in Sch. 36 para. 57(2) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 58(2)**, 64(1)

58 (1) Section 151 of the Inheritance Tax Act 1984 (treatment of pension rights) continues to apply to so much of the assets of the fund or scheme at any time as does not exceed the amount that is the protected amount at that time.

(2) But sub-paragraph (1) does not affect the operation of subsection (1)(d) of section 58 of that Act (because paragraph 57 makes provision about the extent to which the assets of the fund or scheme constitute relevant property within the meaning given by that section).

(3) If inheritance tax has not previously been chargeable (otherwise than only because of this paragraph) by reference to the value of the assets of the fund or scheme on or after 6th April 2006, the protected amount is an amount equal to the amount of the market value of the assets of the fund or scheme on 5th April 2006, but subject to the adjustments provided by sub-paragraph (4).

(4) The adjustments are—

(a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for April 2006, and

(b) a reduction by the amount of any relevant payments made under the fund or scheme on or after 6th April 2006 and before that time.

(5) If inheritance tax would (apart from this paragraph) have previously been chargeable by reference to the value of the assets of the fund or scheme on one or more occasions on or after 6th April 2006, the protected amount is what it was immediately before the occasion, or (where there has been more than one) the last occasion, on which inheritance tax would have been so chargeable ("the relevant tax occasion"), but—

(a) reduced by the value of the property on which inheritance tax would have been chargeable on the relevant tax occasion, and

(b) subject to the adjustments provided by sub-paragraph (6).

(6) The adjustments are —

(a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for the month in which the relevant tax occasion fell, and

(b) a reduction by the amount of any **[**[F17]relevant**]** payments made under the fund or scheme since the relevant tax occasion.

(7) "Relevant payments"are payments other than—

(a) payments of costs or expenses, or

(b) payments which are (or will be) income of any person for any of the purposes of income tax.

Textual Amendments

F17 Word in Sch. 36 para. 58(6)(b) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 58(3)**, 64(1)