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## SCHEDULES

### SCHEDULE 1

Section 4

#### NEW SCHEDULE 2A TO THE ALCOHOLIC LIQUOR DUTIES ACT 1979

##### Commencement Information

- II** Sch. 1 has effect as specified by [The Finance Act 2004 \(Duty Stamps\) \(Appointed Day\) Order 2006 \(S.I. 2006/201\)](#), [art. 2](#)

The Schedule inserted before Schedule 3 to the Alcoholic Liquor Duties Act 1979 (c. 4) is as follows—

#### “SCHEDULE 2A

Section 64A

#### DUTY STAMPS

##### *Retail containers to be stamped*

- 1 (1) Retail containers of alcoholic liquors to which this Schedule applies shall be stamped—
- (a) in such cases and circumstances, and with a duty stamp of such a type, as may be prescribed; but
  - (b) subject to such exceptions as may be prescribed.
- (2) In this Schedule “retail container”, in relation to an alcoholic liquor, means a container—
- (a) of a capacity of 35 centilitres or more, and
  - (b) in which, or from which, the liquor is intended to be sold by retail.
- (3) This Schedule applies to the following alcoholic liquors—
- (a) spirits;
  - (b) wine or made-wine of a strength exceeding 22 per cent.
- (4) For the purposes of this Schedule a retail container is “stamped” if—
- (a) it carries a duty stamp of a type mentioned in sub-paragraph (5)(a) below which has been affixed to the container in a way that complies with the requirements of regulations under this Schedule, or
  - (b) it carries a label which has been so affixed to the container and the label incorporates a duty stamp of a type mentioned in sub-paragraph (5)(b) below.
- (5) In this Schedule “duty stamp” means any of the following—
- (a) a document (a “type A stamp”) issued by or on behalf of the Commissioners which—
    - (i) is designed to be affixed to a retail container of alcoholic liquor, and
    - (ii) indicates that the appropriate duty, or an amount representing some or all of the appropriate duty, has been (or is to be) paid;

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- (b) a part of a label for a retail container of alcoholic liquor (a “type B stamp”) which—
  - (i) is incorporated in the label under the authority of the Commissioners, and
  - (ii) indicates that the appropriate duty, or an amount representing some or all of the appropriate duty, has been (or is to be) paid.
- (6) In sub-paragraph (5) above “the appropriate duty” means the duty chargeable on the quantity and description of alcoholic liquor contained, or to be contained, in the retail container to which the stamp, or the label incorporating the stamp, is, or is to be, affixed.

*Power to alter liquors, and capacity of container, to which this Schedule applies*

- 2 (1) The Treasury may by order made by statutory instrument amend paragraph (a) of paragraph 1(2) above for the purpose of varying the capacity from time to time specified in that paragraph.
- (2) The Treasury may by order made by statutory instrument amend paragraph 1(3) above for the purpose of causing this Schedule—
  - (a) to apply to any description of alcoholic liquor to which it does not apply, or
  - (b) to cease to apply to any description of alcoholic liquor to which it does apply.
- (3) A statutory instrument containing an order under this paragraph shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

*Acquisition of and payment for duty stamps*

- 3 (1) The Commissioners may by regulations make provision as to the terms and conditions on which a person may obtain—
  - (a) a type A stamp,
  - (b) authority to incorporate in a label a type B stamp,
  - (c) authority to obtain a label incorporating a type B stamp,
  - (d) authority to affix such a label to a retail container of alcoholic liquor.
- (2) Regulations under sub-paragraph (1) above may in particular make provision for or in connection with—
  - (a) requiring a person in prescribed cases or circumstances to pay, or agree to pay, the prescribed amount to the Commissioners or to a person authorised by the Commissioners for this purpose;
  - (b) requiring a person in prescribed cases or circumstances to provide to the Commissioners such security as they may require in respect of payment of the appropriate duty.
- (3) An amount prescribed for the purposes of sub-paragraph (2)(a) above must not exceed the aggregate of—
  - (a) an amount representing the appropriate duty, and
  - (b) in the case of a type A stamp, the cost of issuing the stamp.
- (4) Regulations under sub-paragraph (1) above may also in particular make provision for or in connection with requiring or enabling the Commissioners to bear, in prescribed circumstances, in the case of a type B stamp, all or part of so much of the cost of producing the label as is attributable to the incorporation in it of the stamp.

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- (5) The whole of an amount payable for a duty stamp shall be treated for the purposes of the Customs and Excise Acts 1979 as an amount due by way of excise duty.
- (6) In this paragraph “the appropriate duty” means the duty chargeable on the quantity and description of alcoholic liquor contained, or to be contained, in the retail container to which the stamp, or the label incorporating the stamp, is to be affixed.

### *Regulations*

- 4 (1) The Commissioners may by regulations make provision as to such matters relating to duty stamps as appear to them to be necessary or expedient.
- (2) Regulations under this Schedule may in particular make provision about—
  - (a) the times at which a retail container must bear a duty stamp;
  - (b) the type of duty stamp (see paragraph 1(5)) with which a retail container is to be stamped in any particular case or circumstances;
  - (c) the design and appearance of a duty stamp (including the production of a label incorporating a type B stamp);
  - (d) the information that is to appear on a duty stamp;
  - (e) the cost of issuing a type A stamp for the purposes of paragraph 3(3)(b) above;
  - (f) the procedure for obtaining—
    - (i) a type A stamp,
    - (ii) authority to incorporate in a label a type B stamp,
    - (iii) authority to obtain a label incorporating a type B stamp,
    - (iv) authority to affix such a label to a retail container of alcoholic liquor, (including provision setting periods of notice);
  - (g) where on the container a type A stamp, or a label incorporating a type B stamp, is to be affixed;
  - (h) repayment of, or credit for, in prescribed circumstances and subject to such conditions as may be prescribed, all or part of a payment made under or by virtue of this Schedule to the Commissioners or to a person authorised by the Commissioners;
  - (i) liability to forfeiture in prescribed circumstances of some or all of a payment made, or security provided, under or by virtue of this Schedule to the Commissioners or to a person authorised by the Commissioners.
- (3) Regulations under this Schedule may also, in particular, make provision for or in connection with preventing a type A stamp, or a label incorporating a type B stamp, from being used by a person other than—
  - (a) in the case of a type A stamp, the person to or for whom the stamp was issued or a person authorised by that person to affix the stamp to a retail container of alcoholic liquor,
  - (b) in the case of a type B stamp, the person to or for whom authority to obtain the label incorporating the stamp, or to affix that label to a retail container of alcoholic liquor, was given by the Commissioners.
- (4) Regulations under this Schedule may also, in particular, make provision—
  - (a) for or in connection with requiring a person who is not established, and does not have any fixed establishment, in the United Kingdom, in prescribed circumstances, to appoint another person (a “duty stamps representative”) to act on his behalf in relation to duty stamps, and

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- (b) as to the rights, obligations or liabilities of duty stamps representatives.
- (5) The Commissioners may, with a view to the protection of the revenue, make regulations for securing and collecting duty payable in accordance with this Schedule.
- (6) Regulations under this Schedule may make different provision for different cases.

*Offences of possession, sale etc of unstamped containers*

- 5 (1) Except in such cases as may be prescribed, a person commits an offence if he—
  - (a) is in possession of, transports or displays, or
  - (b) sells, offers for sale or otherwise deals in,
 unstamped retail containers containing alcoholic liquor to which this Schedule applies.
- (2) It is a defence for a person charged with an offence under this paragraph to prove that the retail containers in question were not required to be stamped.
- (3) A person who commits an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A retail container in relation to which an offence under this paragraph is committed is liable to forfeiture (together with its contents).

*Offence of using premises for sale of liquor in or from unstamped containers*

- 6 (1) A manager of premises commits an offence if—
  - (a) he suffers the premises to be used for the sale of liquor in an unstamped retail container, or for the sale of liquor that is from an unstamped retail container; and
  - (b) the liquor is alcoholic liquor to which this Schedule applies.
- (2) It is a defence for a person charged with an offence under this paragraph to prove that the retail container in question was not required to be stamped.
- (3) A person who commits an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Where an offence is committed under this paragraph, all unstamped retail containers of alcoholic liquor to which this Schedule applies that are on the premises at the time of the offence are liable to forfeiture (together with their contents).
- (5) For the purposes of this Schedule a person is a “manager” of premises if he—
  - (a) is entitled to control their use,
  - (b) is entrusted with their management, or
  - (c) is in charge of them.

*Alcohol sales ban following conviction for offence under paragraph 6*

- 7 (1) A court by or before which a person is convicted of an offence under paragraph 6 above may make an order prohibiting the use of the premises in question for the sale of alcoholic liquors during a period specified in the order.
- (2) The period specified in an order under this paragraph shall not exceed six months; and the first day of the period shall be the day specified as such in the order.



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- (3) If a manager of premises suffers the premises to be used in breach of an order under this paragraph, he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Penalty for altering duty stamps*

- 8 (1) This paragraph applies where a person—
- (a) alters a type A stamp, otherwise than in accordance with regulations under this Schedule, after it has been issued, or
  - (b) so alters a type B stamp after the label in which it is incorporated has been produced.
- (2) His conduct attracts a penalty under section 9 of the Finance Act 1994 (civil penalties).
- (3) The stamp, or the label in which it is incorporated, is liable to forfeiture.

*Penalty for affixing wrong, altered or forged stamps, or over-labelling*

- 9 (1) This paragraph applies where a person affixes to a retail container that is required to be stamped any of the items mentioned in sub-paragraphs (2) to (5) below.
- (2) The first is—
- (a) a type A stamp, or
  - (b) a label incorporating a type B stamp,
- if the stamp is not a correct stamp for that container in accordance with regulations under this Schedule.
- (3) The second is—
- (a) a type A stamp that has been altered, otherwise than in accordance with regulations under this Schedule, after it has been issued, or
  - (b) a label incorporating a type B stamp if the stamp has been so altered after the label has been produced.
- (4) The third is an item that purports to be, but is not,—
- (a) a type A stamp, or
  - (b) a label incorporating a type B stamp.
- (5) The fourth is any label or other item affixed in such a way as to cover up all or part of—
- (a) a type A stamp affixed to the container, or
  - (b) a type B stamp incorporated in a label affixed to the container,
- except where the label or other item is so affixed in accordance with regulations under this Schedule.
- (6) The person's conduct attracts a penalty under section 9 of the Finance Act 1994 (civil penalties).
- (7) The container is liable to forfeiture (together with its contents).

*Penalty for failing to comply with regulations*

- 10 (1) If a person fails to comply with a requirement imposed by or under regulations under this Schedule—

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- (a) his conduct attracts a penalty under section 9 of the Finance Act 1994 (civil penalties);
  - (b) any article in respect of which he fails to comply with the requirement is liable to forfeiture (including, in the case of a container, its contents).
- (2) Regulations under this Schedule may make provision as to the amount by reference to which the penalty under sub-paragraph (1)(a) above is to be calculated.

*Forfeiture of forged, altered or stolen duty stamps*

- 11 (1) The following items are liable to forfeiture.
- (2) The first is an item that purports to be, but is not,—
- (a) a type A stamp, or
  - (b) a label incorporating a type B stamp.
- (3) The second is—
- (a) a type A stamp that has been altered, otherwise than in accordance with regulations under this Schedule, after it has been issued, or
  - (b) a label incorporating a type B stamp if the stamp has been so altered after the label has been produced.
- (4) The third is—
- (a) a type A stamp, or
  - (b) a label incorporating a type B stamp,
- that is in a person’s possession unlawfully.

*Interpretation*

- 12 In this Schedule—
- “duty stamp” has the meaning given by paragraph 1(5) above;
  - “prescribed” means prescribed in regulations made by the Commissioners;
  - “retail container” has the meaning given by paragraph 1(2) above;
  - “stamped” and “unstamped” are to be read in accordance with paragraph 1(4) above;
  - “type A stamp” has the meaning given by paragraph 1(5)(a) above;
  - “type B stamp” has the meaning given by paragraph 1(5)(b) above.”.

SCHEDULE 2

Section 19

DISCLOSURE OF VALUE ADDED TAX AVOIDANCE SCHEMES

**PART 1**

PRINCIPAL AMENDMENTS OF VALUE ADDED TAX ACT 1994

- 1 After section 58 of the Value Added Tax Act 1994 (c. 23) insert—

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*“Disclosure of avoidance schemes*

**58A Disclosure of avoidance schemes**

Schedule 11A (which imposes disclosure requirements relating to the use of schemes for avoiding VAT) shall have effect.”.

**Commencement Information**

**I2** Sch. 2 para. 1 wholly in force at 1.8.2004; Sch. 2 para. 1 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 1 in force otherwise at 1.8.2004 by [S.I. 2004/1934](#), [art. 2](#)

2 After Schedule 11 to that Act insert—

“SCHEDULE  
11A

Section 58A

DISCLOSURE OF AVOIDANCE SCHEMES

*Interpretation*

- 1 In this Schedule—
- “designated scheme” has the meaning given by paragraph 3(4);
  - “notifiable scheme” has the meaning given by paragraph 5(1);
  - “scheme” includes any arrangements, transaction or series of transactions;
  - “tax advantage” is to be read in accordance with paragraph 2.

*Obtaining a tax advantage*

- 2 (1) For the purposes of this Schedule, a person obtains a tax advantage if—
- (a) in any prescribed accounting period, the amount by which the output tax accounted for by him exceeds the input tax deducted by him is less than it otherwise would be, or
  - (b) he obtains a VAT credit when he would not otherwise do so, or obtains a larger VAT credit or obtains a VAT credit earlier than would otherwise be the case.
- (2) A person also obtains a tax advantage for the purposes of this Schedule if, in a case where he recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case.

*Designation by order of avoidance schemes*

- 3 (1) If it appears to the Treasury—
- (a) that a scheme of a particular description has been, or might be, entered into for the purpose of enabling any person to obtain a tax advantage, and

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- (b) that it is unlikely that persons would enter into a scheme of that description unless the main purpose, or one of the main purposes, of doing so was the obtaining by any person of a tax advantage, the Treasury may by order designate that scheme for the purposes of this paragraph.
- (2) A scheme may be designated for the purposes of this paragraph even though the Treasury are of the opinion that no scheme of that description could as a matter of law result in the obtaining by any person of a tax advantage.
- (3) The order must allocate a reference number to each scheme.
- (4) In this Schedule “designated scheme” means a scheme of a description designated for the purposes of this paragraph.

*Designation by order of provisions included  
 in or associated with avoidance schemes*

- 4 (1) If it appears to the Treasury that a provision of a particular description is, or is likely to be, included in or associated with schemes that are entered into for the purpose of enabling any person to obtain a tax advantage, the Treasury may by order designate that provision for the purposes of this paragraph.
- (2) A provision may be designated under this paragraph even though it also appears to the Treasury that the provision is, or is likely to be, included in or associated with schemes that are not entered into for the purpose of obtaining a tax advantage.
- (3) In this paragraph “provision” includes any agreement, transaction, act or course of conduct.

*Meaning of “notifiable scheme”*

- 5 (1) For the purposes of this Schedule, a scheme is a “notifiable scheme” if—
  - (a) it is a designated scheme, or
  - (b) although it is not a designated scheme, conditions A and B below are met in relation to it.
- (2) Condition A is that the scheme includes, or is associated with, a provision of a description designated under paragraph 4.
- (3) Condition B is that the scheme has as its main purpose, or one of its main purposes, the obtaining of a tax advantage by any person.

*Duty to notify Commissioners*

- 6 (1) This paragraph applies in relation to a taxable person where—
  - (a) the amount of VAT shown in a return in respect of a prescribed accounting period as payable by or to him is less than or greater than it would be but for any notifiable scheme to which he is party, or
  - (b) he makes a claim for the repayment of output tax or an increase in credit for input tax in respect of any prescribed accounting period in respect of which he has previously delivered a return and the amount claimed is greater than it would be but for such a scheme.

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- (2) Where the scheme is a designated scheme, the taxable person must notify the Commissioners within the prescribed time, and in such form and manner as may be required by or under regulations, of the reference number allocated to the scheme under paragraph 3(3).
- (3) Where the scheme is not a designated scheme, the taxable person must, subject to sub-paragraph (4), provide the Commissioners within the prescribed time, and in such form and manner as may be required by or under regulations, with prescribed information relating to the scheme.
- (4) Sub-paragraph (3) does not apply where the scheme is one in respect of which any person has previously—
  - (a) provided the Commissioners with prescribed information under paragraph 9, and
  - (b) provided the taxable person with a reference number notified to him by the Commissioners under paragraph 9(2)(b).
- (5) The taxable person is not obliged to comply with sub-paragraph (2) or (3) in relation to any scheme if he has on a previous occasion complied with that sub-paragraph in relation to that scheme.
- (6) This paragraph has effect subject to paragraph 7.

*Exemptions from duty to notify under paragraph 6*

- 7 (1) Paragraph 6 does not apply to a taxable person in relation to a scheme—
  - (a) where the taxable person is not a group undertaking in relation to any other undertaking and conditions A and B below, as they have effect in relation to the scheme, are met in relation to the taxable person, or
  - (b) where the taxable person is a group undertaking in relation to any other undertaking and conditions A and B below, as they have effect in relation to the scheme, are met in relation to the taxable person and every other group undertaking.
- (2) Condition A is that the total value of the person's taxable supplies and exempt supplies in the period of twelve months ending immediately before the beginning of the relevant period is less than the minimum turnover.
- (3) Condition B is that the total value of the person's taxable supplies and exempt supplies in the prescribed accounting period immediately preceding the relevant period is less than the appropriate proportion of the minimum turnover.
- (4) In sub-paragraphs (2) and (3) "the minimum turnover" means—
  - (a) in relation to a designated scheme, £600,000, and
  - (b) in relation to any other notifiable scheme, £10,000,000.
- (5) In sub-paragraph (3) "the appropriate proportion" means the proportion which the length of the prescribed accounting period bears to twelve months.
- (6) The value of a supply of goods or services shall be determined for the purposes of this paragraph on the basis that no VAT is chargeable on the supply.

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- (7) The Treasury may by order substitute for the sum for the time being specified in sub-paragraph (4)(a) or (b) such other sum as they think fit.
- (8) This paragraph has effect subject to paragraph 8.
- (9) In this paragraph—
  - “relevant period” means the prescribed accounting period referred to in paragraph 6(1)(a) or (b);
  - “undertaking” and “group undertaking” have the same meanings as in Part 7 of the Companies Act 1985.

*Power to exclude exemption*

- 8 (1) The purpose of this paragraph is to prevent the maintenance or creation of any artificial separation of business activities carried on by two or more persons from resulting in an avoidance of the obligations imposed by paragraph 6.
- (2) In determining for the purposes of sub-paragraph (1) whether any separation of business activities is artificial, regard shall be had to the extent to which the different persons carrying on those activities are closely bound to one another by financial, economic and organisational links.
- (3) If the Commissioners make a direction under this section—
  - (a) the persons named in the direction shall be treated for the purposes of paragraph 7 as a single taxable person carrying on the activities of a business described in the direction with effect from the date of the direction or, if the direction so provides, from such later date as may be specified in the direction, and
  - (b) if paragraph 7 would not exclude the application of paragraph 6, in respect of any notifiable scheme, to that single taxable person, it shall not exclude the application of paragraph 6, in respect of that scheme, to the persons named in the direction.
- (4) The Commissioners shall not make a direction under this section naming any person unless they are satisfied—
  - (a) that he is making or has made taxable or exempt supplies,
  - (b) that the activities in the course of which he makes those supplies form only part of certain activities, the other activities being carried on concurrently or previously (or both) by one or more other persons, and
  - (c) that, if all the taxable and exempt supplies of the business described in the direction were taken into account, conditions A and B in paragraph 7(2) and (3), as those conditions have effect in relation to designated schemes, would not be met in relation to that business.
- (5) A direction under this paragraph shall be served on each of the persons named in it.
- (6) A direction under this paragraph remains in force until it is revoked or replaced by a further direction.

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*Voluntary notification of avoidance scheme that is not designated scheme*

- 9 (1) Any person may, at any time, provide the Commissioners with prescribed information relating to a scheme or proposed scheme of a particular description which is (or, if implemented, would be) a notifiable scheme by virtue of paragraph 5(1)(b).
- (2) On receiving the prescribed information, the Commissioners may—
- (a) allocate a reference number to the scheme (if they have not previously done so under this paragraph), and
  - (b) notify the person who provided the information of the number allocated.

*Penalty for failure to notify use of notifiable scheme*

- 10 (1) A person who fails to comply with paragraph 6 shall be liable, subject to sub-paragraphs (2) and (3), to a penalty of an amount determined under paragraph 11.
- (2) Conduct falling within sub-paragraph (1) shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the failure.
- (3) Where, by reason of conduct falling within sub-paragraph (1)—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under section 60,
- that conduct shall not give rise to a penalty under this paragraph.

*Amount of penalty*

- 11 (1) Where the failure mentioned in paragraph 10(1) relates to a notifiable scheme that is not a designated scheme, the amount of the penalty is £5,000.
- (2) Where the failure mentioned in paragraph 10(1) relates to a designated scheme, the amount of the penalty is 15 per cent. of the VAT saving (as determined under sub-paragraph (3)).
- (3) For this purpose the VAT saving is—
- (a) to the extent that the case falls within paragraph 6(1)(a), the aggregate of—
    - (i) the amount by which the amount of VAT that would, but for the scheme, have been shown in returns in respect of the relevant periods as payable by the taxable person exceeds the amount of VAT that was shown in those returns as payable by him, and
    - (ii) the amount by which the amount of VAT that was shown in such returns as payable to the taxable person exceeds the amount of VAT that would, but for the scheme, have been shown in those returns as payable to him, and

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- (b) to the extent that the case falls within paragraph 6(1)(b), the amount by which the amount claimed exceeds the amount which the taxable person would, but for the scheme, have claimed.
- (4) In sub-paragraph (3)(a) “the relevant periods” means the prescribed accounting periods beginning with that in respect of which the duty to comply with paragraph 6 first arose and ending with the earlier of the following—
  - (a) the prescribed accounting period in which the taxable person complied with that paragraph, and
  - (b) the prescribed accounting period immediately preceding the notification by the Commissioners of the penalty assessment.

#### *Penalty assessments*

- 12 (1) Where any person is liable under paragraph 10 to a penalty of an amount determined under paragraph 11, the Commissioners may, subject to sub-paragraph (3), assess the amount due by way of penalty and notify it to him accordingly.
- (2) The fact that any conduct giving rise to a penalty under paragraph 10 may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.
- (3) In a case where the penalty falls to be calculated by reference to the VAT saving as determined under paragraph 11(3) and the VAT that would, but for the scheme, have been shown in returns as payable by or to the taxable person cannot be readily attributed to any one or more prescribed accounting periods, it shall be treated for the purposes of this Schedule as VAT that would, but for the scheme, have been shown as payable by or to the taxable person in returns for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the penalty.
- (4) No assessment to a penalty under this paragraph shall be made more than two years from the time when facts sufficient, in the opinion of the Commissioners, to indicate that there has been a failure to comply with paragraph 6 in relation to a notifiable scheme came to the Commissioners' knowledge.
- (5) Where the Commissioners notify a person of a penalty in accordance with sub-paragraph (1), the notice of assessment shall specify—
  - (a) the amount of the penalty,
  - (b) the reasons for the imposition of the penalty,
  - (c) how the penalty has been calculated, and
  - (d) any reduction of the penalty in accordance with section 70.
- (6) Where a person is assessed under this paragraph to an amount due by way of penalty and is also assessed under section 73(1), (2), (7), (7A) or (7B) for any of the prescribed accounting periods to which the assessment under this paragraph relates, the assessments may be combined and notified to him as one assessment, but the amount of the penalty shall be separately identified in the notice.



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- (7) If an amount is assessed and notified to any person under this paragraph, then unless, or except to the extent that, the assessment is withdrawn or reduced, that amount shall be recoverable as if it were VAT due from him.
- (8) Subsection (10) of section 76 (notification to certain persons acting for others) applies for the purposes of this paragraph as it applies for the purposes of that section.

#### *Penalty assessments*

- 13 Regulations under this Schedule—
- (a) may make different provision for different circumstances, and
  - (b) may include transitional provisions or savings.”.

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#### **Commencement Information**

- I3** Sch. 2 para. 2 wholly in force at 1.8.2004; Sch. 2 para. 2 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 2 in force otherwise at 1.8.2004 by [S.I. 2004/1934](#), [art. 2](#)

## **PART 2**

### CONSEQUENTIAL AMENDMENTS

- 3 In section 70 of the Value Added Tax Act 1994 (c. 23) (mitigation of penalties), in subsection (1) after “69A” insert “ or under paragraph 10 of Schedule 11A ”.

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#### **Commencement Information**

- I4** Sch. 2 para. 3 wholly in force at 1.8.2004; Sch. 2 para. 3 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 3 in force otherwise at 1.8.2004 by [S.I. 2004/1934](#), [art. 2](#)

- 4 In section 83 of that Act (appeals) after paragraph (z) insert—
- “(za) a direction under paragraph 8 of Schedule 11A,
  - (zb) any liability to a penalty under paragraph 10(1) of Schedule 11A, any assessment under paragraph 12(1) of that Schedule or the amount of such an assessment;”.

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#### **Commencement Information**

- I5** Sch. 2 para. 4 wholly in force at 1.8.2004; Sch. 2 para. 4 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 4 in force otherwise at 1.8.2004 by [S.I. 2004/1934](#), [art. 2](#)

- 5 (1) Section 84 of that Act (further provisions relating to appeals) is amended as follows.
- (2) In subsection (3), for “or (ra)” substitute “, (ra) or (zb) ”.
- (3) After subsection (6) insert—
- “(6A) Without prejudice to section 70, nothing in section 83(zb) shall be taken to confer on a tribunal any power to vary an amount assessed by way of

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penalty except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 11 of Schedule 11A.”.

**Commencement Information**

**I6** Sch. 2 para. 5 wholly in force at 1.8.2004; Sch. 2 para. 5 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 5 in force otherwise at 1.8.2004 by [S.I. 2004/1934](#), [art. 2](#)

6 In section 97 of that Act (orders, rules and regulations) in subsection (4) (which lists powers exercisable subject to affirmative procedure in the House of Commons) after paragraph (f) insert—  
“(g) an order under paragraph 3 or 4 of Schedule 11A.”.

**Commencement Information**

**I7** Sch. 2 para. 6 wholly in force at 1.8.2004; Sch. 2 para. 6 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 6 in force otherwise at 1.8.2004 by [S.I. 2004/1934](#), [art. 2](#)

<sup>F1</sup>SCHEDULE 3

Section 28

**Textual Amendments**

**F1** [Sch. 3](#) repealed (with effect in accordance with Sch. 26 Pt. 3(1) Note of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 26 Pt. 3\(1\)](#)

SCHEDULE 4

Section 29

AMENDMENTS RELATING TO THE RATE APPLICABLE TO TRUSTS

*Sums paid to settlor otherwise than as income*

<sup>F21</sup> .....

**Textual Amendments**

**F2** Sch. 4 para. 1 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Trustees chargeable to income tax at 30 per cent in certain cases*

<sup>F32</sup> .....

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**Textual Amendments**

- F3** Sch. 4 para. 2 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

*Commencement*

**F43** .....

**Textual Amendments**

- F4** Sch. 4 para. 3 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 3** (with [Sch. 2](#))

SCHEDULE 5

Section 30

PROVISION NOT AT ARM'S LENGTH: RELATED AMENDMENTS

*Taxes Management Act 1970*

*Notice of enquiry*

- 1 (1) Section 9A of the Taxes Management Act 1970 (c. 9) is amended as follows.
- (2) For subsection (4) (scope of inquiry) substitute—
- “(4) An enquiry extends to—
- (a) anything contained in the return, or required to be contained in the return, including any claim or election included in the return,
  - (b) consideration of whether to give the taxpayer a transfer pricing notice under paragraph 5C of Schedule 28AA to the principal Act (provision not at arm's length: medium-sized enterprise),
- but this is subject to the following limitation.”.

*Income and Corporation Taxes Act 1988*

**F52** .....

**Textual Amendments**

- F5** Sch. 5 para. 2 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

*Petroleum extraction activities: ring fence trade: charges on income*

- 3 (1) Section 494 of the Taxes Act 1988 (charges on income) is amended as follows.

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(2) In subsection (2) (which restricts the loan relationship debits that may be brought into account in a manner resulting in reduction of ring fence profits)—

- F6(a) .....
- (b) omit paragraph (d) (which imposes a restriction by reference to a reasonable commercial rate of return and is superseded by the application of paragraphs 1A and 1B of Schedule 28AA to the Taxes Act 1988 by virtue of paragraph 11 of that Schedule);
- (c) omit the third sentence (which defines “net debit” for the purposes of paragraph (d)).

(3) Omit subsection (2B) (which relates to the net debit within the meaning of subsection (2)(d)).

**Textual Amendments**  
**F6** Sch. 5 para. 3(2)(a) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Assumptions for calculating chargeable profits etc: transfer pricing*

4 In Schedule 24 to the Taxes Act 1988, paragraph 20 shall cease to have effect.

*Finance Act 1996*

*Loan relationships: introductory*

F75 .....

**Textual Amendments**  
**F7** Sch. 5 paras. 5-8 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Transactions not at arm’s length*

F76 .....

**Textual Amendments**  
**F7** Sch. 5 paras. 5-8 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Continuity of treatment: groups etc.*

F77 .....

**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

**Textual Amendments**

- F7** Sch. 5 paras. 5-8 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Amounts imputed under Schedule 28AA to the Taxes Act 1988*

**F78** .....

**Textual Amendments**

- F7** Sch. 5 paras. 5-8 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Finance Act 1998*

*Introductory*

9 The Finance Act 1998 (c. 36) is amended as follows.

*Scope of enquiry*

- 10 (1) In Schedule 18 (company tax returns, assessments and related matters) paragraph 25 is amended as follows.
- (2) In sub-paragraph (1), for the words following paragraph (b) substitute— “ and also extends to consideration of whether to give the company a transfer pricing notice under paragraph 5C of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length: medium-sized enterprise). But this is subject to the following limitation. ”.

*Finance Act 2000*

*Introductory: tonnage tax: transactions not at arm's length*

**F811** .....

**Textual Amendments**

- F8** Sch. 5 paras. 11-13 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 2** (with Sch. 9 paras. 1-9, 22)

*Transactions between tonnage tax company and another person*

**F812** .....

*Changes to legislation: Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**Textual Amendments**

**F8** Sch. 5 paras. 11-13 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 2** (with Sch. 9 paras. 1-9, 22)

*Transactions between tonnage tax trade and other activities of same company*

**F8**<sup>13</sup> .....

**Textual Amendments**

**F8** Sch. 5 paras. 11-13 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 2** (with Sch. 9 paras. 1-9, 22)

*Finance Act 2002*

**F9**<sup>14</sup> .....

**Textual Amendments**

**F9** Sch. 5 paras. 14-16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F9**<sup>15</sup> .....

**Textual Amendments**

**F9** Sch. 5 paras. 14-16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F9**<sup>16</sup> .....

**Textual Amendments**

**F9** Sch. 5 paras. 14-16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**Textual Amendments**

**F10** Sch. 6 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 247(l)(iii)**

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## SCHEDULE 7

Section 47

### INSURANCE COMPANIES ETC

#### *Transfers of business*

F11<sub>1</sub> .....

#### **Textual Amendments**

**F11** Sch. 7 para. 1 repealed (19.2.2008) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), art. 1(1), **Sch. Pt. 1**

F12<sub>2</sub> .....

#### **Textual Amendments**

**F12** Sch. 7 paras. 2-4 repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 27 Pt. 2(9)**

F12<sub>3</sub> .....

#### **Textual Amendments**

**F12** Sch. 7 paras. 2-4 repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 27 Pt. 2(9)**

F12<sub>4</sub> .....

#### **Textual Amendments**

**F12** Sch. 7 paras. 2-4 repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 27 Pt. 2(9)**

F13<sub>5</sub> .....

#### **Textual Amendments**

**F13** Sch. 7 para. 5 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 247(l)(iv)**

#### *Chargeable gains*

- 6 (1) In section 210A(10) of the Taxation of Chargeable Gains Act 1992 (c. 12) (ring-fencing of losses: policy holders' share of chargeable gains or losses), in paragraph (b) (case where policy holders' share of relevant profits does not exceed BLAGAB profits), for “of the company for the accounting period bears to those relevant profits” substitute “ for the accounting period bears to those BLAGAB profits ”.
- (2) Sub-paragraph (1) has effect in relation to accounting periods beginning on or after 17th March 2004.

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*Double taxation*

F147 .....

**Textual Amendments**  
F14 Sch. 7 para. 7 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 1](#) (with Sch. 9 paras. 1-9, 22)

*Meaning of “referable”*

F158 .....

**Textual Amendments**  
F15 Sch. 7 para. 8 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\), Sch. 16 para. 247\(l\)\(iv\)](#)

9 F16(1) .....

F17(2) .....

- (3) In the following provisions of the Taxation of Chargeable Gains Act 1992 (c. 12)—
- (a) the definitions of “BLAGAB allowable losses” and “BLAGAB chargeable gains” in section 210A(13) (ring-fencing of losses),
  - (b) section 211ZA(10) (transfers of business: transfer of unused losses), and
  - (c) section 213(1A)(a) (spreading of gains and losses under section 212), after “referable” insert “ (in accordance with section 432A of the Taxes Act) ”.

**Textual Amendments**  
F16 Sch. 7 para. 9(1) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 27 Pt. 2\(7\)](#)  
F17 Sch. 7 para. 9(2) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\), Sch. 16 para. 247\(l\)\(iv\)](#)

F18 SCHEDULE 8

Section 48

.....

**Textual Amendments**  
F18 Sch. 8 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 3 Pt. 1](#) (with Sch. 2 Pts. 1, 2)

F19 SCHEDULE 9

Section 49

.....



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**Textual Amendments**

**F19** Sch. 9 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

SCHEDULE 10

Section 52

AMENDMENT OF ENACTMENTS THAT OPERATE BY REFERENCE TO ACCOUNTING PRACTICE

**PART 1**

LOAN RELATIONSHIPS

*Main computational provisions*

**F20**<sub>1</sub> .....

**Textual Amendments**

**F20** Sch. 10 paras. 1-4 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

**F20**<sub>2</sub> .....

**Textual Amendments**

**F20** Sch. 10 paras. 1-4 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

**F20**<sub>3</sub> .....

**Textual Amendments**

**F20** Sch. 10 paras. 1-4 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

**F20**<sub>4</sub> .....

**Textual Amendments**

**F20** Sch. 10 paras. 1-4 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

5 In section 88 of that Act (exemption from section 87 in certain cases), omit subsection (2)(b) and subsection (3)(b).

**F21**<sub>6</sub> .....

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**Textual Amendments**

**F21** Sch. 10 para. 6 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

7 Omit section 90 of that Act (changes of accounting method).

F22<sup>8</sup> .....

**Textual Amendments**

**F22** Sch. 10 para. 8 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

9 F23<sup>(1)</sup> .....

- (2) Where at the relevant time a company holds an asset to which section 92 applies—
  - (a) section 92(7) (deemed disposal and re-acquisition) shall have effect as if the asset had ceased at that time to be an asset to which that section applied (but without ceasing to represent a creditor relationship of the company), and
  - (b) any amount falling to be brought into account under the Taxation of Chargeable Gains Act 1992 (c. 12) shall be brought into account in accordance with section 92(4) accordingly.
- (3) The relevant time for this purpose is immediately before the end of the last period of account before that in relation to which sub-paragraph (1) has effect (see section 52(3) of this Act).

**Textual Amendments**

**F23** Sch. 10 para. 9(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

10 Omit section 92A of that Act (convertible securities etc.: debtor relationships).

11 (1) Omit sections 93, 93A and 93B of that Act (relationships linked to the value of chargeable assets).

- (2) Where at the relevant time a company holds an asset to which section 93 applies—
  - (a) section 93B (deemed disposal and re-acquisition) shall have effect as if the asset had ceased at that time to be an asset to which section 93 applied (but without ceasing to represent a creditor relationship of the company), and
  - (b) any amount falling to be brought into account under the Taxation of Chargeable Gains Act 1992 (c. 12) shall be brought into account in accordance with section 93(4) accordingly.
- (3) The relevant time for this purpose is immediately before the end of the last period of account before that in relation to which sub-paragraph (1) has effect (see section 52(3) of this Act).

F24<sup>12</sup> .....

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**Textual Amendments**

**F24** Sch. 10 para. 12 repealed (7.4.2005) by Finance Act 2005 (c. 7), Sch. 11 Pt. 2(7)

**F25** 13 .....

**Textual Amendments**

**F25** Sch. 10 para. 13 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

**F26** 14 .....

**Textual Amendments**

**F26** Sch. 10 para. 14 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

15 In section 96 of that Act (special rules for certain other gilts), omit subsection (3).

**F27** 16 .....

**Textual Amendments**

**F27** Sch. 10 para. 16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

**F28** 17 .....

**Textual Amendments**

**F28** Sch. 10 para. 17 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

*Special computational provisions*

18 Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) is amended as follows.

**F29** 19 .....

**Textual Amendments**

**F29** Sch. 10 paras. 19-23 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

**F29** 20 .....

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**Textual Amendments**

**F29** Sch. 10 paras. 19-23 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F29**21 .....

**Textual Amendments**

**F29** Sch. 10 paras. 19-23 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F29**22 .....

**Textual Amendments**

**F29** Sch. 10 paras. 19-23 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F29**23 .....

**Textual Amendments**

**F29** Sch. 10 paras. 19-23 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F30**24 .....

**Textual Amendments**

**F30** Sch. 10 para. 24 repealed (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(5)**

**F31**25 .....

**Textual Amendments**

**F31** Sch. 10 para. 25 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F32**26 .....

**Textual Amendments**

**F32** Sch. 10 para. 26 repealed (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(5)**

**F33**27 .....

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**Textual Amendments**

**F33** Sch. 10 para. 27 repealed (7.4.2005) by Finance Act 2005 (c. 7), Sch. 11 Pt. 2(5)

<sup>F34</sup>28 .....

**Textual Amendments**

**F34** Sch. 10 para. 28 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

29 In paragraph 10A (deemed disposal on company ceasing to be resident in UK etc.), omit sub-paragraph (5).

<sup>F35</sup>30 .....

**Textual Amendments**

**F35** Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

<sup>F35</sup>31 .....

**Textual Amendments**

**F35** Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

<sup>F35</sup>32 .....

**Textual Amendments**

**F35** Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

<sup>F35</sup>33 .....

**Textual Amendments**

**F35** Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

<sup>F35</sup>34 .....

**Textual Amendments**

**F35** Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

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F3535 .....

**Textual Amendments**  
F35 Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3536 .....

**Textual Amendments**  
F35 Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Collective investment schemes etc.*

F3537 .....

**Textual Amendments**  
F35 Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3538 .....

**Textual Amendments**  
F35 Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3539 .....

**Textual Amendments**  
F35 Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3540 .....

**Textual Amendments**  
F35 Sch. 10 paras. 30-42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3541 .....

**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

**Textual Amendments**

**F35** Sch. 10 paras. 30–42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

<sup>F35</sup>42 .....

**Textual Amendments**

**F35** Sch. 10 paras. 30–42 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Consequential amendments*

<sup>F36</sup>43 .....

**Textual Amendments**

**F36** Sch. 10 para. 43 repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(10)**

<sup>F37</sup>44 .....

**Textual Amendments**

**F37** Sch. 10 para. 44 repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(14)**

<sup>F38</sup>45 .....

**Textual Amendments**

**F38** Sch. 10 para. 45 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

46 In paragraph 7(3) of Schedule 26 to the Transport Act 2000 (c. 38) (transfers under that Act), for “an authorised accounting method” substitute “ a basis of accounting ”.

**PART 2**

DERIVATIVE CONTRACTS

*Method of taxation*

<sup>F39</sup>47 .....

*Changes to legislation: Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**48 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Accounting methods*

**F39**49 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**50 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**51 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Special provision for bad debt etc.*

**F39**52 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**53 .....



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**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Special computational provisions*

**F39**54 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**55 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**56 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**57 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**58 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Collective investment schemes*

**F39**59 .....

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**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**60 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**61 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**62 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**63 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Miscellaneous*

**F39**64 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F39**65 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

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F39 66 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F39 67 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Interpretation*

F39 68 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F39 69 .....

**Textual Amendments**

**F39** Sch. 10 paras. 47-69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Consequential amendment*

F40 70 .....

**Textual Amendments**

**F40** Sch. 10 para. 70 repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(10)**

**PART 3**

INTANGIBLE FIXED ASSETS

*Excluded assets: assets in respect of which capital allowances previously made*

F41 71 .....

*Changes to legislation: Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**Textual Amendments**

**F41** Sch. 10 para. 71 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Adjustment on change of accounting policy*

**F42**72 .....

**Textual Amendments**

**F42** Sch. 10 para. 72 repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), **Sch. 11 Pt. 2(7)**

*References to amounts recognised in profit and loss account*

**F43**73 .....

**Textual Amendments**

**F43** Sch. 10 para. 73 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Consequential amendments*

**F44**74 .....

**Textual Amendments**

**F44** Sch. 10 paras. 74-76 repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), **Sch. 11 Pt. 2(7)**

**F44**75 .....

**Textual Amendments**

**F44** Sch. 10 paras. 74-76 repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), **Sch. 11 Pt. 2(7)**

**F44**76 .....

**Textual Amendments**

**F44** Sch. 10 paras. 74-76 repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), **Sch. 11 Pt. 2(7)**

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## PART 4

### FOREIGN CURRENCY ACCOUNTING

#### *Main provisions*

F4577 .....

#### **Textual Amendments**

**F45** Sch. 10 para. 77 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

#### *Consequential amendments*

F4678 .....

#### **Textual Amendments**

**F46** Sch. 10 para. 78 repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(14)**

#### *[<sup>F47</sup>Transitional provision*

#### **Textual Amendments**

**F47** Sch. 10 para. 79 and cross-heading inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 51**

79 Where a company carries forward to its first period of account beginning on or after 1st January 2005 an amount by way of—

- (a) management expenses brought forward under section 75 of the Taxes Act 1988,
- (b) losses brought forward under section 392B or 393 of that Act, or
- (c) non-trading deficits on loan relationships brought forward under section 83 of the Finance Act 1996,

that amount shall be translated into sterling using the London closing exchange rate for the last day of the previous period of account.]

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## SCHEDULE 11

Section 64

## CONDITIONS FOR REGISTRATION FOR GROSS PAYMENT

**PART 1**

## CONDITIONS TO BE SATISFIED BY INDIVIDUALS

*General*

- 1 (1) In the case of an application for an individual to be registered for gross payment, the following conditions must be satisfied by the individual.
- (2) But where the application is for the registration of the individual as a partner in a firm, this Part of this Schedule has effect with the omission of paragraphs 2 and 3.

*The business test*

- 2 The applicant must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that he is carrying on a business in the United Kingdom which—
- (a) consists of or includes the carrying out of construction operations or the furnishing or arranging for the furnishing of labour in carrying out construction operations, and
- (b) is, to a substantial extent, carried on by means of an account with a bank.

*The turnover test*

- 3 (1) The applicant must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the carrying on of the business mentioned in paragraph 2 is likely to involve the receipt in the year following the making of the application of an aggregate amount by way of relevant payments which is not less than the amount specified in regulations made by the Board as the minimum turnover for the purposes of this sub-paragraph.
- (2) In sub-paragraph (1) “relevant payments” means payments under contracts relating to, or to the work of individuals participating in the carrying out of, any operations which—
- (a) are of a description specified in subsection (2) of section 74; but
- (b) are not of a description specified in subsection (3) of that section, other than so much of the payments as represents the direct cost to the person receiving the payments of materials used or to be used in carrying out the operations in question.
- (3) The Board may make regulations for the purpose of enabling a person who does not satisfy the condition in sub-paragraph (1) to be treated as satisfying that condition in such circumstances as may be prescribed.

*The compliance test*

- 4 (1) The applicant must, subject to sub-paragraphs (3) and (4), have complied with—
- [<sup>F48</sup>(a) any obligation imposed on him in the qualifying period (see paragraph 14)—

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- (i) to pay the amount liable to be deducted under section 61 of this Act from payments made during that period,
    - (ii) to submit returns as required by regulations made under section 70 of this Act,
    - (iii) to pay the tax liable to be deducted under [F49PAYE regulations], and
    - (iv) to submit a self-assessment return, and
    - [F50(v) to account for or pay VAT as required by or under the Value Added Tax Act 1994, and]]
  - (b) all requests made in the qualifying period to supply to the Inland Revenue accounts of, or other information about, any business of his.
- (2) An applicant who at any time in the qualifying period had control of a company is to be taken not to satisfy the condition in sub-paragraph (1) unless the company has satisfied that condition in relation to the period or periods within the qualifying period during which he had control of it; and for this purpose “control” is to be construed in accordance with [F51sections 450 and 451 of the Corporation Tax Act 2010].
- (3) An applicant or company that has failed to comply with such an obligation or request as—
  - (a) is referred to in sub-paragraph (1), and
  - (b) is of a kind prescribed by regulations made by the Board of Inland Revenue, is, in such circumstances as may be prescribed by the regulations, to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request.
- (4) An applicant or company that has failed to comply with such an obligation or request as is referred to in sub-paragraph (1) is to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—
  - (a) the applicant or company had a reasonable excuse for the failure to comply, and
  - (b) if the excuse ceased, he or it complied with the obligation or request without unreasonable delay after the excuse had ceased.
- (5) Where the applicant states, for the purpose of showing that he has complied with all obligations imposed on him as mentioned in sub-paragraph (1), that he was not subject to any of one or more obligations in respect of any period within the qualifying period—
  - (a) he must satisfy the Board of Inland Revenue of that fact by such evidence as may be prescribed in regulations made by the Board; and
  - (b) if for that purpose he states that he has been outside the United Kingdom for the whole or any part of the qualifying period, he must also satisfy them, by such evidence as may be so prescribed, that he has complied with any obligations imposed under the tax laws of any country in which he was living during that period which are comparable to the obligations mentioned in sub-paragraph (1).
- (6) The applicant must, if any contribution has at any time during the qualifying period become due from him under—
  - (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),

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have paid the contribution when it became due.

- (7) There must be reason to expect that the applicant will, in respect of periods after the qualifying period, comply with—
- (a) such obligations as are referred to in sub-paragraphs (1) to (6), and
  - (b) such requests as are referred to in sub-paragraph (1).
- (8) Subject to sub-paragraphs (3) and (4), a person is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraphs (1) to (5) if there has been a contravention of a requirement as to—
- (a) the time at which, or
  - (b) the period within which,
- the obligation or request was to be complied with.

#### Textual Amendments

- F48** Sch. 11 para. 4(1)(a) substituted (6.4.2016) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2016 \(S.I. 2016/404\)](#), arts. 1, **2(a)**
- F49** Words in Sch. 11 para. 4(1)(a)(iii) substituted (with effect in accordance with s. 35(4) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), s. **35(3)(a)(i)** (with s. 35(5))
- F50** Sch. 11 para. 4(1)(a)(v) inserted (with effect in accordance with s. 35(4) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), s. **35(3)(a)(ii)** (with s. 35(5))
- F51** Words in Sch. 11 para. 4(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 430** (with Sch. 2)

## PART 2

### CONDITIONS TO BE SATISFIED BY FIRMS

#### *General*

- 5 In the case of an application for an individual or a company to be registered for gross payment as a partner in a firm, the following conditions must be satisfied by the firm.

#### *The business test*

- 6 The applicant must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the firm's business—
- (a) is carried on in the United Kingdom, and
  - (b) satisfies the conditions mentioned in paragraph 2(a) and (b).

#### *The turnover test*

- 7 (1) The partners must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the carrying on of the firm's business is likely to involve the receipt in the year following the making of the application of an aggregate amount by way of relevant payments which is not less than whichever is the smaller of—



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- (a) the multiple turnover threshold; and
- (b) the amount specified for the purposes of this paragraph in regulations made by the Board;

and in this sub-paragraph “relevant payments” has the meaning given by paragraph 3(2).

- (2) In sub-paragraph (1) “the multiple turnover threshold” means the sum of—
  - (a) the amount obtained by multiplying the number of partners in the firm who are individuals by the amount specified in regulations as the minimum turnover for the purposes of paragraph 3(1); and
  - (b) in respect of each partner in the firm which is a company (other than one to which paragraph 11(1)(b) would apply), the amount equal to what would have been the minimum turnover for the purposes of paragraph 11 (1) if the application had been for registration of that company for gross payment.
- (3) The Board may make regulations—
  - (a) for determining the number of partners in the firm to be taken into account for the purposes of sub-paragraph (2) (for example, where the number of partners has fluctuated over a period);
  - (b) for the purpose of enabling a firm which does not satisfy the condition in sub-paragraph (1) to be treated as satisfying that condition in such circumstances as may be prescribed.

#### *The compliance test*

- 8 (1) Subject to sub-paragraphs (2) and (3), each of the persons who are partners at the time of the application must have complied, so far as any such charge to income tax or corporation tax is concerned as falls to be computed by reference to the profits or gains of the firm’s business, with—
  - [<sup>F52</sup>(a) any obligation imposed on that partner in the qualifying period (see paragraph 14)—
    - (i) to pay the amount liable to be deducted under section 61 of this Act from payments made during that period,
    - (ii) to submit returns as required by regulations made under section 70 of this Act,
    - (iii) to pay the tax liable to be deducted under [<sup>F53</sup>PAYE regulations], and
    - (iv) to submit a self-assessment return, and
    - [<sup>F54</sup>(v) to account for or pay VAT as required by or under the Value Added Tax Act 1994, and]]
  - (b) all requests made in the qualifying period to him as such a partner to supply to the Inland Revenue accounts of, or other information about, the firm’s business or his share of the profits or gains of that business.
- (2) Where a person has failed to comply with such an obligation or request as—
  - (a) is referred to in sub-paragraph (1), and
  - (b) is of a kind prescribed by regulations made by the Board of Inland Revenue, the firm is, in such circumstances as may be prescribed by the regulations, to be treated, in relation to that partner, as satisfying the condition in that sub-paragraph as regards that obligation or request.

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- (3) Where a person has failed to comply with such an obligation or request as is referred to in sub-paragraph (1), the firm is to be treated, in relation to that partner, as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—
- (a) the person had a reasonable excuse for the failure to comply, and
  - (b) if the excuse ceased, he complied with the obligation or request without unreasonable delay after the excuse had ceased.
- (4) There must be reason to expect that each of the persons who are from time to time partners in the firm will, in respect of periods after the qualifying period, comply with such obligations and requests as are referred to in sub-paragraph (1).
- (5) Subject to sub-paragraphs (2) and (3), a person is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraph (1) if there has been a contravention of a requirement as to—
- (a) the time at which, or
  - (b) the period within which,
- the obligation or request was to be complied with.
- [<sup>F55</sup>(6) This paragraph is subject to paragraph 8A (exception from compliance test: firms).]

#### Textual Amendments

- F52** Sch. 11 para. 8(1)(a) substituted (6.4.2016) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2016 \(S.I. 2016/404\)](#), arts. 1, **2(b)**
- F53** Words in Sch. 11 para. 8(1)(a)(iii) substituted (with effect in accordance with [s. 35\(4\)](#) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), **s. 35(3)(b)(i)** (with [s. 35\(5\)](#))
- F54** Sch. 11 para. 8(1)(a)(v) inserted (with effect in accordance with [s. 35\(4\)](#) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), **s. 35(3)(b)(ii)** (with [s. 35\(5\)](#))
- F55** Sch. 11 para. 8(6) inserted (6.4.2015) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2015 \(S.I. 2015/789\)](#), arts. 1, **2(a)**

#### <sup>F56</sup>Exception from compliance test: firms

#### Textual Amendments

- F56** Sch. 11 para. 8A inserted (6.4.2015) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2015 \(S.I. 2015/789\)](#), arts. 1, **2(b)**

- 8A (1) The conditions in paragraph 8 (the compliance test: firms) do not need to be satisfied by the firm if, at the time of the application—
- (a) one or more of the partners is already registered for gross payment as a partner in another firm or otherwise than as a partner in a firm, and
  - (b) that partner has, or those partners together have, a right to a share of at least half the assets, or at least half the income, of the firm.
- (2) In sub-paragraph (1)(a) the reference to registration for gross payment does not include registration for gross payment by virtue of this paragraph or paragraph 12A (exception from compliance test: companies).]

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### PART 3

#### CONDITIONS TO BE SATISFIED BY COMPANIES

##### *General*

- 9 In the case of an application for a company to be registered for gross payment (whether as a partner in a firm or otherwise), the following conditions must be satisfied by the company.

##### *The business test*

- 10 The company must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that—
- (a) it is carrying on (whether or not in partnership) a business in the United Kingdom, and
  - (b) that business satisfies the conditions mentioned in paragraph 2(a) and (b).

##### *The turnover test*

- 11 (1) The company must either—
- (a) satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the carrying on of its business is likely to involve the receipt in the year following the making of the application of an aggregate amount by way of relevant payments which is not less than the amount which is the minimum turnover for the purposes of this sub-paragraph; or
  - (b) satisfy the Inland Revenue that the only persons with shares in the company are companies which are limited by shares and themselves are registered for gross payment;
- and in this sub-paragraph “relevant payments” has the meaning given by paragraph 3(2).
- (2) The minimum turnover for the purposes of sub-paragraph (1) is whichever is the smaller of—
- (a) the amount obtained by multiplying the amount specified in regulations as the minimum turnover for the purposes of paragraph 3 (1) by the number of persons who are relevant persons in relation to the company; and
  - (b) the amount specified for the purposes of this paragraph in regulations made by the Board of Inland Revenue.
- (3) For the purposes of sub-paragraph (2) a person is a relevant person in relation to the company—
- (a) where the company is a close company, if he is a director of the company (within the meaning given by section 67 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1)) or a beneficial owner of shares in the company; and
  - (b) in any other case, if he is such a director of the company.
- (4) The Board may make regulations—

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- (a) for determining the number of relevant persons to be taken into account for the purposes of sub-paragraph (2) (for example, where the number of such persons has fluctuated over a period);
- (b) for the purpose of enabling a company which does not satisfy the condition in sub-paragraph (1) to be treated as satisfying that condition in such circumstances as may be prescribed.

*The compliance test*

- 12 (1) The company must, subject to sub-paragraphs (2) and (3), have complied with—
- [<sup>F57</sup>(a) any obligation imposed on it in the qualifying period (see paragraph 14)—
    - (i) to pay the amount liable to be deducted under section 61 of this Act from payments made during that period,
    - (ii) to submit returns as required by regulations made under section 70 of this Act,
    - (iii) to pay the tax liable to be deducted under [<sup>F58</sup>PAYE regulations], and
    - (iv) to submit a self-assessment return, and
    - [<sup>F59</sup>(v) to account for or pay VAT as required by or under the Value Added Tax Act 1994, and]]
  - (b) all requests made in the qualifying period to supply to the Inland Revenue accounts of, or other information about, its business.
- (2) A company that has failed to comply with such an obligation or request as—
- (a) is referred to in sub-paragraph (1), and
  - (b) is of a kind prescribed by regulations made by the Board of Inland Revenue,
- is, in such circumstances as may be prescribed by the regulations, to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request.
- (3) A company that has failed to comply with such an obligation or request as is referred to in sub-paragraph (1) is to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—
- (a) the company had a reasonable excuse for the failure to comply, and
  - (b) if the excuse ceased, it complied with the obligation or request without unreasonable delay after the excuse had ceased.
- (4) The company must, if any contribution has at any time during the qualifying period become due from the company under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),
- have paid the contribution when it became due.
- (5) The company must have complied with any obligations imposed on it by the following provisions of the Companies Act 1985 (c. 6) in so far as those obligations fell to be complied with within the qualifying period—
- (a) sections 226, 241 and 242 (contents, laying and delivery of annual accounts);
  - (b) section 288(2) (return of directors and secretary and notification of changes therein);
  - (c) sections 363 to 365 (annual returns);

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- (d) section 691 (registration of constitutional documents and list of directors and secretary of oversea company);
  - (e) section 692 (notification of changes in constitution or directors or secretary of oversea company);
  - (f) section 693 (oversea company to state its name and country of incorporation);
  - (g) section 699 (obligations of companies incorporated in Channel Islands or Isle of Man);
  - (h) Chapter 2 of Part 23 (accounts of oversea company).
- (6) The company must have complied with any obligations imposed on it by the following provisions of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) in so far as those obligations fell to be complied with within the qualifying period—
- (a) Articles 234, 249 and 250 (contents, laying and delivery of annual accounts);
  - (b) Article 296(2) (return of directors and secretary and notification of changes therein);
  - (c) Articles 371 to 373 (annual returns);
  - (d) Article 641 (registration of constitutional documents and list of directors and secretary of Part XXIII company);
  - (e) Article 642 (notification of changes in constitution or directors or secretary of Part XXIII company);
  - (f) Article 643 (Part XXIII company to state its name and country of incorporation);
  - (g) Article 649 (accounts of Part XXIII company).
- (7) There must be reason to expect that the company will, in respect of periods after the qualifying period, comply with—
- (a) all such obligations as are referred to in paragraphs 10 and 11 and sub-paragraphs (1) to (6), and
  - (b) such requests as are referred to in sub-paragraph (1).
- (8) Subject to sub-paragraphs (2) and (3), a company is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraphs (1) to (6) if there has been a contravention of a requirement as to—
- (a) the time at which, or
  - (b) the period within which,
- the obligation or request was to be complied with.

[<sup>F60</sup>(9) This paragraph is subject to paragraph 12A (exception from compliance test: companies).]

#### Textual Amendments

- F57** Sch. 11 para. 12(1)(a) substituted (6.4.2016) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2016 \(S.I. 2016/404\)](#), arts. 1, **2(c)**
- F58** Words in Sch. 11 para. 12(1)(a)(iii) substituted (with effect in accordance with s. 35(4) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), **s. 35(3)(c)(i)** (with s. 35(5))
- F59** Sch. 11 para. 12(1)(a)(v) inserted (with effect in accordance with s. 35(4) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), **s. 35(3)(c)(ii)** (with s. 35(5))

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**F60** Sch. 11 para. 12(9) inserted (6.4.2015) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2015 \(S.I. 2015/789\)](#), arts. 1, **3(a)**

*[<sup>F61</sup>Exception from the compliance test: companies*

**Textual Amendments**

**F61** Sch. 11 para. 12A inserted (6.4.2015) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2015 \(S.I. 2015/789\)](#), arts. 1, **3(b)**

- 12A (1) The conditions in paragraph 12 (compliance test: companies) do not need to be satisfied by the company if, at the time of the application—
- (a) one or more of its members is registered for gross payment (whether as a partner in a firm or otherwise), and
  - (b) that member possesses or is entitled to acquire or those members together possess or are entitled to acquire—
    - (i) at least 50% of the share capital or issued share capital of the company,
    - (ii) at least 50% of the voting power in the company,
    - (iii) so much of the issued share capital of the company as would, on the assumption that the whole of the income of the company were distributed among its members, entitle the member or members mentioned in paragraph (a) to receive at least 50% of the amount so distributed, or
    - (iv) such rights as would entitle the member or members mentioned in paragraph (a), in the event of the winding up of the company or in any other circumstances, to receive at least 50% of the assets of the company which would then be available for distribution among its members.
- (2) In sub-paragraph (1)(a) the reference to registration for gross payment does not include registration for gross payment by virtue of this paragraph or paragraph 8A (exception from compliance test: firms).
- (3) For the purposes of this paragraph a person is treated as entitled to acquire anything which the person—
- (a) is entitled to acquire at a future date, or
  - (b) will at a future date be entitled to acquire.
- (4) Any rights that a member or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in sub-paragraph (1)(b)(iii); and for this purpose “loan creditor” has the same meaning as in Part 10 of the Corporation Tax Act 2010 (close companies).]

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## PART 4

### SUPPLEMENTARY PROVISIONS

#### *Power to amend conditions for registration for gross payment*

- 13 (1) The Treasury may by order made by statutory instrument amend this Schedule by—
- (a) adding,
  - (b) varying, or
  - (c) removing,
- a condition for registration for gross payment.
- (2) No statutory instrument containing an order under this paragraph shall be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

#### *“Qualifying period”*

- 14 In this Schedule “the qualifying period” means the period of 12 months ending with the date of the application in question.
- [<sup>F62</sup>14A(1) For any part of the qualifying period falling on 1 October 2009 or later, paragraph 12(5) must be understood as referring instead to—
- (a) the Companies Act 2006 (c. 46) sections 394, 395, 437 and 441 (accounts);
  - (b) sections 167(1), 167(2), 276(1) and 276(2) of that Act (changes in director or secretary);
  - (c) Part 24 of that Act (annual returns);
  - (d) regulations under Part 34 of that Act (overseas companies) which are about—
    - (i) registration of particulars,
    - (ii) accounts, reports or returns,
    - (iii) trading disclosures.
- (2) For such part of the qualifying period, paragraph 12(6) must be disregarded and paragraphs 12(7)(a) and 12(8) understood as referring to sub-paragraphs (1) to (5) instead of (1) to (6).]

#### **Textual Amendments**

**F62** Sch. 11 para. 14A inserted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), 6

#### *Regulations under this Schedule*

- 15 Any power under this Schedule to make regulations prescribing the evidence required for establishing what is likely to happen at any time includes power to provide for such matters to be presumed (whether conclusively or unless the contrary is shown in the manner provided for in the regulations) from evidence of what has previously happened.

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- 16 Regulations under paragraph 3(1), 7 (1) or 11 (1) prescribing the evidence required for establishing the amount by way of relevant payments likely to be received by a person may make different provision according to whether—
- (a) the person is applying for registration for gross payment, or
  - (b) the Board of Inland Revenue are considering whether to make a determination under section 66(1)(a) cancelling the person’s registration for gross payment.

## SCHEDULE 12

Section 76

### CONSTRUCTION INDUSTRY SCHEME: CONSEQUENTIAL AMENDMENTS

#### *Records to be kept for purposes of returns*

- 1 (1) Section 12B of the Taxes Management Act 1970 (c. 9) is amended as follows.
- (2) In subsection (4A) (records in respect of which duty to preserve records may not be satisfied by preservation of information contained in them) for paragraph (b) substitute—
- “(b) any record (however described) which is required by regulations under section 70(1)(c) of the Finance Act 2004 to be given to a sub-contractor (within the meaning of section 58 of that Act) on the making of a payment to which section 61 of that Act (deductions on account of tax) applies;”.

#### *General rule as to when corporation tax is due and payable*

- 2 (1) Section 59D of the Taxes Management Act 1970 is amended as follows.
- (2) In subsection (4)(d) (amounts taken into account in determining whether repayment is due under subsection (2)) for “by virtue of regulations under section 559A of the principal Act” substitute “ by virtue of regulations under section 62 of the Finance Act 2004 ”.

#### *Claim for repayment in advance of liability being established*

- 3 (1) Section 59DA of the Taxes Management Act 1970 is amended as follows.
- (2) In subsection (7) (deductions under section 559 of the Taxes Act 1988 to be disregarded in considering whether amount paid by company exceeds its probable tax liability, where claim made before return delivered) for “section 559 of the principal Act” substitute “ section 61 of the Finance Act 2004 ”.

#### *Priority of claim for tax*

- 4 (1) Section 62 of the Taxes Management Act 1970 is amended as follows.
- (2) In subsection (1A)(b) (goods or chattels of person in default not to be taken in execution etc unless person seeking execution pays to collector sums due from person in default in respect of deductions under section 559 of the Taxes Act 1988) for “section 559 of the principal Act” substitute “ section 61 of the Finance Act 2004 ”.



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#### *Recovery of tax in Scotland*

- 5 (1) Section 63 of the Taxes Management Act 1970 (c. 9) is amended as follows.
- (2) In subsection (3)(b) (application for summary warrant relating to sums due in respect of deductions required to be made under section 559 of the Taxes Act 1988: no requirement to state that 14 days have elapsed since demand) for “section 559 of the principal Act” substitute “ section 61 of the Finance Act 2004 ”.

#### *Priority of claim for tax in Scotland*

- 6 (1) Section 64 of the Taxes Management Act 1970 is amended as follows.
- (2) In subsection (1A)(b) (moveable goods and effects of person in default not to be taken by diligence etc unless person proceeding to take goods and effects pays to collector sums due from person in default in respect of deductions under section 559 of the Taxes Act 1988) for “section 559 of the principal Act” substitute “ section 61 of the Finance Act 2004 ”.

#### *Special returns etc*

- 7 (1) Section 98 of the Taxes Management Act 1970 is amended as follows.
- (2) In the first column of the Table, omit the entry relating to section 561(8) of the Taxes Act 1988.
- (3) In the second column of the Table, omit the entry relating to regulations under section 566(1), (2) or (2A) of that Act.
- (4) In the first column of the Table, insert at the appropriate place— “ Regulations under section 70(3) of the Finance Act 2004. ”.
- (5) In the second column of the Table, insert at the appropriate place— “ Regulations under section 65(2), 69(1), 70(1)(a) or (c) or 71 of the Finance Act 2004. ”.

#### *Special penalties in the case of certain returns*

- 8 (1) Section 98A of the Taxes Management Act 1970 is amended as follows.
- (2) In subsection (1) (regulations which may provide for section 98A to apply) for “section 566 (1) (sub-contractors) of the principal Act” substitute “ section 70(1)(a) or 71 of the Finance Act 2004 (sub-contractors) ”.
- (3) In subsection (2)(b) (penalty for failure to make return continuing beyond 12 months)
- 
- (a) after “not exceeding” insert—
- “(i) in the case of a provision of PAYE regulations,”  
and
- (b) at the end insert “, or
- (ii) in the case of a provision of regulations under section 70(1)(a) or 71 of the Finance Act 2004, £3,000.”.
- (4) In subsection (4)(a) (penalty for fraudulently or negligently making incorrect return) after “year of assessment” insert “ (in the case of a provision of PAYE regulations)

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or period (in the case of a provision of regulations under section 70(1)(a) or 71 of the Finance Act 2004) ”.

*Sub-contractors in the construction industry*

- 9 (1) The Taxes Act 1988 is amended as follows.  
 (2) In Part 13, omit Chapter 4.

*Designated international organisations: miscellaneous exemptions*

F63 10 .....

**Textual Amendments**

**F63** Sch. 12 para. 10 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Application of Income Tax Acts to public departments etc*

F64 11 .....

**Textual Amendments**

**F64** Sch. 12 para. 11 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Provisions for securing payment by company of outstanding tax*

F65 12 .....

**Textual Amendments**

**F65** Sch. 12 para. 12 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 12** (with Sch. 9 paras. 1-9, 22)

*Supplementary provisions relating to contributions: Great Britain*

- 13 (1) Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) is amended as follows.  
 (2) In paragraph 7 (special penalties in case of certain returns) in sub-paragraph (1) (paragraph 7 to apply to certain returns made at the same time as a return made under regulations under section 566 (1) of the Taxes Act 1988 etc) in paragraph (a) for “section 566 (1) (sub-contractors) of the Income and Corporation Taxes Act 1988” substitute “ section 70(1)(a) or 71 (sub-contractors) of the Finance Act 2004 ”.

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*Supplementary provisions relating to contributions: Northern Ireland*

- 14 (1) Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) is amended as follows.
- (2) In paragraph 7 (special penalties in case of certain returns) in sub-paragraph (1) (paragraph 7 to apply to certain returns made at the same time as a return made under regulations under section 566 (1) of the Taxes Act 1988 etc) in paragraph (a) for “section 566 (1) (sub-contractors) of the Income and Corporation Taxes Act 1988” substitute “ section 70(1)(a) or 71 (sub-contractors) of the Finance Act 2004 ”.

*Transitional provisions concerning construction workers supplied by agencies*

- 15 (1) Section 56 of the Finance Act 1998 (c. 36) is amended as follows.
- (2) In subsection (8) (meaning of “construction trade”) for “Chapter 4 of Part 13 of the Taxes Act 1988” substitute “ section 74 of the Finance Act 2004 ”.

*Company tax returns, assessments and related matters*

- 16 (1) Schedule 18 to the Finance Act 1998 is amended as follows.
- (2) In paragraph 22 (preservation of information instead of original records) in sub-paragraph (3) (records in respect of which duty to preserve records may not be satisfied by preservation of information contained in them) for paragraph (b) substitute—
- “(b) any record (however described) which is required by regulations under section 70(1)(c) of the Finance Act 2004 to be given to a sub-contractor (within the meaning of section 58 of that Act) on the making of a payment to which section 61 of that Act (deductions on account of tax) applies;”.

*Calculation of deemed employment payment*

- 17 (1) Section 54 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.
- (2) In subsection (2) (intermediary to be treated, in calculating the deemed employment payment, as if amounts received subject to deduction under section 559 of the Taxes Act 1988 had been received without deduction) for “section 559 of ICTA” substitute “ section 61 of the Finance Act 2004 ”.

SCHEDULE 13

Section 78

CHILDCARE AND CHILDCARE VOUCHERS

*Childcare*

- 1 In Chapter 11 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (miscellaneous exemptions), for section 318 (care for children) substitute—

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### “318 Childcare: exemption for employer-provided care

- (1) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of the provision for an employee of care for a child if conditions A to D are met.

For the meaning of “care” and “child”, see section 318B.

- (2) If those conditions are met only as respects part of the provision, no such liability arises in respect of that part.
- (3) Condition A is that the child—
- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense,
  - (b) is resident with the employee, or
  - (c) is a person in respect of whom the employee has parental responsibility.

For the meaning of “parental responsibility”, see section 318B.

- (4) Condition B is that—
- (a) the premises on which the care is provided are not used wholly or mainly as a private dwelling, and
  - (b) any applicable registration requirement is met.
- (5) The registration requirements are—
- (a) in England and Wales, that under Part 10A of the Children Act 1989;
  - (b) in Scotland, that under Part 1 or 2 of the Regulation of Care (Scotland) Act 2001;
  - (c) in Northern Ireland, that under Part XI of the Children (Northern Ireland) Order 1995.
- (6) Condition C is that—
- (a) the premises on which the care is provided are made available by the scheme employer alone, or
  - (b) the partnership requirements are met.

In this section “scheme employer” means the employer operating the scheme under which the care is provided (who need not be the employer of the employee).

- (7) The partnership requirements are—
- (a) that the care is provided under arrangements made by persons who include the scheme employer,
  - (b) that the premises on which it is provided are made available by one or more of those persons, and
  - (c) that under the arrangements the scheme employer is wholly or partly responsible for financing and managing the provision of the care.
- (8) Condition D is that the care is provided under a scheme that is open—
- (a) to the scheme employer’s employees generally, or
  - (b) generally to those of the scheme employer’s employees at a particular location,

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and that the employee to whom it is provided is either an employee of the scheme employer or is an employee working at the same location as employees of the scheme employer to whom the scheme is open.

### **318A Childcare: limited exemption for other care**

- (1) If conditions A to C are met in relation to the provision for an employee of care for a child, liability to income tax by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) arises only in respect of so much of the cash equivalent of the benefit as exceeds the exempt amount.

For the meaning of “care” and “child”, see section 318B.

- (2) If those conditions are met only as respects part of the provision, subsection (1) applies in respect of that part.
- (3) Condition A is that the child—
- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense, or
  - (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

For the meaning of “parental responsibility”, see section 318B.

- (4) Condition B is that the care is qualifying child care.

For the meaning of “qualifying child care”, see section 318C.

- (5) Condition C is that the care is provided under a scheme that is open—
- (a) to the employer’s employees generally, or
  - (b) generally to those at a particular location.
- (6) For the purposes of this section the “exempt amount”, in any tax year, is £50 for each qualifying week in that year.
- (7) A “qualifying week” means a tax week in which care is provided for a child in circumstances in which conditions A to C are met.

A “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).

- (8) An employee is only entitled to one exempt amount even if care is provided for more than one child.

But it does not matter that another person may also be entitled to an exempt amount in respect of the same child.

- (9) An employee is not entitled to an exempt amount under this section and under section 270A (limited exemption for childcare vouchers) in respect of the same tax week.

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### **318B Childcare: meaning of “care”, “child” and “parental responsibility”**

- (1) For the purposes of sections 318 and 318A (exemptions for employer-provided or employer-contracted childcare) “care” means any form of care or supervised activity that is not provided in the course of the child’s compulsory education.
- (2) For the purposes of those sections a person is a “child” until the last day of the week in which falls the 1st September following the child’s fifteenth birthday (or sixteenth birthday if the child is disabled).
- (3) For the purposes of subsection (2) a child is disabled if—
  - (a) a disability living allowance is payable in respect of him, or has ceased to be payable solely because he is a patient,
  - (b) he—
    - (i) is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services),
    - (ii) has been certified as blind in Scotland and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland, or
    - (iii) has been certified as blind in Northern Ireland and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board, or
  - (c) he ceased to be so registered as blind within the previous 28 weeks.
- (4) In subsection (3)(a) “patient” means a person (other than a person who is serving a sentence imposed by a court in a prison or youth custody institution or, in Scotland, a young offenders' institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975 or the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975.
- (5) For the purposes of sections 318 and 318A “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child’s property.
- (6) In this section and section 318C “local authority” means—
  - (a) in relation to England, the council of a county or district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) in relation to Wales, the council of a county or county borough;
  - (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

### **318C Childcare: meaning of “qualifying child care”**

- (1) For the purposes of section 318A “qualifying child care” means registered or approved care within any of subsections (2) to (6) below that is not excluded by subsection (7) below.

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- (2) Care provided for a child in England is registered or approved care if it is provided—
- (a) by a person registered under Part 10A of the Children Act 1989,
  - (b) by a school or establishment that does not need to be registered under that Part to provide the care because of an exemption under paragraph 1 or 2 of Schedule 9A to that Act,
  - (c) in the case of care provided for a child out of school hours between the child's 8th birthday and the last day on which he is treated as being a child, by a school on school premises or by a local authority, or
  - (d) by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 1999,
  - (e) wholly or mainly in the child's home by a child care provider approved in accordance with the Tax Credits (Approval of Home Child Care Providers) Scheme 2003, or
  - (f) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002.
- (3) Care provided for a child in Wales is registered or approved care if it is provided—
- (a) by a person registered under Part 10A of the Children Act 1989,
  - (b) by a school or establishment that does not need to be registered under that Part to provide the care because of an exemption under paragraph 1 or 2 of Schedule 9A to that Act,
  - (c) in the case of care provided for a child out of school hours between the child's 8th birthday and the last day on which he is treated as being a child, by a school on school premises or by a local authority, or
  - (d) by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 1999.
- (4) Care provided for a child in Scotland is registered or approved care if it is provided—
- (a) by a person in circumstances where the care service provided by him—
    - (i) consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, and
    - (ii) is registered under Part 1 of that Act, or
  - (b) by a local authority in circumstances where the care service provided by the local authority—
    - (i) consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, and
    - (ii) is registered under Part 2 of that Act.
- (5) Care provided for a child in Northern Ireland is registered or approved care if it is provided—

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- (a) by a person registered under Part XI of the Children (Northern Ireland) Order 1995, or
  - (b) by an institution or establishment that does not need to be registered under that Part to provide the care because of an exemption under Article 121 of that Order, or
  - (c) in the case of care provided for a child out of school hours between the child’s 12th birthday and the last day on which he is treated as being a child, by a school on school premises or by an education and library board or an HSS trust.
- (6) Care provided for a child outside the United Kingdom is registered or approved child care if it is provided by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 2002.
- (7) Child care is excluded from section 318A—
- (a) if it is provided by the partner of the employee in question, or
  - (b) if it is provided by a relative of the child wholly or mainly in the child’s home or (if different) the home of a person having parental responsibility for the child.
- (8) In subsection (7)—
- “partner” means one of a married or unmarried couple; and
  - “relative” means parent, grandparent, aunt, uncle, brother or sister, whether by blood, half blood or marriage.

**318D Childcare: power to vary exempt amount and qualifying conditions**

- (1) The Treasury may by order amend section 318A(6) (employer-contracted care: the exempt amount) so as to substitute a different sum of money for that for the time being specified.
- (2) The Treasury may by regulations make such amendments of the provisions of sections 318 to 318C relating to the qualifying conditions for the exemptions conferred by sections 318 and 318A as appear to them appropriate having regard to the corresponding provisions of regulations under section 12 of the Tax Credits Act 2002 relating to entitlement to the child care element of working tax credit.”.

*Childcare vouchers*

- 2 (1) Chapter 4 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (taxable benefits: vouchers and credit-tokens) is amended as follows.
- (2) In section 84 (meaning of “non-cash voucher”)—
- (a) in subsection (1), after paragraph (a) insert—
    - “(ab) a childcare voucher,” and
  - (b) after subsection (2) insert—
    - “(2A) In this Chapter “childcare voucher” means a voucher, stamp or similar document or token intended to enable a person to obtain the provision of care for a child (whether or not in exchange for it).”.



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(3) In section 87 (benefit of non-cash voucher treated as earnings), after subsection (3) insert—

“(3A) In the case of a childcare voucher, the reference in subsection (3)(b) to the services for which the voucher is capable of being exchanged is to the provision of care for a child which may be obtained by using it.”.

(4) In section 95 (disregard for money, goods or services obtained), after subsection (3) insert—

“(3A) In the case of a childcare voucher, the reference in subsection (2)(a) to the services obtained in exchange for the voucher is to the provision of care for a child obtained by using it.”.

3 In Chapter 6 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (exemptions: non-cash vouchers and credit-tokens), after section 270 insert—

**“270A Limited exemption for qualifying childcare vouchers**

(1) If qualifying childcare vouchers are provided for an employee, liability to income tax by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit tokens) arises only in respect of so much of the cash equivalent of the benefit as exceeds the exempt amount.

(2) A “qualifying childcare voucher” means a non-cash voucher in relation to which Conditions A to C are met.

(3) Condition A is that the voucher is provided to enable an employee to obtain care for a child who—

- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense, or
- (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

(4) Condition B is that the voucher can only be used to obtain qualifying child care.

(5) Condition C is that the vouchers are provided under a scheme that is open—

- (a) to the employer’s employees generally, or
- (b) generally to those at a particular location.

(6) For the purposes of this section the “exempt amount”, in any tax year, is £50 for each qualifying week in that year.

(7) A “qualifying week” means a tax week in respect of which a qualifying childcare voucher is received.

A “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).

(8) An employee is only entitled to one exempt amount even if care is provided for more than one child.

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But it does not matter that another person may also be entitled to an exempt amount in respect of the same child.

- (9) An employee is not entitled to an exempt amount under this section and under section 318A (limited exemption for employer-contracted childcare) in respect of the same tax week.
- (10) In this section “care”, “child”, “parental responsibility” and “qualifying child care” have the same meaning as in section 318A (see sections 318B and 318C).
- (11) The powers conferred by section 318D (childcare: power to vary exempt amount and qualifying conditions) are exercisable—
- (a) in relation to the exempt amount specified in subsection (6) above as in relation to the exempt amount specified in section 318A(6), and
  - (b) in relation to the qualifying conditions for the exemption conferred by this section as in relation to the qualifying conditions for the exemption conferred by section 318A.”.

## SCHEDULE 14

Section 80

### VANS

- 1 The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.
- 2 (1) Section 114 (cars, vans and related benefits) is amended as follows.
- (2) In subsection (2), in paragraph (c), for “166” substitute “ 159 ”and after that paragraph insert “; and
- (d) sections 160 to 164 provide for the cash equivalent of the benefit of any fuel provided for the van to be treated as earnings in certain circumstances.”
- (3) After subsection (3) insert—
- “(3A) This Chapter does not apply to a van in relation to a tax year if the private use of the van during the tax year by the employee or member of the employee’s family or household is insignificant.”
- (4) In subsection (4), insert at the end— “ section 169A (van available to more than one member of family or household employed by same employer). ”
- 3 In section 116(2) (when car is first made available and last day on which car is available), after “car”, in each place, insert “ or van ”.
- 4 In section 119 (where alternative to benefit of car offered), after “car”, in each place (including the heading), insert “ or van ”.
- 5 For sections 155 to 166 substitute—

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### “155 Cash equivalent of the benefit of a van

- (1) What is the cash equivalent of the benefit of a van for a tax year depends on whether or not the restricted private use condition is met in relation to the van for the year.
- (2) The cash equivalent of the benefit of the van for the year is—
  - (a) nil if that condition is met in relation to the van for the tax year, and
  - (b) the amount given by subsection (3) if it is not.
- (3) That amount is—
  - (a) where the tax year is the tax year 2005-06 or 2006-07—
    - (i) £500 if the age of the van is less than 4 years at the end of the tax year, and
    - (ii) £350 in any other case, and
  - (b) where the tax year is a later tax year, £3,000.
- (4) The restricted private use condition is met in relation to a van for a tax year if—
  - (a) the commuter use requirement is satisfied throughout the year (or the part of the year on which it is available to the employee) or the extent to which it is not satisfied during that period is insignificant, and
  - (b) the business travel requirement is satisfied throughout the year (or the part of the year on which it is available to the employee).
- (5) The commuter use requirement is satisfied at any time if—
  - (a) the terms on which the van is available to the employee at the time prohibit its private use otherwise than for the purposes of ordinary commuting or travel between two places that is for practical purposes substantially ordinary commuting, and
  - (b) neither the employee nor a member of the employee’s family or household makes private use of the van at the time otherwise than for those purposes.
- (6) In subsection (5) “ordinary commuting” has the same meaning as in section 338 (travel for necessary attendance) (see subsection (3) of that section).
- (7) The business travel requirement is satisfied at a time if the van is available to the employee at the time mainly for use for the purposes of the employee’s business travel (see section 171(1)).
- (8) The cash equivalent of the van may be reduced—
  - (a) under section 156 for any periods when the van is unavailable,
  - (b) under section 157 where the van is shared, and
  - (c) under section 158 in respect of payments by the employee for the private use of the van.

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*Vans: reductions of cash equivalent*

**156 Reduction for periods when van unavailable**

- (1) The cash equivalent of the benefit of a van for a tax year under section 155(2) (a) or (b) is to be reduced if the van has been unavailable on any day during the year.
- (2) For the purposes of this section a van is unavailable on any day if the day—
  - (a) falls before the first day on which the van is available to the employee,
  - (b) falls after the last day on which the van is available to the employee, or
  - (c) falls within a period of 30 days or more throughout which the van is not available to the employee.
- (3) The amount of the reduction is given by the formula—

$$\frac{U}{Y} \times CE$$

where—

U is the number of days in the year on which the van is unavailable,

Y is the number of days in the year, and

CE is the amount of the cash equivalent before any reduction.

*Reduction of cash equivalent where van is shared*

**157 Reduction of cash equivalent where van is shared**

- (1) This section applies if in a tax year a van—
  - (a) is available to more than one employee concurrently,
  - (b) is so made available by the same employer, and
  - (c) is available concurrently for each employee’s private use.
- (2) The cash equivalent of the benefit of the van to each of those employees for that year—
  - (a) is to be calculated separately under sections 155 and 156, and
  - (b) is then to be reduced on a just and reasonable basis.
- (3) If —
  - (a) any of the employees mentioned in subsection (1)(a) (“E”) is a member of the family or household of another of them (“M”), and
  - (b) E’s employment is an excluded employment,
 the availability of the van to E is to be disregarded when applying subsection (2)(b) in respect of M.

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- (4) In this section the reference to the van being available for each employee's private use includes a reference to the van being available for the private use of a member of the employee's family or household.

*Reduction for payments for private use*

**158 Reduction for payments for private use**

- (1) The cash equivalent of the benefit of a van for a tax year under section 155(2) (a) or (b) (after any reduction under sections 156 and 157) is to be reduced if, as a condition of the van being available for the employee's private use, the employee—
- (a) is required in that year to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
  - (b) makes such payment.
- (2) If the amount paid by the employee in respect of that year is equal to or exceeds that cash equivalent, it is reduced to nil.
- (3) In any other case that cash equivalent is reduced by the amount paid by the employee.
- (4) In this section the reference to the van being available for the employee's private use includes a reference to the van being available for the private use of a member of the employee's family or household.

*Modification of provisions where van temporarily replaced*

**159 Modification of provisions where van temporarily replaced**

- (1) This section applies if—
- (a) the van normally available to an employee ("the normal van") is not available to the employee for a period of less than 30 days,
  - (b) another van ("the replacement van") is made available to the employee in order to replace the normal van for the whole or part of that period, and
  - (c) the employee is chargeable to tax in respect of both the normal van and the replacement van by virtue of section 154.
- (2) If this section applies—
- (a) section 156 applies so that the replacement van is to be treated as unavailable on the days during the period on which it replaces the normal van, and
  - (b) sections 155, 157 and 158 apply as if the replacement van were the normal van.

*Van fuel: benefit treated as earnings*

**160 Benefit of van fuel treated as earnings**

- (1) If in a tax year—

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- (a) fuel is provided for a van by reason of an employee's employment,
  - (b) that person is chargeable to tax in respect of the van by virtue of section 154, and
  - (c) the cash equivalent of the van for that year is that under section 155(2)(b),
- the cash equivalent of the benefit of the fuel is to be treated as earnings from the employment for that year.
- (2) The cash equivalent of the benefit of the fuel is calculated in accordance with sections 161 to 164.
  - (3) Fuel is to be treated as provided for a van, in addition to any other way in which it may be provided, if—
    - (a) any liability in respect of the provision of fuel for the van is discharged,
    - (b) a non-cash voucher or a credit-token is used to obtain fuel for the van,
    - (c) a non-cash voucher or a credit-token is used to obtain money which is spent on fuel for the van, or
    - (d) any sum is paid in respect of expenses incurred in providing fuel for the van.
  - (4) References in this section to fuel do not include any facility or means for supplying electrical energy for an electrically propelled vehicle.

#### **161 Van fuel: the cash equivalent**

The cash equivalent of the benefit of the fuel is—

- (a) where the tax year is the tax year 2005-06 or 2006-07, nil, and
- (b) where the tax year is a later tax year, £500.

#### **162 Van fuel: nil cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is nil if condition A or B is met.
- (2) Condition A is met if in the tax year in question—
  - (a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee's private use, and
  - (b) the employee does make good that expense.
- (3) Condition B is met if in the tax year in question the fuel is made available only for business travel (see section 171(1)).

#### **163 Van fuel: proportionate reduction of cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is to be proportionately reduced if for any part of the tax year in question the van for which the fuel is provided is unavailable (within the meaning of section 156 (reduction for periods when van unavailable)).
- (2) But if section 159 (van temporarily replaced) applies—

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- (a) section 160 applies as if the replacement van were the normal van, and
  - (b) for the purposes of subsection (1) the replacement van is to be treated as unavailable on the days during the period on which it replaces the normal van.
- (3) The cash equivalent of the benefit of the fuel is also to be proportionately reduced if for any part of the tax year in question—
- (a) the facility for the provision of fuel as mentioned in section 160 (1) is not available,
  - (b) the fuel is made available only for business travel (see section 171(1)), or
  - (c) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee’s private use and the employee does make good that expense.
- (4) The fact that any of the conditions specified in subsection (3) is met for part of a tax year is to be disregarded if there is a time later in that year when none of those conditions is met.
- (5) Where the cash equivalent is to be proportionately reduced under subsection (1) or (3) (or under both those subsections), the reduced amount is given by the formula—

$$CE \times \frac{Y - D}{Y}$$

where—

CE is the amount of the cash equivalent before any reduction,

Y is the number of days in the tax year in question, and

D is the total number of days in the tax year on which either the van is unavailable or one or more of the conditions in subsection (3) is met.

#### **164 Van fuel: reduction of cash equivalent**

If a reduction of the cash equivalent of the benefit of the van for which the fuel is provided is made under section 157 (reduction of cash equivalent where van is shared), a corresponding reduction is to be made in relation to the cash equivalent of the benefit of the fuel.”

6 After section 169 insert—

#### **“169A Van available to more than one member of family or household employed by same employer**

- (1) This section applies where—
  - (a) an employee (“E”) and a member of the employee’s family or household (“M”) are employed by the same employer, and

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- (b) as a result of a van being made available to M in a tax year, E would (apart from this section) be chargeable to tax in respect of the van in that year by virtue of section 154.
  - (2) The cash equivalent of the benefit of the van and of any fuel provided for the van by reason of E's employment is not to be treated as E's earnings for that year if—
    - (a) M is chargeable to tax in respect of the van in that year by virtue of section 154, or
    - (b) where M's employment is an excluded employment, M had the benefit of the van in M's own right as an employee and condition A or B is met.
  - (3) Condition A is met if equivalent vans are made available on the same terms to employees who—
    - (a) are in similar employment to M with the same employer, and
    - (b) are not members of the family or household of employees of that employer who are employed in employment which is not an excluded employment.
  - (4) Condition B is met if the making available of an equivalent van is in accordance with the normal commercial practice for an employment of the kind held by M.”
- 7 (1) Section 170 (orders etc.) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) The Treasury may by order substitute a different amount for that for the time being specified in—
- (a) section 155(2)(a) (cash equivalent where van subject only to restricted private use by employee), and
  - (b) section 155(3)(b) (cash equivalent in other cases).”
- (3) In subsection (2), after “(1)” insert “ or (1A) ”.
- (4) In subsection (5), insert at the end “ or section 161(b) (van fuel: cash equivalent) ”.
- 8 In section 237 (exemption from Chapter 10 of Part 3 in respect of provision of workplace parking), in subsection (3)(a) (car parking space to be “workplace parking”), for “car parking space” substitute “ parking space for a car or van ”.

## SCHEDULE 15

Section 84

### CHARGE TO INCOME TAX ON BENEFITS RECEIVED BY FORMER OWNER OF PROPERTY

#### *Introductory*

- 1 In this Schedule—
- “IHTA 1984” means the Inheritance Tax Act 1984 (c. 51);
  - [<sup>F66</sup>“ITTOIA 2005” means the Income Tax (Trading and Other Income Act) 2005;]



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- “the 1986 Act” means the Finance Act 1986 (c. 41);
- “chattel” means any tangible movable property (or, in Scotland, corporeal movable property) other than money;
- “excluded transaction” has the meaning given by paragraph 10;
- “intangible property” means any property other than chattels or interests in land;
- “interest in land” has the same meaning as in Chapter 4 of Part 6 of IHTA 1984;
- “land” has the same meaning as in IHTA 1984;
- “prescribed” means prescribed by regulations;
- “property” has the same meaning as in IHTA 1984;
- “regulations” means regulations made by the Treasury under this Schedule;
- “settlement” and “settled property” have the same meanings as in IHTA 1984.

#### Textual Amendments

**F66** Words in Sch. 15 para. 1 inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 653\(2\)](#) (with [Sch. 2](#))

- [<sup>F672</sup> (1) For the purposes of this Schedule whether a person is connected with another person is determined in accordance with section 993 of the Income Tax Act 2007.
- (2) But for those purposes sections 993 and 994 of that Act are to be read as if in those sections—
- (a) “relative” included uncle, aunt, nephew and niece, and
- (b) “settlement”, “settlor” and “trustee” had the same meanings as in IHTA 1984.]

#### Textual Amendments

**F67** Sch. 15 para. 2 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. 482\(2\)](#) (with [Sch. 2](#))

### Land

- 3 (1) This paragraph applies where—
- (a) an individual (“the chargeable person”) occupies any land (“the relevant land”), whether alone or together with other persons, and
- (b) the disposal condition or the contribution condition is met as respects the land.
- (2) The disposal condition is that—
- (a) at any time after 17th March 1986 the chargeable person owned an interest—
- (i) in the relevant land, or
- (ii) in other property the proceeds of the disposal of which were (directly or indirectly) applied by another person towards the acquisition of an interest in the relevant land, and

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- (b) the chargeable person has disposed of all, or part of, his interest in the relevant land or the other property, otherwise than by an excluded transaction.
- (3) The contribution condition is that at any time after 17th March 1986 the chargeable person has directly or indirectly provided, otherwise than by an excluded transaction, any of the consideration given by another person for the acquisition of—
- (a) an interest in the relevant land, or
  - (b) an interest in any other property the proceeds of the disposal of which were (directly or indirectly) applied by another person towards the acquisition of an interest in the relevant land.
- (4) For the purposes of this paragraph a disposition which creates a new interest in land out of an existing interest in land is to be taken to be a disposal of part of the existing interest.
- (5) Where this paragraph applies to a person in respect of the whole or part of a year of assessment, an amount equal to the chargeable amount determined under paragraph 4 is to be treated as income of his chargeable to income tax.
- 4 (1) For any taxable period the chargeable amount in relation to the relevant land is the appropriate rental value (as determined under sub-paragraph (2)), less the amount of any payments which, in pursuance of any legal obligation, are made by the chargeable person during the period to the owner of the relevant land in respect of the occupation of the land by the chargeable person.
- (2) The appropriate rental value is—

$$R \times \frac{DV}{V}$$

where—

R is the rental value of the relevant land for the taxable period,

DV is—

- (a) in a case falling within paragraph 3(2)(a)(i), the value as at the valuation date of the interest in the relevant land that was disposed of as mentioned in paragraph 3(2)(b) by the chargeable person or, where the disposal was a non-exempt sale, the appropriate proportion of that value,
- (b) in a case falling within paragraph 3(2)(a)(ii), such part of the value of the relevant land at the valuation date as can reasonably be attributed to the property originally disposed of by the chargeable person or, where the original disposal was a non-exempt sale, to the appropriate proportion of that property, and
- (c) in a case falling within paragraph 3(3), such part of the value of the relevant land at the valuation date as can reasonably be attributed to the consideration provided by the chargeable person, and

V is the value of the relevant land at the valuation date.

- (3) The “rental value” of the land for the taxable period is the rent which would have been payable for the period if the property had been let to the chargeable person at an annual rent equal to the annual value.

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- (4) The disposal by the chargeable person of an interest in land is a “non-exempt sale” if (although not an excluded transaction) it was a sale of his whole interest in the property for a consideration paid in money in sterling or any other currency; and, in relation to a non-exempt sale, “the appropriate proportion” is—

$$\frac{MV - P}{MV}$$

where—

MV is the value of the interest in land at the time of the sale;

P is the amount paid.

- (5) Regulations may—
- (a) in relation to any valuation date, provide for a valuation of the relevant land or any interest in the relevant land by reference to an earlier valuation date to apply subject to any prescribed adjustments, and
  - (b) in relation to any year of assessment, provide for a determination of the rental value of the land by reference to any earlier year of assessment to apply subject to any prescribed adjustments.

- (6) In this paragraph—

“the taxable period” means the year of assessment, or part of a year of assessment, during which paragraph 3 applies to the chargeable person;

“the valuation date”, in relation to a taxable period, means such date as may be prescribed.

- 5 (1) For the purposes of paragraph 4 the annual value of the relevant land is the rent which might reasonably be expected to be obtained on a letting from year to year if—
- (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (2) For the purposes of sub-paragraph (1) that rent—
- (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of a letting of the land, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.
- (3) In this paragraph “relevant service” means a service other than the repair, insurance or maintenance of the premises.

#### *Chattels*

- 6 (1) This paragraph applies where—
- (a) an individual (“the chargeable person”) is in possession of, or has the use of, a chattel, whether alone or together with other persons, and

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- (b) the disposal condition or the contribution condition is met as respects the chattel.
- (2) The disposal condition is that—
- (a) at any time after 17th March 1986 the chargeable person had (whether alone or jointly with others) owned—
- (i) the chattel, or
- (ii) any other property the proceeds of the disposal of which were (directly or indirectly) applied by another person towards the acquisition of the chattel, and
- (b) the chargeable person disposed of all or part of his interest in the chattel or other property otherwise than by an excluded transaction.
- (3) The contribution condition is that at any time after 17th March 1986 the chargeable person had directly or indirectly provided, otherwise than by an excluded transaction, any of the consideration given by another person for the acquisition of—
- (a) the chattel, or
- (b) any other property the proceeds of the disposal of which were (directly or indirectly) applied by another person towards the acquisition of the chattel.
- (4) For the purposes of this paragraph, a disposition which creates a new interest in a chattel out of an existing interest in a chattel is to be taken to be a disposal of part of the existing interest.
- (5) Where this paragraph applies to a person in respect of the whole or part of a year of assessment, an amount equal to the chargeable amount determined under paragraph 7 is to be treated as income of his chargeable to income tax.
- 7 (1) For any taxable period the chargeable amount in relation to any chattel is the appropriate amount (as determined under sub-paragraph (2)), less the amount of any payments which, in pursuance of any legal obligation, are made by the chargeable person during the period to the owner of the chattel in respect of the possession or use of the chattel by the chargeable person.
- (2) The appropriate amount is—

$$N \times \frac{DV}{V}$$

where—

N is the amount of the interest that would be payable for the taxable period if interest were payable at the prescribed rate on an amount equal to the value of the chattel as the valuation date,

DV is—

- (a) in a case falling within paragraph 6(2)(a)(i), the value as at the valuation date of the interest in the chattel that was disposed of as mentioned in paragraph 6(2)(b) by the chargeable person or, where the disposal was a non-exempt sale, the appropriate proportion of that value,
- (b) in a case falling within paragraph 6(2)(a)(ii), such part of the value of the chattel at the valuation date as can reasonably be attributed to the property

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originally disposed of by the chargeable person or, where the original disposal was a non-exempt sale, to the appropriate proportion of that property, and  
(c) in a case falling within paragraph 6(3), such part of the value of the chattel at the valuation date as can reasonably be attributed to the consideration provided by the chargeable person, and

V is the value of the chattel at the valuation date.

- (3) The disposal by the chargeable person of an interest in a chattel is a “non-exempt sale” if (although not an excluded transaction) it was a sale of his whole interest in the chattel for a consideration paid in money in sterling or any other currency; and, in relation to a non-exempt sale, “the appropriate proportion” is—

$$\frac{MV - P}{MV}$$

where—

MV is the value of the interest in the chattel at the time of the sale;

P is the amount paid.

- (4) Regulations may, in relation to any valuation date, provide for a valuation of the chattel or any interest in the chattel by reference to an earlier valuation date to apply subject to any prescribed adjustments.
- (5) In this paragraph—  
“the taxable period” means the year of assessment, or part of a year of assessment, during which paragraph 6 applies to the chargeable person;  
“the valuation date”, in relation to a taxable period, means such date as may be prescribed.

*Intangible property comprised in settlement where settlor retains an interest*

- 8 (1) This paragraph applies where—
- the terms of a settlement, as they affect any property comprised in the settlement, are such that any income arising from the property would be treated by virtue of [<sup>F68</sup> section 624 of ITTOIA 2005] (income arising under settlement where settlor retains an interest) as income of a person (“the chargeable person”) who is for the purposes of [<sup>F69</sup> Chapter 5 of Part 5] of that Act the settlor,
  - any such income would be so treated even if [<sup>F70</sup> section 625(1) of ITTOIA 2005 (settlor's retained interest)] did not include any reference to the spouse [<sup>F71</sup> or civil partner] of the settlor, and
  - that property includes any property as respects which the condition in sub-paragraph (2) is met (“the relevant property”).
- (2) The condition mentioned in sub-paragraph (1)(c) is that the property is intangible property which is or represents property which the chargeable person settled, or added to the settlement, after 17th March 1986.

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- (3) Where this paragraph applies in respect of the whole or part of a year of assessment, an amount equal to the chargeable amount determined under paragraph 9 is to be treated as income of the chargeable person chargeable to income tax.
- [<sup>F72</sup>(4) For the purpose of deciding whether the condition in sub-paragraph (1)(a) is met, ignore section 628A of ITTOIA 2005 (which provides for section 624 of that Act not to apply to certain foreign income arising under a settlement).]

#### Textual Amendments

- F68** Words in Sch. 15 para. 8(1)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(3\)\(a\)\(i\)](#) (with Sch. 2)
- F69** Words in Sch. 15 para. 8(1)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(3\)\(a\)\(ii\)](#) (with Sch. 2)
- F70** Words in Sch. 15 para. 8(1)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(3\)\(b\)](#) (with Sch. 2)
- F71** Words in Sch. 15 para. 8(1)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 179\(a\)](#)
- F72** [Sch. 15 para. 8\(4\)](#) inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 8 para. 19](#)

- 9 (1) For any taxable period the chargeable amount in relation to the relevant property is N minus T where—
- N is the amount of the interest that would be payable for the taxable period if interest were payable at the prescribed rate on an amount equal to the value of the relevant property at the valuation date, and
- T is the amount of any income tax or capital gains tax payable by the chargeable person in respect of the taxable period by virtue of any of the following provisions—
- (a) [<sup>F73</sup>section 461 of ITTOIA 2005],
- (b) [<sup>F74</sup>section 624 of that Act],
- ([<sup>F75</sup>c) sections 720 to 730 of the Income Tax Act 2007,]
- (d) section 77 of the Taxation of Chargeable Gains Act 1992 (c. 12), and
- (e) section 86 of that Act,
- so far as the tax is attributable to the relevant property.
- (2) Regulations may, in relation to any valuation date, provide for a valuation of the relevant property by reference to an earlier valuation date to apply subject to any prescribed adjustments.
- (3) In this paragraph—
- “the taxable period” means the year of assessment, or part of a year of assessment, during which paragraph 8 applies to the chargeable person;
- “the valuation date”, in relation to a year of assessment, means such date as may be prescribed.

#### Textual Amendments

- F73** Words in Sch. 15 para. 9(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(4\)\(a\)](#) (with Sch. 2)

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- F74** Words in Sch. 15 para. 9(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(4\)\(b\)](#) (with Sch. 2)
- F75** Sch. 15 para. 9(1)(c) 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. 482\(3\)](#) (with Sch. 2)

### *Excluded transactions*

- 10 (1) For the purposes of paragraphs 3(2) and 6(2) (the disposal condition), the disposal of any property is an “excluded transaction” in relation to any person (“the chargeable person”) if—
- (a) it was a disposal of his whole interest in the property, except for any right expressly reserved by him over the property, either—
    - (i) by a transaction made at arm’s length with a person not connected with him, or
    - (ii) by a transaction such as might be expected to be made at arm’s length between persons not connected with each other,
  - (b) the property was transferred to his spouse [<sup>F76</sup>or civil partner] (or where the transfer has been ordered by a court, to his former spouse [<sup>F76</sup>or civil partner]),
  - (c) it was a disposal by way of gift (or, where the transfer is for the benefit of his former spouse [<sup>F77</sup>or civil partner], in accordance with a court order), by virtue of which the property became settled property in which his spouse [<sup>F77</sup>or civil partner] or former spouse [<sup>F77</sup>or civil partner] is beneficially entitled to an interest in possession,
  - (d) the disposal was a disposition falling within section 11 of IHTA 1984 (dispositions for maintenance of family), or
  - (e) the disposal is an outright gift to an individual and is for the purposes of IHTA 1984 a transfer of value that is wholly exempt by virtue of section 19 (annual exemption) or section 20 (small gifts).
- (2) For the purposes of paragraphs 3(3) and 6(3) (the contribution condition) the provision by a person (“the chargeable person”) of consideration for another’s acquisition of any property is an “excluded transaction” in relation to the chargeable person if—
- (a) the other person was his spouse [<sup>F78</sup>or civil partner] (or, where the transfer has been ordered by the court, his former spouse [<sup>F78</sup>or civil partner]),
  - (b) on its acquisition the property became settled property in which his spouse [<sup>F79</sup>or civil partner] or former spouse [<sup>F79</sup>or civil partner] is beneficially entitled to an interest in possession,
  - (c) the provision of the consideration constituted an outright gift of money (in sterling or any other currency) by the chargeable person to the other person and was made at least seven years before the earliest date on which the chargeable person met the condition in paragraph 3(1)(a) or, as the case may be, 6(1)(a),
  - (d) the provision of the consideration is a disposition falling within section 11 of IHTA 1984 (dispositions for maintenance of family), or
  - (e) the provision of the consideration is an outright gift to an individual and is for the purposes of IHTA 1984 a transfer of value that is wholly exempt by virtue of section 19 (annual exemption) or section 20 (small gifts).

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- (3) A disposal is not an excluded transaction by virtue of sub-paragraph (1)(c) or (2)(b), if the interest in possession of the spouse [<sup>F80</sup>or civil partner] or former spouse [<sup>F80</sup>or civil partner] has come to an end otherwise than on the death of the spouse [<sup>F80</sup>or civil partner] or former spouse [<sup>F80</sup>or civil partner].

#### **Textual Amendments**

- F76** Words in Sch. 15 para. 10(1)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **179(b)**
- F77** Words in Sch. 15 para. 10(1)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **179(b)**
- F78** Words in Sch. 15 para. 10(2)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **179(b)**
- F79** Words in Sch. 15 para. 10(2)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **179(b)**
- F80** Words in Sch. 15 para. 10(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **179(b)**

#### *Exemptions from charge*

- 11 (1) Paragraph 3 (land), paragraph 6 (chattels) and paragraph 8 (intangible property) do not apply to a person at a time when his estate for the purposes of IHTA 1984 includes—
- (a) the relevant property, or
  - (b) other property—
    - (i) which derives its value from the relevant property, and
    - (ii) whose value, so far as attributable to the relevant property, is not substantially less than the value of the relevant property.
- (2) Where the estate for the purposes of IHTA 1984 of a person to whom paragraph 3, 6 or 8 applies includes property—
- (a) which derives its value from the relevant property, and
  - (b) whose value, so far as attributable to the relevant property, is substantially less than the value of the relevant property,
- the appropriate rental value in paragraph 4, the appropriate amount in paragraph 7 or the chargeable amount in paragraph 9 (as the case may be) is to be reduced by such proportion as is reasonable to take account of the inclusion of the property in his estate.
- (3) Paragraphs 3, 6 and 8 do not apply to a person at a time when—
- (a) the relevant property, or
  - (b) any other property—
    - (i) which derives its value from the relevant property, and
    - (ii) whose value, so far as attributable to the relevant property, is not substantially less than the value of the relevant property,
 falls within sub-paragraph (5) in relation to him.
- (4) Where any property which falls within sub-paragraph (5) in relation to a person includes property—
- (a) which derives its value from the relevant property, and



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- (b) whose value, so far as attributable to the relevant property, is substantially less than the value of the relevant property,
- the appropriate rental value in paragraph 4, the appropriate amount in paragraph 7 or the chargeable amount in paragraph 9 (as the case may be) is to be reduced by such proportion as is reasonable to take account of that fact.
- (5) Property falls within this sub-paragraph in relation to a person at a time when it—
- (a) would fall to be treated by virtue of any provision of Part 5 of the 1986 Act (inheritance tax) as property which in relation to him is property subject to a reservation,
  - (b) would fall to be so treated but for any of paragraphs (d) to (i) of subsection (5) of section 102 of the 1986 Act (certain cases where disposal by way of gift is an exempt transfer for purposes of inheritance tax),
  - (c) would fall to be so treated but for subsection (4) of section 102B of the 1986 Act (gifts with reservation: share of interest in land), or would have fallen to be so treated but for that subsection if the disposal by way of gift of an undivided share of an interest in land had been made on or after 9th March 1999, or
  - (d) would fall to be so treated but for section 102C(3) of, and paragraph 6 of Schedule 20 to, the 1986 Act (exclusion of benefit).
- (6) Where at any time the value of a person’s estate for the purposes of IHTA 1984 is reduced by an excluded liability affecting any property, that property is not to be treated for the purposes of sub-paragraph (1) or (2) as comprised in his estate except to the extent that the value of the property exceeds the amount of the excluded liability.
- (7) For the purposes of sub-paragraph (6) a liability is an excluded liability if—
- (a) the creation of the liability, and
  - (b) any transaction by virtue of which the person’s estate came to include the relevant property or property which derives its value from the relevant property or by virtue of which the value of property in his estate came to be derived from the relevant property,
- were associated operations, as defined by section 268 of IHTA 1984.
- (8) In determining whether any property falls within sub-paragraph (5)(b), (c) or (d) in a case where the contribution condition in paragraph 3(3) or 6(3) is met, paragraph 2(2)(b) of Schedule 20 (exclusion of gifts of money) is to be disregarded.
- (9) In [<sup>F81</sup>this paragraph] “the relevant property” means—
- (a) in relation to paragraphs 3 and 6—
    - (i) where the disposal condition in paragraph 3(2) or 6(2) is met, the property disposed of,
    - (ii) where the contribution condition in paragraph 3(3) or 6(3) is met, the property representing the consideration directly or indirectly provided,
  - (b) in relation to paragraph 8, the relevant property within the meaning of that paragraph.
- (10) Property is not to be treated as falling within sub-paragraph (5)(b) at any time in a case falling within section 102(5)(h) of the 1986 Act unless the property remains

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subject to trusts which comply with the requirements of paragraph 3 (1) of Schedule 4 to IHTA 1984.

[<sup>F82</sup>(11) Sub-paragraph (12) applies where at any time—

- (a) the relevant property has ceased to be comprised in a person's estate for the purposes of IHTA 1984, or
- (b) he has directly or indirectly provided any consideration for the acquisition of the relevant property,

and at any subsequent time the relevant property or any derived property is comprised in his estate for the purposes of IHTA 1984 as a result of section 49(1) of that Act (treatment of interests in possession).

(12) Where this sub-paragraph applies, the relevant property and any derived property—

- (a) are not to be treated for the purposes of sub-paragraphs (1) and (2) as comprised in his estate at that subsequent time, and
- (b) are not to be treated as falling within sub-paragraph (5) in relation to him at that subsequent time.

(13) For the purposes of sub-paragraphs (11) and (12) references, in relation to the relevant property, to any derived property are to other property—

- (a) which derives its value from the relevant property, and
- (b) whose value, so far as attributable to the relevant property, is not substantially less than the value of the relevant property.]

#### Textual Amendments

**F81** Words in Sch. 15 para. 11(9) substituted (retrospective and with effect in accordance with s. 80(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 80\(2\)\(a\)\(8\)](#)

**F82** Sch. 15 para. 11(11)-(13) inserted (retrospective and with effect in accordance with s. 80(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 80\(2\)\(b\)\(8\)](#)

#### *Chargeable person resident or domiciled outside the United Kingdom*

- 12 (1) This Schedule does not apply in relation to any person for any year of assessment during which he is not resident in the United Kingdom.
- (2) Where in any year of assessment a person is resident in the United Kingdom but is domiciled outside the United Kingdom, this Schedule does not apply to him unless the property falling within paragraph 3(1)(a), 6(1)(a) or 8(1)(c) is situated in the United Kingdom.
- (3) In the application of this Schedule to a person who was at any time domiciled outside the United Kingdom, no regard is to be had to any property which is for the purposes of IHTA 1984 excluded property in relation to him by virtue of section 48(3)(a) of that Act.
- (4) For the purposes of this paragraph, a person is to be treated as domiciled in the United Kingdom at any time only if he would be so treated for the purposes of IHTA 1984.

#### *Exemption in cases where aggregate notional annual values do not exceed £5,000*

- 13 (1) This paragraph applies where, in relation to any person who would (apart from this paragraph) be chargeable under this Schedule for any year of assessment, the

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aggregate of the amounts specified in sub-paragraph (2) in respect of that year does not exceed £5,000.

- (2) Those amounts are—
- (a) in relation to any land to which paragraph 3 applies in respect of him, the appropriate rental value as determined under paragraph 4(2),
  - (b) in relation to any chattel to which paragraph 6 applies in respect of him, the appropriate amount as determined under paragraph 7(2), and
  - (c) in relation to any intangible property to which paragraph 8 applies in respect of him, the chargeable amount determined under paragraph 9.
- (3) Where this paragraph applies, the person is not chargeable for that year of assessment under any of the following provisions—
- (a) paragraph 3(5) (land),
  - (b) paragraph 6(5) (chattels), or
  - (c) paragraph 8(3) (intangible property).

*Power of Treasury to confer further exemptions by regulations*

- 14 Regulations may confer further exemptions from the charges to income tax imposed by paragraphs 3, 6 and 8.

*Valuation*

- 15 Except as otherwise provided by this Schedule, the value of any property shall for the purposes of this Schedule be the price which the property might reasonably be expected to fetch if sold in the open market at that time; but that price shall not be assumed to be reduced on the ground that the whole property is to be placed on the market at one and the same time.

*Changes in distribution of deceased's estate*

- 16 Any disposition made by a person (“the chargeable person”) in relation to an interest in the estate of a deceased person is to be disregarded for the purposes of this Schedule if by virtue of section 17 of IHTA 1984 (changes in distribution of deceased's estate, etc.) the disposition is not treated for the purposes of inheritance tax as a transfer of value by the chargeable person.

*Guarantees*

- 17 Where a person (“A”) acts as guarantor in respect of a loan made to another person (“B”) by a third party in connection with B's acquisition of any property, the mere giving of the guarantee is not to be regarded as the provision by A of consideration for B's acquisition of the property.

*Persons chargeable under different provisions by reference to same property*

- 18 (1) Where, in any year of assessment, a person (“the chargeable person”) is (apart from this paragraph) chargeable to income tax both—
- (a) under paragraph 3 (land) or paragraph 6 (chattels) by reason of his occupation of any land or his possession or use of any chattel, and

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(b) under paragraph 8 (intangible property) by reference to any intangible property which derives its value (whether in whole or part) from the land or the chattel,

he is to be charged to income tax under whichever provision produces the higher chargeable amount in relation to him.

(2) Where sub-paragraph (1) applies, only the amount under the paragraph under which he is chargeable is to be taken into account in relation to the chargeable person for the purposes of paragraph 13(2).

*Relationship with Part 3 of Income Tax (Earnings and Pensions) Act 2003*

19 Where, in any year of assessment, a person is (apart from this paragraph) chargeable, in respect of his occupation of any land or his possession or use of any chattel, to income tax both—

(a) under this Schedule, and

(b) under Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1),

the provisions of that Part shall have priority and he shall not be chargeable to income tax under this Schedule, except to the extent that the amount chargeable under this Schedule exceeds the amount to be treated as earnings under that Part.

*Regulations*

20 (1) Regulations under this Schedule may—

(a) make different provision for different cases, and

(b) include transitional provisions and savings.

(2) Any power conferred by this Schedule to prescribe a rate of interest includes power—

(a) to prescribe different rates in relation to property of different descriptions, and

(b) to prescribe a rate by reference to a rate specified in the regulations.

*Election for application of inheritance tax provisions*

21 (1) This paragraph applies where—

(a) a person (“the chargeable person”) would (apart from this paragraph) be chargeable under paragraph 3 (land) or paragraph 6 (chattels) for any year of assessment (“the initial year”) by reference to his enjoyment of any property (“the relevant property”), and

(b) he has not been chargeable under the paragraph in question in respect of any previous year of assessment by reference to his enjoyment of the relevant property, or of any other property for which the relevant property has been substituted.

(2) The chargeable person may elect in accordance with paragraph 23 that—

(a) the preceding provisions of this Schedule shall not apply to him during the initial year and subsequent years of assessment by reference to his enjoyment of the relevant property or of any property which may be substituted for the relevant property, but

(b) so long as the chargeable person continues to enjoy the relevant property or any property which is substituted for the relevant property—

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- (i) the chargeable proportion of the property is to be treated for the purposes of Part 5 of the 1986 Act (in relation to the chargeable person) as property subject to a reservation<sup>F83</sup>, but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property]
- <sup>F84</sup>(ii) section 102(3) and (4) of that Act shall apply, but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property, and
- (iii) if the chargeable person is beneficially entitled to an interest in possession in the property, sections 53(3) and (4) and 54 of IHTA 1984 (which deal with cases of property reverting to the settlor etc) shall not apply in relation to the chargeable proportion of the property.]

(3) In this paragraph, “the chargeable proportion”, in relation to any property, means—

$$\frac{DV}{V}$$

where DV and V are to be read in accordance with paragraph 4(2) or 7(2), as the case requires, but as if—

- (a) any reference in paragraph 4(2) or 7(2) to the valuation date were a reference—
  - (i) in the case of property falling within subsection (3) of section 102 of the Finance Act 1986, to the date of the death of the chargeable person, and
  - (ii) in the case of property falling within subsection (4) of that section, to the date on which the property ceases to be treated as property subject to a reservation, and
  - <sup>F85</sup>(iii) in the case of property in which the chargeable person is beneficially entitled to an interest in possession, to the date of his death or (if his interest comes to an end on an earlier date) that earlier date, and]
- (b) the transactions to be taken into account in calculating DV included transactions after the time when the election takes effect as well as transactions before that time.

(4) For the purposes of this paragraph a person “enjoys” property if—

- (a) in the case of an interest in land, he occupies the land, and
- (b) in the case of an interest in a chattel, he is in possession of, or has the use of, the chattel.

#### Textual Amendments

- F83** Words in Sch. 15 para. 21(2)(b)(i) inserted (retrospective and with effect in accordance with s. 80(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 80\(3\)\(a\)\(8\)](#)
- F84** Sch. 15 para. 21(2)(b)(ii)(iii) substituted for Sch. 15 para. 21(2)(b)(ii) (retrospective and with effect in accordance with s. 80(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 80\(3\)\(b\)\(8\)](#)
- F85** Sch. 15 para. 21(3)(a)(iii) inserted (retrospective and with effect in accordance with s. 80(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 80\(3\)\(c\)\(8\)](#)

22 (1) This paragraph applies where—

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- (a) a person (“the chargeable person”) would (apart from this paragraph) be chargeable under paragraph 8 (intangible property) for any year of assessment (“the initial year”) by reference to any property (“the relevant property”), and
  - (b) he has not been chargeable under that paragraph in respect of any previous year of assessment by reference to the relevant property or any property which the relevant property represents or is derived from.
- (2) The chargeable person may elect in accordance with paragraph 23 that—
- (a) the preceding provisions of this Schedule shall not apply to him during the initial year and subsequent years of assessment by reference to the relevant property or any property which represents or is derived from the relevant property, but
  - (b) so long as the conditions in sub-paragraph (3) are satisfied—
    - (i) the relevant property and any property which represents or is derived from the relevant property shall be treated for the purposes of Part 5 of the 1986 Act (in relation to the chargeable person) as property subject to a reservation<sup>[F86]</sup>, but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property concerned]
    - <sup>[F87]</sup>(ii) section 102(3) and (4) of that Act shall apply, but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property concerned, and
    - (iii) if the chargeable person is beneficially entitled to an interest in possession in the property concerned, sections 53(3) and (4) and 54 of IHTA 1984 (which deal with cases of property reverting to the settlor etc) shall not apply in relation to that property.]
- (3) The conditions referred to in sub-paragraph (2)(b) are—
- (a) that the relevant property or the property which represents or is derived from the relevant property remains comprised in the settlement, and
  - (b) that any income arising under the settlement would be treated by virtue of <sup>[F88]</sup>section 624 of ITTOIA 2005] as income of the chargeable person.

#### Textual Amendments

- F86** Words in Sch. 15 para. 22(2)(b)(i) inserted (retrospective and with effect in accordance with s. 80(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 80\(4\)\(a\)\(8\)](#)
- F87** Sch. 15 para. 22(2)(b)(ii)(iii) substituted for Sch. 15 para. 22(2)(b)(ii) (retrospective and with effect in accordance with s. 80(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 80\(4\)\(b\)\(8\)](#)
- F88** Words in Sch. 15 para. 22(3)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(5\)](#) (with Sch. 2)

- 23 (1) In this paragraph—
- “election” means an election under paragraph 21 or 22;
  - “the relevant filing date” means 31st January in the year of assessment that immediately follows the initial year within the meaning of paragraph 21 or (as the case requires) paragraph 22.
- (2) The election must be made in the prescribed manner.
- <sup>[F89]</sup>(3) The election must be made on or before—

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- (a) the relevant filing date, or
  - (b) such later date as an officer of Revenue and Customs may, in a particular case, allow.]
- (5) The election may be withdrawn or amended, during the life of the chargeable person, at any time on or before the relevant filing date.
- (6) Subject to sub-paragraph (5), the election takes effect for the purposes of inheritance tax from the beginning of the initial year within the meaning of paragraph 21 or (as the case requires) paragraph 22 or, if later, the date on which the chargeable person would (but for the election) have first become chargeable under this Schedule by reference to the property to which the election relates.

**Textual Amendments**

**F89** Sch. 15 para. 23(3) substituted for Sch. 15 para. 23(3)(4) (retrospective to 21.3.2007) by [Finance Act 2007 \(c. 11\)](#), s. 66(1)(2)

SCHEDULE 16

Section 85

RELIEF WHERE NATIONAL INSURANCE CONTRIBUTIONS MET BY EMPLOYEE

*Income tax relief: restricted securities*

- 1 (1) Chapter 2 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: restricted securities) is amended as follows.
- (2) In section 426 (charge on occurrence of chargeable event), for subsections (1) to (4) substitute—
- “(1) If a chargeable event occurs in relation to the employment-related securities, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
- (a) “chargeable event” has the meaning given by section 427,
  - (b) “the taxable amount” is the amount determined under section 428, and
  - (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief may be available under section 428A (relief for secondary Class 1 contributions met by employee) against an amount counting as employment income under this section.”.
- (3) After section 428 insert—

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### “428A Relief for secondary Class 1 contributions met by employee

- (1) Relief is available under this section against an amount counting as employment income under section 426 (“the employment income amount”) if—
- (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contribution in respect of that amount, or
  - (b) an election having effect under paragraph 3B of that Schedule is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of that amount.
- (2) The amount of the relief is the total of—
- (a) any amount that under the agreement referred to in subsection (1) (a) is recovered in respect of the employment income amount by the secondary contributor before 5th June in the tax year following that in which the chargeable event occurs, and
  - (b) the amount of any liability in respect of the employment income amount that, by virtue of the election referred to in subsection (1) (b), has become the employee’s liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of the liability referred to in subsection (2)(b) is limited to the amount met before 5th June in the tax year following that in which the chargeable event occurs.
- (4) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (5) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
  - (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.
- (6) In this section—
- “approval”, in relation to an election, means approval by the Inland Revenue under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and
- “secondary contributor” has the same meaning as in that Act (see section 7).”.

#### Commencement Information

**I8** Sch. 16 para. 1 in force at 1.9.2004 by [S.I. 2004/1945](#), [art. 2](#)



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*Income tax relief: convertible securities*

- 2 (1) Chapter 3 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: convertible securities) is amended as follows.
- (2) In section 438 (charge on occurrence of chargeable event), for subsections (1) to (4) substitute—
- “(1) If a chargeable event occurs in relation to the employment-related securities, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
- (a) “chargeable event” has the meaning given by section 439,
- (b) “the taxable amount” is the amount determined under section 440, and
- (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief may be available under section 442A (relief for secondary Class 1 contributions met by employee) against an amount counting as employment income under this section.”.
- (3) After section 442 insert—

**“442A Relief for secondary Class 1 contributions met by employee**

- (1) Relief is available under this section against an amount counting as employment income under section 438 (“the employment income amount”) if—
- (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contribution in respect of that amount, or
- (b) an election having effect under paragraph 3B of that Schedule is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of that amount.
- (2) The amount of the relief is the total of—
- (a) any amount that under the agreement referred to in subsection (1) (a) is recovered in respect of the employment income amount by the secondary contributor before 5th June in the tax year following that in which the chargeable event occurs, and
- (b) the amount of any liability in respect of the employment income amount that, by virtue of the election referred to in subsection (1) (b), has become the employee’s liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of the liability referred to in subsection (2)(b) is limited to the amount met before 5th June in the tax year following that in which the gain is realised.
- (4) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.

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- (5) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
  - (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.
- (6) In this section—
- “approval”, in relation to an election, means approval by the Inland Revenue under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and
- “secondary contributor” has the same meaning as in that Act (see section 7).”.

**Commencement Information**

**19** Sch. 16 para. 2 in force at 1.9.2004 by [S.I. 2004/1945](#), [art. 2](#)

*Income tax relief: securities options*

- 3 (1) Chapter 5 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: securities options) is amended as follows.
- (2) In section 476 (charge on occurrence of chargeable event), for subsections (1) to (4) substitute—
- “(1) If a chargeable event occurs in relation to an employment-related securities option, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
- (a) “chargeable event” has the meaning given by section 477,
  - (b) “the taxable amount” is the amount determined under section 478, and
  - (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief under section 481 or 482 (relief for secondary Class 1 contributions or special contribution met by employee) may be available against an amount counting as employment income under this section.”.
- (3) In section 480 (deductible amounts), omit subsection (7).
- (4) In section 481 (deductible amount in respect of secondary Class 1 contributions met by employee)—
- (a) in the heading for “**Deductible amount in respect of**” substitute “**Relief for**”;
  - (b) in subsection (1) for the opening words down to “if” substitute “Relief is available under this section against an amount counting as employment income under section 476 if”;
  - (c) in subsection (2) for the opening words down to “of” substitute “The amount of the relief is the total of”;

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- (d) after subsection (4) insert—
- “(4A) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (4B) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
- (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.”.
- (5) In section 482 (deductible amount in respect of special contribution met by employee)—
- (a) in the heading for “**Deductible amount in respect of**” substitute “**Relief for**”;
- (b) in subsection (1) for the opening words down to “if” substitute “Relief is available under this section against an amount counting as employment income under section 476 if”;
- (c) after subsection (5) add—
- “(6) The amount of the relief is the amount of the liability referred to in subsection (4).
- (“) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.”.

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**Commencement Information**

**I10** Sch. 16 para. 3 in force at 1.9.2004 by [S.I. 2004/1945](#), [art. 2](#)

*Consequential amendments: PAYE*

- 4 (1) Part 11 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (Pay As You Earn) is amended as follows.
- (2) In section 698 (PAYE: special charges on employment-related securities), after subsection (2) insert—
- “(2A) For the purposes of this section the amount likely to count as employment income under section 426 or 438 means the amount after deducting the amount of any relief likely to be available under section 428A or 442A (relief for secondary Class 1 contributions met by employee).”.
- (3) In section 700 (PAYE: gains from securities options), after subsection (4) insert—
- “(4A) For the purposes of this section the amount likely to count as employment income under section 476 means the amount after deducting the amount of any relief likely to be available under section 481 or 482 (relief for secondary Class 1 contributions or special contribution met by employee).”.

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### Commencement Information

**I11** Sch. 16 para. 4 in force at 1.9.2004 by [S.I. 2004/1945](#), [art. 2](#)

### *Consequential amendments: corporation tax relief*

**F905** .....

### Textual Amendments

**F90** Sch. 16 para. 5 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009](#) (c. 4), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

### *Consequential amendments: capital gains tax*

- 6 (1) Section 119A of the Taxation of Chargeable Gains Act 1992 (c. 12) (increase in expenditure by reference to tax charged in relation to employment-related securities) is amended as follows.
- (2) For subsection (5) (determination of relevant amount) substitute—
- “(5) In determining for the purposes of subsection (4) the amount counting as employment income—
- (a) in the case of an amount counting as employment income under section 476 of ITEPA 2003 any amounts deducted under section 480(5)(a) or (b) of that Act shall be added back, and
- (b) no account shall be taken of any relief under section 428A, 442A, 481 or 482 of that Act (relief for secondary Class 1 contributions or special contribution met by employee).”.
- (3) Omit subsection (8).
- (4) Nothing in this paragraph affects the operation of section 119A(5) of the Taxation of Chargeable Gains Act 1992 (c. 12), as inserted by paragraph 50 (1) of Schedule 22 to the Finance Act 2003 (c. 14), in relation to amounts deducted under section 481 or 482 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) before the amendment of those sections by this Schedule.

### Commencement Information

**I12** Sch. 16 para. 6 in force at 1.9.2004 by [S.I. 2004/1945](#), [art. 2](#)

### *Other consequential amendments*

- 7 (1) In section 484(7) of the Income Tax (Earnings and Pensions) Act 2003 (definitions for Chapter 5 of Part 7), omit the definition of “the Contributions and Benefits Act” and the word “and” preceding it.
- (2) In section 721 (1) of that Act (general definitions), at the appropriate place insert—

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““the Contributions and Benefits Act” means SSCBA 1992 or SSCB(NI)A 1992;”.

- (3) In Part 2 of Schedule 1 to that Act (index of defined expressions), for the entry relating to “the Contributions and Benefits Act” substitute—

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“the Contributions and Benefits Act                      section 721(1)”

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**Commencement Information**

**I13** Sch. 16 para. 7 in force at 1.9.2004 by [S.I. 2004/1945, art. 2](#)

SCHEDULE 17

Section 92

MINOR AMENDMENTS OF OR CONNECTED WITH THE  
INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

*Free or subsidised meals*

- 1 (1) In Chapter 11 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: miscellaneous exemptions), in section 317 (free or subsidised meals), for subsection (1) substitute—

“(1) No liability to income tax arises in respect of the provision for an employee by the employer of free or subsidised meals if they are provided—  
(a) in a canteen, or  
(b) on the employer’s business premises,  
and conditions A to C are met.”.

- (2) This amendment has effect for the year 2004-05 and subsequent tax years.

*Payments to non-approved pension schemes: exception for  
employment where earnings not within main charging provisions*

<sup>F91</sup>2 .....

**Textual Amendments**

**F91** Sch. 17 para. 2 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) Note (with [Sch. 36](#))

*Time limit for assessment: income received after year for which it is assessable*

- 3 (1) In Part 4 of the Taxes Management Act 1970 (c. 9) (assessments and claims), for section 35 (time limit for assessment: emoluments received after year for which they are assessable) substitute—

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**“35 Time limit: income received after year for which it is assessable**

- (1) Where income to which this section applies is received in a year of assessment subsequent to that for which it is assessable, an assessment to income tax as respects that income may be made at any time within six years after the year of assessment in which it was received.
- (2) This section applies to—
  - (a) employment income,
  - (b) pension income, and
  - (c) social security income.”.
- (2) This amendment has effect in relation to income assessable for the year 2004-05 and subsequent years of assessment.

*Computation of profits or gains under Schedule D: delayed payment of remuneration*

F92 4 . . . . .

**Textual Amendments**

**F92** Sch. 17 para. 4 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

*Donations to charity by individuals: application to Crown employment*

- 5 (1) In section 25(2) of the Finance Act 1990 (c. 29) (donations to charity by individuals: qualifying conditions), in paragraph (i)(i) for the words from “or performs duties” to “performed in the United Kingdom” substitute “ or is in Crown employment as defined in section 28(2) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (2) This amendment (which supersedes the amendment made by paragraph 166(3) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003) has effect for the year 2003-04 and subsequent years of assessment.

*Payments on account of income tax*

- 6 (1) Section 108 of the Finance Act 1995 (c. 4) shall be deemed not to have been repealed by Part 1 of Schedule 8 to the Income Tax (Earnings and Pensions) Act 2003 and the inclusion of that section among the enactments so repealed shall be deemed not to have affected the amendments made by that section in section 59A of the Taxes Management Act 1970 (c. 9) (payments on account of income tax).
- (2) Nothing in this paragraph affects anything done—
  - (a) on or after 6th April 2003 (when the Income Tax (Earnings and Pensions) Act 2003 came into force), and
  - (b) before the passing of this Act,
 in reliance on the view that the amendments referred to in sub-paragraph (1) had ceased to have effect.

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*Tax relief for expenditure on R&D or remediation of contaminated land: staff costs*

F937 .....

**Textual Amendments**

**F93** Sch. 17 para. 7 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

*Gains and losses of a company from intangible fixed assets: delayed payment of remuneration*

F948 .....

**Textual Amendments**

**F94** Sch. 17 para. 8 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

*Minor corrections of the Income Tax (Earnings and Pensions) Act 2003*

- 9 (1) The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.
- (2) In section 286 (power to amend sections 279 to 285), in the heading and in subsection (1), for “279” substitute “ 277 ”.
- (3) In Chapter 11 of Part 7 (supplementary provisions about employee benefit trusts), in section 554(1)(a) (attribution of further interest in company), for “employment” substitute “ employee ”.
- (4) In section 577 (United Kingdom social security pensions)—
- (a) in subsection (2), in paragraph (b) of the definition of “state pension”, for “48” substitute “ 48A ”, and
- (b) omit subsection (3).
- (5) In section 677 (UK social security benefits wholly exempt from income tax), in Part 2 of Table B (benefits payable under regulations), omit the entry relating to compensation payments where child support reduced because of a change in legislation.

*Other minor corrections*

10 F95(1) .....

F96(2) .....

- (3) In section 38(9) of the Finance Act 1988 (c. 39) (maintenance payments under existing obligations: 1989-90 onwards)—
- (a) for “68(1)(b) or 192(3)” substitute “or 68(1)(b)”, and
- (b) after “Taxes Act 1988” insert “or section 355 of the Income Tax (Earnings and Pensions) Act 2003”.

F97(4) .....

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**Textual Amendments**

**F95** Sch. 17 para. 10(1) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

**F96** Sch. 17 para. 10(2) repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F97** Sch. 17 para. 10(4) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 3](#) Note (with [Sch. 36](#))

SCHEDULE 18

Section 93

ENTERPRISE INVESTMENT SCHEME

<sup>F98</sup>**PART 1**

INCOME TAX RELIEF

.....

**Textual Amendments**

**F98** Sch. 18 Pt. 1 repealed (with effect in accordance with s. 1034(1)(3) of the amending Act) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 3 Pt. 2](#) (with [Sch. 2](#))

**PART 2**

DEFERRAL RELIEF

12 Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12) (enterprise investment scheme: re-investment) is amended as follows.

- 13 (1) In paragraph 1(2) (definition of qualifying investment)—
- (a) in paragraph (a), omit “wholly in cash”,
  - (b) after that paragraph insert—
    - “(aza) he subscribed for the shares (other than any of them which are bonus shares) wholly in cash”,
  - (c) in paragraph (c), for the words from “are fully” to “future date)” substitute “(other than any of them which are bonus shares) are fully paid up”,
  - (d) in paragraph (e), after “Act” insert “(read with section 289(1B) to (1E) of that Act)”,
  - (e) in paragraph (f), for “all the shares comprised in the issue” substitute “the shares (other than any of them which are bonus shares)”,

<sup>F99</sup>(f) .....

(2) After paragraph 1(4) of that paragraph insert—

“(5) Shares are not fully paid up for the purposes of sub-paragraph (2)(c) above if there is any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.”.



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### Textual Amendments

**F99** Sch. 18 para. 13(1)(f) omitted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by virtue of Finance Act 2009 (c. 10), Sch. 8 para. 10(b)

- 14 In paragraph 1A (failure of conditions of application)—
- (a) in sub-paragraph (1), after “the shares” insert “ mentioned in sub-paragraph (2)(a) of that paragraph ”,
  - (b) in sub-paragraph (2), after “the shares” insert “ mentioned in sub-paragraph (2)(a) of that paragraph ”,
  - (c) in sub-paragraph (3), for “an issue of eligible shares,” substitute “ the shares mentioned in sub-paragraph (2)(a) of that paragraph, ”,
  - (d) in sub-paragraph (4), for “an issue of eligible shares, the shares” substitute “ the issue of eligible shares, the shares mentioned in sub-paragraph (2)(a) of that paragraph ”,
  - (e) in sub-paragraph (5)(b), after “the shares” insert “ mentioned in paragraph 1(2)(a) above ”.
- 15 (1) In paragraph 10 (re-investment in same company, etc)—
- (a) in sub-paragraph (1), for “other securities” substitute “ securities ”,
  - (b) after sub-paragraph (3) insert—

“(4) In this paragraph “group of companies” means a company which has one or more 51 per cent. subsidiaries, together with those subsidiaries.”.
- (2) The amendments made by this paragraph have effect, for the purposes of paragraph 10 (1) of Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12), in relation to holdings of shares or securities disposed of on or after 17th March 2004.
- (3) The amendment made by sub-paragraph (1)(b) has effect, for the purposes of paragraph 10(2) of that Schedule, in relation to eligible shares in a relevant company issued on or after 17th March 2004.
- 16 (1) In paragraph 13 (value received by investor) in sub-paragraph (2)(b)(i), for “on which he subscribed for the shares” substitute “ of issue of the shares ”.
- (2) Subject to sub-paragraph (3), the amendment made by this paragraph has effect in relation to shares issued on or after 17th March 2004.
- (3) The amendment made by this paragraph does not have effect in relation to the repayment of a debt incurred before 17th March 2004 if—
- (a) the shares were subscribed for before that date, and
  - (b) the debt was incurred on or after the date on which the shares were subscribed for.
- 17 (1) In paragraph 14 (value received by other persons) in sub-paragraph (7), for “paragraph 14AA” substitute “ paragraphs 14AA and 14A ”.
- (2) The amendment made by this paragraph has effect in relation to any repayment (within the meaning of paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12)) made on or after 17th March 2004.
- 18 (1) In paragraph 14A (certain receipts to be disregarded for the purposes of paragraph 14) in sub-paragraph (6), omit paragraph (a).

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- (2) The amendment made by this paragraph has effect in relation to any repayment (within the meaning of paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992) made on or after 17th March 2004.
- 19 (1) In paragraph 16 (information)—
- (a) in sub-paragraph (6), for “293(8) or 308(2)(e)” substitute “ 289(1D) or (9) (e), 289A(8)(b) or (8A), 293(4B), (6) or (8) or 308(2)(e), (3), (3A) or (4) ”,
  - (b) in sub-paragraph (7)—
    - (i) in paragraph (a), after “above” insert “ or section 293(4B) or (6) of the Taxes Act ”,
    - (ii) after paragraph (a) insert—
      - “(aa) in relation to section 289(1D), 289A(8)(b) or (8A) or 308(3), (3A) or (4) of the Taxes Act, the claimant, the company, any other company in question and any person controlling the company or any other company in question;”,
    - (iii) in paragraph (c), after “section” insert “ 289(9)(e), ”,
    - (iv) in the full-out words at the end, for “(a)” substitute “ (a), (aa) ”,
  - (c) after sub-paragraph (7) insert—
    - “(7A) The references in sub-paragraphs (6) and (7) above to subsections (3), (3A) and (4) of section 308 of the Taxes Act are to be read as including those provisions as applied by section 289(10) and (11) of that Act.”.
- (2) The amendments made by this paragraph have effect in relation to any notice given after the passing of this Act in respect of shares issued on or after 17th March 2004.
- 20 (1) In paragraph 19 (1) (interpretation)—
- (a) before the definition of “arrangements” insert—
    - ““51 per cent. subsidiary” has the meaning given by section 838 of the Taxes Act;”,
  - (b) after the definition of “associate” insert—
    - ““bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise);”.
- (2) The amendment made by sub-paragraph (1)(a) has effect in relation to shares issued on or after 17th March 2004, except that, for the purposes of the amendment made by sub-paragraph (1)(b) of paragraph 15 of this Schedule, it has effect in accordance with sub-paragraphs (2) and (3) of that paragraph.

### PART 3

#### COMMENCEMENT

- 21 Except where otherwise provided, the amendments made by this Schedule have effect in relation to shares issued on or after 17th March 2004.

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SCHEDULE 19

Section 94

VENTURE CAPITAL TRUSTS

<sup>F100</sup>**PART 1**

INCREASE IN RELIEF ON INVESTMENTS AND DISTRIBUTIONS

.....

**Textual Amendments**

**F100** Sch. 19 Pt. 1 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

**PART 2**

ABOLITION OF DEFERRAL RELIEF

*Main amendments*

- 4 Section 151A(3) of the Taxation of Chargeable Gains Act 1992 (c. 12) (which introduces Schedule 5C) shall cease to have effect.
- 5 Schedule 5C to that Act (venture capital trusts: deferred charge on re-investment) shall cease to have effect.

*Consequential amendment*

- 6 (1) The Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In paragraph 2(4) of Schedule 5B (enterprise investment scheme: re-investment) omit “or Schedule 5C”.

*Commencement*

- 7 (1) The amendments made by this Part have effect in relation to shares issued on or after 6th April 2004 which are shares by reference to which an individual is given relief under Part 1 of Schedule 15B to the Taxes Act 1988.
- (2) But nothing in this Act affects the continuing operation of Schedule 5C to the Taxation of Chargeable Gains Act 1992 (c. 12) for the purposes of section 151B(8)(b)(ii) of that Act.

<sup>F101</sup>**PART 3**

MISCELLANEOUS

.....

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### Textual Amendments

**F101** Sch. 19 Pt. 3 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

## SCHEDULE 20

Section 95

### CORPORATE VENTURING SCHEME

- 1 Schedule 15 to the Finance Act 2000 (c. 17) (the corporate venturing scheme) is amended as follows.
- 2 In paragraph 3 (meaning of “the qualification period”)—
- (a) in sub-paragraph (1)(b)(ii), and
  - (b) in sub-paragraph (2)(a) and (b),
- for “qualifying subsidiaries” substitute “qualifying 90% subsidiaries”.
- 3 In paragraph 15 (introduction) after paragraph (e) insert—
- “(ea) property managing subsidiaries (see paragraph 21A);”.
- 4 In paragraph 20 (the qualifying subsidiaries requirement) for sub-paragraph (2) substitute—
- “(2) In this paragraph “subsidiary” means any company which the company controls, either on its own or together with any person connected with it.
- (3) For the purpose of sub-paragraph (2), the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.”.
- 5 (1) Paragraph 21 (meaning of “qualifying subsidiary”) is amended as follows.
- (2) In sub-paragraph (2)—
- (a) omit paragraphs (a) to (c),
  - (b) before paragraph (d) insert—
- “(ca) the subsidiary is a 51% subsidiary of the relevant company;”.
- (c) in paragraph (e) for “the conditions in paragraphs (a) to” substitute “either of the conditions in paragraphs (ca) and”.
- (3) In sub-paragraph (4)(a)(ii), after “company” insert “concerned”.
- (4) In sub-paragraph (5)—
- (a) after “qualifying subsidiary” insert “of the relevant company”.
  - (b) for “and not part” substitute “and is not to be part”.
- 6 After paragraph 21 insert—

*“The property managing subsidiaries requirement*

21A(1) The issuing company is not a qualifying issuing company in relation to the relevant shares if, at any time during the qualification period relating to those

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shares, it has a property managing subsidiary which is not a qualifying 90% subsidiary of the issuing company (see paragraph 23(10) and (11)).

(2) “Property managing subsidiary” means a qualifying subsidiary of the issuing company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.

(3) In sub-paragraph (2), “land” and “property deriving its value from land” have the same meaning as in section 776 of the Taxes Act 1988.”.

7 In paragraph 23 (the trading activities requirement)—

(a) in sub-paragraph (3)(b), for “at least one group company” substitute “ the issuing company or a qualifying 90% subsidiary of the issuing company ”,

(b) in sub-paragraph (5)—

(i) for “a subsidiary” substitute “ a qualifying 90% subsidiary of the issuing company ”,

(ii) for “or subsidiary” substitute “ or a qualifying 90% subsidiary of the issuing company ”,

(c) in sub-paragraph (6), for “the company”, in the first place, substitute “ a company ”,

<sup>F102</sup>(d) .....

#### Textual Amendments

**F102** Sch. 20 para. 7(d) repealed (19.7.2007 with effect in accordance with Sch. 16 to the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(16\)](#)

8 In paragraph 24 (ceasing to meet trading requirements by reason of administration, receivership etc)—

(a) in sub-paragraph (1)—

(i) omit “which is in administration or receivership”,

(ii) after “by reason” insert “ only ”,

(b) in sub-paragraph (2)(b), after “company” insert “ concerned ”,

(c) in sub-paragraph (4)—

(i) in paragraph (a), for “of the company or any of its subsidiaries” substitute “ only of the company or any of its qualifying subsidiaries ”,

(ii) in paragraph (b), for “and not” substitute “ and is not ”.

9 In paragraph 25 (meaning of “qualifying trade”) in sub-paragraph (3)(b), for “any other group company” substitute “ the issuing company or any of its qualifying 90% subsidiaries ”.

10 In paragraph 35 (requirement as to the shares) in sub-paragraph (2), for “the issuing company at a future date” substitute “ any person at a future date in respect of the acquisition of the shares ”.

11 In paragraph 36 (requirement as to money raised)—

(a) in sub-paragraph (1B)(b)—

(i) for “relevant trade was not being carried on” substitute “ issuing company or a qualifying 90% subsidiary of that company had not begun to carry on the relevant trade ”,

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- (ii) for “subsidiary” substitute “ qualifying 90% subsidiary of that company ”,
  - (b) in sub-paragraphs (4)(b)(ii) and (5)(b), for “qualifying subsidiary” substitute “ qualifying 90% subsidiary ”.
- 12 In paragraph 40 (entitlement to claim)—
- (a) in sub-paragraph (2), for paragraph (a) substitute—
    - “(a) the funded trade has been carried on for four months by no person other than the issuing company or a qualifying 90% subsidiary of that company, disregarding—
      - (i) any time spent preparing to carry on that trade, and
      - (ii) any person required to be disregarded in accordance with sub-paragraph (2A) or (2B), and”,
  - (b) after sub-paragraph (2) insert—
    - “(2A) At any time when the funded trade is carried on by the partners in a partnership of which the issuing company, or a qualifying 90% subsidiary of that company, is a member, there shall be disregarded for the purposes of sub-paragraph (2)(a) any other members of the partnership at that time.
    - (2B) At any time when the funded trade is carried on by the parties to a joint venture to which the issuing company, or a qualifying 90% subsidiary of that company, is a party, there shall be disregarded for the purposes of sub-paragraph (2)(a) any other parties to the joint venture at that time.”,
  - (c) for sub-paragraph (5)(a) substitute—
    - “(a) by reason only of the issuing company or any other company being wound up or dissolved without winding up, the funded trade is carried on as mentioned in sub-paragraph (2)(a) for a period shorter than four months, and”,
  - (d) in sub-paragraph (5)(b), for “was”, in each place, substitute “ is ”,
  - (e) for sub-paragraph (6)(a) substitute—
    - “(a) by reason only of anything done as a consequence of the issuing company or any other company being in administration or receivership, the funded trade is carried on as mentioned in sub-paragraph (2)(a) for a period shorter than four months, and”,
  - (f) in sub-paragraph (6)(b), after “company” insert “ concerned ”.
- 13 In paragraph 102 (minor definitions etc) after sub-paragraph (7) insert—
- “(8) In determining for the purposes of paragraph 3(2), 23(5) or 36(1B) when a trade is begun to be carried on by a qualifying 90% subsidiary of the issuing company there shall be disregarded any carrying on of the trade by it before it became such a subsidiary.”.
- 14 In paragraph 103 (index of defined expressions), after the entry for “qualifying subsidiary” insert—

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“qualifying 90% subsidiary paragraph 23(10) and (11)”.

15 The amendments made by this Schedule have effect in relation to shares issued on or after 17th March 2004.

SCHEDULE 21

Section 116

CHARGEABLE GAINS: RESTRICTION OF GIFTS RELIEF ETC

*Penalties for failure to furnish particulars etc*

F103<sup>1</sup> .....

**Textual Amendments**

**F103** Sch. 21 para. 1 omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, **Sch. para. 60(j)**

*Charge on settlor with interest in settlement etc: supplementary provisions*

F104<sup>2</sup> .....

**Textual Amendments**

**F104** Sch. 21 para. 2 omitted (21.7.2008) (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 21(g)**

*Relief for gifts of business assets*

3 (1) Section 165 of the Taxation of Chargeable Gains Act 1992 is amended as follows.  
(2) In subsection (1) (circumstances in which subsection (4) applies, subject to certain provisions) for “and 169” substitute “, 169, 169B and 169C”.  
(3) In subsection (3) (relief not to apply to disposal in certain cases) after paragraph (b) insert—  
    “(ba) in the case of a disposal of shares or securities, the transferee is a company,”.

F105<sup>(4)</sup> .....

(5) In subsection (10) (deduction to be allowed in computing chargeable gain on subsequent disposal by transferee, where disposal by transferor is chargeable transfer for inheritance tax purposes) for “after 13th March 1989, in respect of which a claim is made under this section,” substitute “ in relation to which subsection (4) above applies ”.

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### Textual Amendments

**F105** Sch. 21 para. 3(4) omitted (21.7.2008) (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 2 para. 55(g)(i)

### *Gifts relief not to be available on certain transfers to settlor-interested settlements etc*

4 After section 169A of the Taxation of Chargeable Gains Act 1992 (c. 12) insert—

#### **“169B Gifts to settlor-interested settlements etc**

- (1) Neither section 165(4) nor section 260(3) shall apply in relation to a disposal (“the relevant disposal”)—
  - (a) made by a person (“the transferor”) to the trustees of a settlement, and
  - (b) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, immediately after the making of the relevant disposal,—
  - (a) there is a settlor (see section 169E) who has an interest in the settlement (see section 169F), or
  - (b) an arrangement (see section 169G) subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
  - (a) a chargeable gain would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal,
  - (b) in computing the gain, the allowable expenditure would to any extent fall to be reduced in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
  - (c) immediately after the making of the relevant disposal,—
    - (i) that individual has an interest in the settlement, or
    - (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) This section is subject to section 169D (exception for maintenance funds for historic buildings and certain settlements for disabled persons).

#### **169C Clawback of relief if settlement becomes settlor-interested etc**

- (1) This section applies in relation to a disposal (“the relevant disposal”)—
  - (a) made by a person (“the transferor”) to the trustees of a settlement,
  - (b) in relation to which section 165(4) or 260(3) applies, or would apart from this section apply, and
  - (c) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, at any time during the clawback period,—



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- (a) there is a settlor who has an interest in the settlement, or
  - (b) an arrangement subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
- (a) in computing the chargeable gain which would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal, the allowable expenditure would fall to be reduced,
  - (b) that reduction would to any extent fall to be made in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
  - (c) at any time during the clawback period,—
    - (i) that individual has an interest in the settlement, or
    - (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) If no claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time, neither section 165(4) nor section 260(3) shall apply in relation to that disposal.
- (5) Subsections (7) to (9) below apply if a claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time.
- (6) But those subsections do not apply if—
- (a) the transferor is an individual, and
  - (b) he dies before the material time.
- (7) A chargeable gain, of an amount equal to the amount of the held-over gain (within the meaning of section 165 or 260) on the relevant disposal, shall be treated for the purposes of tax in respect of chargeable gains as accruing to the transferor at the material time.
- (8) For any chargeable period ending after the making of the relevant disposal, the chargeable gains and allowable losses of—
- (a) the trustees of the settlement, or
  - (b) any person whose title to any property to any extent derives, directly or indirectly, from them,
- shall be determined on the assumption that neither section 165(4)(b) nor section 260(3)(b) ever applied in relation to that disposal.
- (9) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to subsection (8) above (notwithstanding any limitation on the time within which any adjustment may be made).
- (10) If a claim for relief under section 165 or 260 in respect of the relevant disposal is revoked, this section shall apply as if the claim had never been made.
- (11) In this section “the clawback period” means the period—
- (a) beginning immediately after the making of the relevant disposal, and

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- (b) ending six years after the end of the year of assessment in which that disposal was made.
- (12) In this section “the material time” means the time at which subsection (1)(c) above first becomes satisfied.
- (13) This section is subject to section 169D.

### **169D Exceptions to sections 169B and 169C**

- (1) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement in a year of assessment if the trustees have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc) shall have effect in the case of—
  - (a) the settlement, or
  - (b) any part of the settlement,
 in relation to that year of assessment.
- (2) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement if the following conditions are satisfied.
- (3) The first condition is that, immediately after the making of the disposal,—
  - (a) the settled property is held on trusts which secure that, during the lifetime of a disabled person, not less than half of the property which is applied is applied for the benefit of that person, and
  - (b) the settled property is held on trusts—
    - (i) which secure that, during his lifetime, he is entitled to not less than half of the income arising from the property,
    - (ii) which secure that, during his lifetime, no such income may be applied for the benefit of any other person, or
    - (iii) under which, during his lifetime, no interest in possession in the settled property subsists.
- (4) The second condition is that if, immediately after the making of the disposal, one or more settlors is an interested settlor, each such settlor must at that time be a disabled beneficiary.
- (5) For the purposes of subsection (4) above a settlor is an “interested settlor” in relation to a settlement if—
  - (a) he has an interest in the settlement, or
  - (b) an arrangement subsists under which such an interest will or may be acquired by him;
 and for this purpose, the references to an individual’s spouse in section 169F(2) and (3) shall be disregarded.
- (6) In subsection (4) above “disabled beneficiary”, in relation to a settlement, means a disabled person who—
  - (a) is a beneficiary under the settlement, or
  - (b) would be such a beneficiary if he had the interest in the settlement by virtue of which subsection (5)(b) above applies in relation to him.

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- (7) In this section “disabled person” means—
- (a) a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 is incapable of administering his property or managing his affairs; or
  - (b) a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.
- (8) In this section “attendance allowance” means an allowance under—
- (a) section 64 of the Social Security Contributions and Benefits Act 1992, or
  - (b) section 64 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (9) In this section “disability living allowance” means a disability living allowance under—
- (a) section 71 of the Social Security Contributions and Benefits Act 1992, or
  - (b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (10) The trusts on which settled property is held shall not be treated as falling outside subsection (3) above by reason only of the powers conferred on the trustees by—
- (a) section 32 of the Trustee Act 1925, or
  - (b) section 33 of the Trustee Act (Northern Ireland) 1958 (powers of advancement).
- (11) The references in subsection (3) above to the lifetime of a person shall, where the income from the settled property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), be construed as references to the period during which the income is held on trust for him.

### **169E Meaning of “settlor” in sections 169B to 169D and 169G**

- (1) For the purposes of this section, sections 169B to 169D and section 169G, a person is a settlor in relation to a settlement if—
- (a) he is an individual, and
  - (b) the settled property consists of, or includes, property originating from him.
- (2) In subsection (1) above, the reference to property originating from a settlor is a reference to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement, and
  - (b) property which wholly or partly represents that property or any part of it.
- (3) In subsection (2) above, the references to property which a settlor has provided directly or indirectly—

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- (a) include references to property which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but
  - (b) do not include references to property which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person.
- (4) In subsection (2) above, the reference to property which represents other property includes a reference to property which represents accumulated income from that other property.

### **169F Meaning of “interest in a settlement” in sections 169B to 169D**

- (1) For the purposes of this section and sections 169B to 169D, an individual is to be regarded as having an interest in a settlement if subsection (2) or (3) below applies.
- (2) This subsection applies if—
  - (a) any property which may at any time be comprised in the settlement, or
  - (b) any derived property,
 is, or will or may become, payable to or applicable for the benefit of the individual or his spouse in any circumstances whatsoever.
- (3) This subsection applies if the individual or his spouse enjoys a benefit deriving directly or indirectly from—
  - (a) any property which is comprised in the settlement, or
  - (b) any derived property.
- (4) The references in subsections (2) and (3) above to the spouse of the individual do not include—
  - (a) a spouse from whom the individual is separated—
    - (i) under an order of a court,
    - (ii) under a separation agreement, or
    - (iii) in such circumstances that the separation is likely to be permanent, or
  - (b) the widow or widower of the individual.
- (5) An individual is not to be regarded as having an interest in a settlement by virtue of subsection (2) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—
  - (a) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or
  - (b) the death of a child of the individual where the child had become beneficially entitled to the property or any derived property at an age not exceeding 25.
- (6) In this section “derived property”, in relation to any property, means—
  - (a) income from that property,

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- (b) property directly or indirectly representing—
  - (i) proceeds of that property, or
  - (ii) proceeds of income from that property, or
- (c) income from property which is derived property by virtue of paragraph (b) above.

### **169G Meaning of “arrangement” in sections 169B to 169E and information power**

- (1) In sections 169B to 169E “arrangement” or “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.
- (2) An officer of the Board may by notice require any person to whom subsection (3) or (4) below applies to give him within such time as he may direct, not being less than 28 days, such particulars as he thinks necessary for the purposes of sections 169B to 169F.
- (3) This subsection applies to a person who is or has been—
  - (a) a trustee of a settlement,
  - (b) a beneficiary under a settlement, or
  - (c) a settlor in relation to a settlement.
- (4) This subsection applies to a person who—
  - (a) is the spouse of a settlor in relation to a settlement, or
  - (b) has at any time on or after the making of the relevant disposal been the spouse of such a settlor.
- (5) In subsection (4) above “relevant disposal” means the disposal—
  - (a) to which section 169B(1), 169C (1) or 169D (1) or (2) applies or may apply, and
  - (b) in connection with which the notice is given.”.

#### *Gifts on which inheritance tax is chargeable etc*

- 5 (1) Section 260 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In subsection (1) (circumstances in which subsection (3) applies, subject to certain provisions) after “169” insert “, 169B, 169C”.
  - (3) Omit subsection (6A) (unnecessary provision for preventing reduction in case of disposal which is chargeable event for purposes of Schedule 5B).
  - (4) Omit subsection (6B) (unnecessary provision for preventing reduction in case of disposal which is chargeable event for purposes of Schedule 5C).
  - (5) In subsection (7) (deduction to be allowed in computing chargeable gain on subsequent disposal by transferee, where disposal by transferor is chargeable transfer for inheritance tax purposes) after “subsection (2)(a) above” insert “ (whether or not subsection (3) above applies in relation to it) ”.

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*Payment by instalments of tax on gifts*

- 6 (1) Section 281 of the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In subsection (2) (option to pay capital gains tax by instalments by giving notice to inspector) for “the inspector” substitute “ an officer of the Board ”.
- (3) After subsection (7) insert—
- “(8) Subsection (2) above applies in relation to a chargeable gain accruing to a transferor under section 169C(7) (clawback of relief under section 165 or 260 if settlement becomes settlor-interested etc) as it applies in relation to a gain accruing to a person on a disposal if—
- (a) the relevant disposal (within the meaning of section 169C) in question was a disposal of the whole or any part of any assets to which this section applies, and
- (b) at the material time (within the meaning of that section), no part of the subject-matter of that relevant disposal has been disposed of for valuable consideration under a subsequent disposal (whether made by the trustees to whom that relevant disposal was made or by some other person).
- (9) Where subsection (2) above so applies, subsections (4) to (7) above apply accordingly but as if for paragraphs (a) and (b) of subsection (7) there were substituted “ any part of the subject-matter of the relevant disposal in question is disposed of for valuable consideration under a subsequent disposal (whether made by the trustees to whom that relevant disposal was made or by some other person). ”.”.

*Recovery of tax from donee*

- 7 (1) Section 282 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) After subsection (4) insert—
- “(5) This section applies in relation to a chargeable gain accruing to a transferor under section 169C(7) (clawback of relief under section 165 or 260 if settlement becomes settlor-interested etc) as it applies in relation to a chargeable gain accruing to a person on the disposal of an asset by way of gift.
- (6) For the purposes of this section as applied by subsection (5) above—
- (a) the transferor shall be taken to be the donor, and
- (b) the trustees to whom the relevant disposal (within the meaning of section 169C) in question was made shall be taken to be the donee.”.

*Application of taper relief*

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**Textual Amendments**

**F106** Sch. 21 para. 8 omitted (21.7.2008) (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 2 para. 55(g)(i)

*Relief for gifts of business assets*

- 9 (1) Schedule 7 to the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In paragraph 2 (1) (circumstances in which section 165(4) applies, subject to certain provisions, in relation to disposals by trustees of settlement) for “and 169” substitute “, 169, 169B and 169C ”.

*Commencement*

- 10 (1) The amendment in paragraph 1(2) of this Schedule has effect in relation to any notice given—
- (a) after the passing of this Act, and
  - (b) in respect of the year 2003-04 or any subsequent year of assessment.
- (2) The amendment in paragraph 2(2) of this Schedule has effect in relation to the provision of property on or after 10th December 2003.
- (3) The amendments in paragraphs 2(3) and 6(2) of this Schedule have effect in relation to any notice given in respect of the year 2004-05 or any subsequent year of assessment.
- (4) The amendments in paragraphs 3(2), 4, 5(2), 6(3), 7(2)<sup>F107</sup> ... and 9(2) of this Schedule have effect in relation to disposals on or after 10th December 2003 (whenever any earlier disposal as mentioned in section 169B(3)(b) or 169C(3)(b) was made).
- (5) The amendment in paragraph 3(3) of this Schedule has effect in relation to disposals on or after 21st October 2003.
- <sup>F108</sup>(6) .....
- (7) The amendment in paragraph 3(5) of this Schedule has effect in relation to disposals on or after 10th December 2003.
- (8) The amendments in paragraph 5(3) and (4) of this Schedule have effect in relation to gains accruing on or after 6th April 2004.
- (9) The amendment in paragraph 5(5) of this Schedule has effect in relation to disposals on or after 6th April 2004.

**Textual Amendments**

**F107** Word in Sch. 21 para. 10(4) omitted (21.7.2008) (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 2 para. 55(g)(ii)

**F108** Sch. 21 para. 10(6) omitted (21.7.2008) (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 2 para. 55(g)(ii)

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## SCHEDULE 22

Section 117

## CHARGEABLE GAINS: PRIVATE RESIDENCE RELIEF

*Relief on disposal of private residence*

- 1 (1) Section 222 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In subsection (5)(a) (notice to inspector to determine which of two or more residences is individual's main residence) for "the inspector" (on both occasions) substitute "an officer of the Board".

*Amount of relief*

- 2 (1) Section 223 of the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In subsection (4) (dwelling-house let as residential accommodation) in paragraph (a), omit the unnecessary words "or those provisions as applied by section 225".
- (3) After subsection (7) insert—
- “(8) This section is subject to—
- (a) section 224 (amount of relief: further provisions), and
- (b) section 226A (private residence relief: cases where relief obtained under section 260).”.

*Amount of relief: further provisions*

- 3 (1) Section 224 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In subsection (1) (gain accruing from disposal of dwelling-house part of which is used exclusively for purposes of trade etc: relief to apply only to portion of gain) for "accrues from" substitute "accrues on".

*Private residence occupied under terms of settlement*

- 4 (1) Section 225 of the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In the opening words—
- (a) for "a trustee" substitute "the trustees of a settlement", and
- (b) for "the trustee" substitute "the trustees".
- (3) In paragraph (a), for "the trustee" substitute "the trustees".
- (4) In paragraph (b)—
- (a) for "the inspector" substitute "an officer of the Board", and
- (b) for "the trustee" substitute "the trustees".
- (5) At the end of that paragraph insert " ; but section 223 (as so applied) shall apply only on the making of a claim by the trustees. ”.



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*Private residence held by personal representatives*

5 After section 225 of the Taxation of Chargeable Gains Act 1992 insert—

**“225A Private residence held by personal representatives**

- (1) Sections 222 to 224 shall also apply in relation to a gain accruing to the personal representatives of a deceased person on a disposal of an asset within section 222 (1) if the following conditions are satisfied.
- (2) The first condition is that, immediately before and immediately after the death of the deceased person, the dwelling-house or part of the dwelling-house mentioned in section 222 (1) was the only or main residence of one or more individuals.
- (3) The second condition is that—
  - (a) that individual or one of those individuals has a relevant entitlement, or two or more of those individuals have relevant entitlements, and
  - (b) the relevant entitlement accounts for, or the relevant entitlements together account for, 75% or more of the net proceeds of disposal;and for this purpose “relevant entitlement” means an entitlement as legatee of the deceased person to, or to an interest in possession in, the whole or any part of the net proceeds of disposal.
- (4) In subsection (3) above “net proceeds of disposal” means—
  - (a) the proceeds of the disposal of the asset realised by the personal representatives, less
  - (b) any incidental costs allowable as a deduction in accordance with section 38(1)(c) in computing the gain accruing to the personal representatives on that disposal,but on the assumption that none of the proceeds is required to meet the liabilities of the deceased person’s estate (including any liability to inheritance tax).
- (5) In sections 222 to 224 as applied by this section—
  - (a) references to the individual shall be taken as references to the personal representatives except in relation to the occupation of the dwelling-house or part of the dwelling-house, and
  - (b) the notice which may be given to an officer of the Board under section 222(5)(a) shall be a joint notice by the personal representatives and the individual or individuals entitled to occupy the dwelling-house or part of the dwelling-house.
- (6) But section 223 (as so applied) shall apply only on the making of a claim by the personal representatives.”.

*Private residence relief: cases where relief obtained under section 260*

6 After section 226 of the Taxation of Chargeable Gains Act 1992 insert—

**“226A Private residence relief: cases where relief obtained under section 260**

- (1) This section applies where—

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- (a) section 223 applies, or would apart from this section apply, in relation to a gain or part of a gain accruing to an individual or the trustees of a settlement (“the transferor”) on a disposal (the “later disposal”),
  - (b) in computing the chargeable gain which would, apart from section 223, accrue to the transferor on the later disposal, the allowable expenditure would fall to be reduced, and
  - (c) that reduction would to any extent fall to be made in consequence, directly or indirectly, of a claim or claims under section 260 in respect of one or more earlier disposals (whether or not made to the transferor).
- (2) If a claim for relief under section 260 in respect of—
- (a) the earlier disposal, or
  - (b) if there were two or more such disposals, any of them,
- is made on or before the making of the later disposal, section 223 shall not apply in relation to the gain or part of a gain accruing on the later disposal.
- (3) If a claim for relief under section 260 in respect of—
- (a) the earlier disposal, or
  - (b) if there were two or more such disposals, any of them,
- is made after the making of the later disposal and subsection (2) above does not apply, it is to be assumed for the purposes of capital gains tax that section 223 never applied in relation to the gain or part of a gain accruing on the later disposal.
- (4) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to subsection (3) above (notwithstanding any limitation on the time within which any adjustment may be made).
- (5) Where the later disposal is made by the trustees of a settlement, the references in subsections (2) and (3) above to the making of the later disposal shall be read as references to the making of a claim for relief under section 223 in respect of the gain or part of a gain accruing on that disposal.
- (6) If a claim for relief under section 260 in respect of an earlier disposal is revoked, this section shall apply as if the claim had never been made.
- (7) This section is subject to section 226B (exception for maintenance funds for historic buildings).

### **226B Exception to section 226A**

- (1) Section 226A shall not apply in relation to a later disposal made by the trustees of a settlement if the trustees have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc) shall have effect in the case of—
- (a) the settlement, or
  - (b) any part of the settlement,
- in relation to each year of assessment in which a relevant earlier disposal is made.

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(2) In this section “relevant earlier disposal”, in relation to a later disposal, means an earlier disposal in respect of which a claim mentioned in section 226A(1)(c) is made.

(3) This section is to be construed as one with section 226A.”.

#### *Commencement*

- 7 (1) The amendments in paragraphs 1(2) and 4(4)(a) of this Schedule have effect in relation to any notice given on or after 10th December 2003.
- (2) The amendments in paragraphs 2(2), 3(2), 4(2), (3), (4)(b) and (5) and 5 of this Schedule have effect in relation to disposals made on or after 10th December 2003.
- (3) Subject to paragraph 8 of this Schedule, the amendments in paragraphs 2(3) and 6 of this Schedule have effect in relation to gains or parts of gains accruing on later disposals (within the meaning of the section 226A inserted by paragraph 6 of this Schedule) made on or after 10th December 2003 (whenever any relevant earlier disposal was made).
- (4) In sub-paragraph (3) above “relevant earlier disposal”, in relation to a later disposal (within the meaning of the section 226A inserted by paragraph 6 of this Schedule), means an earlier disposal in respect of which a claim mentioned in subsection (1) (c) of that section is made.

#### *Transitional provision*

- 8 (1) This paragraph has effect where section 226A of the Taxation of Chargeable Gains Act 1992 (c. 12) (as inserted by paragraph 6 of this Schedule) (“section 226A”) applies in circumstances in which—
- (a) the relevant earlier disposal, or
  - (b) if there were two or more such disposals, each of them,
- was made before 10th December 2003.
- (2) Section 226A shall have effect subject to the following modifications.
- (3) In subsection (2), omit “not” and at the end insert “ subject to the modifications set out in subsections (2A) to (2C) below ”.
- (4) After subsection (2) insert—
- “(2A) Section 223 (1) shall not apply.
- (2B) For the purposes of section 223(2)(a) and (3)—
- (a) the dwelling-house or the part of the dwelling-house in question is to be taken not to have been the individual’s only or main residence during the post-commencement period or any part of that period, and
  - (b) the words “but inclusive of the last 36 months of the period of ownership in any event” shall not have effect in respect of so much of that period of 36 months as falls within the post-commencement period.
- (2C) In subsection (2B) above “post-commencement period” means the period beginning on 10th December 2003 and ending on the date of the later disposal.”.

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- (5) In subsection (3), omit “never” and at the end insert “ subject to the modifications set out in subsections (2A) to (2C) above ”.
- (6) In this paragraph “relevant earlier disposal”, in relation to a later disposal, means an earlier disposal in respect of which a claim mentioned in subsection (1)(c) of section 226A is made.
- (7) This paragraph is to be construed as one with section 226A.
- (8) Subsections (5) and (6) of section 223 of the Taxation of Chargeable Gains Act 1992 apply in relation to the subsection (2B)(b) treated as inserted by sub-paragraph (4) above as they apply in relation to subsections (1) and (2)(a) of that section.

## SCHEDULE 23

Section 134

### FINANCE LEASEBACKS: TRANSITIONAL PROVISION

#### *Introduction*

- 1 (1) Sections 228B to 228E of the Capital Allowances Act 2001 (c. 2) (as inserted by section 134) are subject to paragraphs 2 to 9 of this Schedule in their application in relation to existing leasebacks.
- (2) Paragraph 10 of this Schedule makes provision in relation to the taxation of chargeable gains where an existing leaseback terminates.

#### *Section 228B*

- 2 (1) This paragraph applies if the pre-commencement rentals are greater than the total of the actual rental deductions for periods of account up to, but excluding, the transitional period of account.
- (2) Section 228B shall not apply in relation to—
  - (a) the transitional period of account if the lessee’s excess rentals are greater than the notional rental deduction for that period, or
  - (b) a subsequent period of account if the unrelieved portion of the lessee’s excess rentals is greater than the notional rental deduction for that period.
- (3) Section 228B is subject to sub-paragraph (4) in its application to—
  - (a) the transitional period of account if the lessee’s excess rentals are not greater than the notional rental deduction for that period, or
  - (b) a subsequent period of account if the unrelieved portion of the lessee’s excess rentals is not greater than the notional rental deduction for that period.
- (4) The permitted maximum for that period of account is the total of—
  - (a) the lessee’s excess rentals (in the case of the transitional period of account) or the unrelieved portion of the lessee’s excess rentals (in the case of a subsequent period of account), and
  - (b) the amount given by this calculation—

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$$\text{BasicAmount} \times \frac{(\text{NotionalRentalDeduction} - \text{DeductibleExcess})}{\text{NotionalRentalDeduction}}$$

where—

“Basic Amount” means the amount calculated in accordance with section 228B(2),

“Notional Rental Deduction” means the notional rental deduction for the period of account in question, and

“Deductible Excess” means the amount included in the permitted maximum by virtue of sub-paragraph (4)(a).

(5) But where, in relation to the transitional period of account, the amount given by sub-paragraph (4) is less than the appropriate fraction of the notional rental deduction for that period, the permitted maximum shall be that fraction of that deduction.

(6) In this paragraph—

(a) “the lessee’s excess rentals” means—

(i) the pre-commencement rentals, minus

(ii) the total of the actual rental deductions referred to in sub-paragraph (1), and

(b) “the unrelieved portion of the lessee’s excess rentals”, in relation to a period of account, means—

(i) the lessee’s excess rentals, minus

(ii) the total of the actual rental deductions for periods of account from and including the transitional period up to, but excluding, the period in question.

(7) In this paragraph—

“actual rental deduction”, in relation to a period of account, means the amount that may be deducted in respect of amounts payable under the existing leaseback in calculating the lessee’s income or profits for that period of account for the purpose of income tax or corporation tax;

“notional rental deduction”, in relation to a period of account, means the amount that could, if section 228B did not apply, be deducted in respect of amounts payable under the existing leaseback in calculating the lessee’s income or profits for that period of account for the purpose of income tax or corporation tax.

(8) Nothing in sub-paragraphs (3) to (5) prevents the inclusion of an amount in the permitted maximum by virtue of section 228B(3) and (4).

(9) This paragraph does not apply in relation to any period of account later than a period of account for which the permitted maximum has been determined in accordance with sub-paragraph (3) to (5).

### Section 228B

3 (1) This paragraph applies where—

(a) the existing leaseback terminates, and

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- (b) in the period of account immediately following that in which it terminates, paragraph 2(2)(b) or 2(3)(b) would apply were it not for the termination.
- (2) The permitted maximum for the period of account in which the leaseback terminates shall also include an amount equal to the amount that the unrelieved portion of the lessee's excess rentals would have been in the period of account immediately following.

*Section 228C*

- 4 Section 228C shall not apply where the existing leaseback terminates before 17 March 2004.

*Section 228C*

- 5 (1) Section 228C applies subject to this paragraph where—
- (a) the existing leaseback terminates otherwise than by expiry of its term, and
  - (b) the amount calculated in accordance with section 228C(3) exceeds the relevant cap.
- (2) In determining the amount by which income or profits are to be increased under section 228C(2), the amount calculated in accordance with section 228C(3) shall be disregarded to the extent that it exceeds the relevant cap.
- (3) The relevant cap is—

$$(\text{OriginalConsideration} - \text{RelevantRentals}) \times \frac{\text{NetConsideration}}{\text{OriginalConsideration}}$$

where—

“Original Consideration” has the same meaning as in section 228B;

“Relevant Rentals” means—

- (a) the pre-commencement rentals, minus
- (b) the total of—
  - (i) finance charges shown in the accounts for periods that end before 17 March 2004, and
  - (ii) the appropriate proportion of finance charges shown in the accounts for the transitional period of account;

“Net Consideration” has the same meaning as in section 228C.

*Section 228C*

- 6 (1) This paragraph applies if—
- (a) the existing leaseback terminates otherwise than by expiry of its term,
  - (b) upon the termination of the leaseback, or during the period of one month beginning with the date of termination, the lessee becomes the owner of the plant of machinery by acquiring it—
    - (i) from the lessor, or

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- (ii) where no person other than the lessor or a person connected with the lessee has owned the plant or machinery at any time since the termination of the leaseback, from a person connected with the lessee,
  - (c) the person who first acquires the plant or machinery from the lessor does so as a result of incurring capital expenditure equal (at least) to the market value of the plant or machinery at the termination of the leaseback, and
  - (d) the amount of the lessee acquisition expenditure that counts as qualifying expenditure is restricted under section 226.
- (2) If the section 226 restriction is greater than the amount calculated in accordance with section 228C(3)—
  - (a) section 228C(2) to (4) shall not apply, but
  - (b) if there is a taxable disposal, section 228C(2) to (4) shall apply subject to sub-paragraph (5).
- (3) If the section 226 restriction is not greater than the amount calculated in accordance with section 228C(3)—
  - (a) the amount by which profits or income are increased in accordance with section 228C(2) shall be reduced by the section 226 restriction, and
  - (b) if there is a taxable disposal, section 228C(2) to (4) shall apply again subject to sub-paragraph (5).
- (4) For the purposes of sub-paragraphs (2) and (3) there is a taxable disposal if, during the period of six years beginning with the date of termination of the leaseback—
  - (a) the whole of the plant or machinery is the subject of a disposal event (within the meaning of Part 2), or
  - (b) part of the plant or machinery is the subject of such a disposal event.
- (5) Where section 228C(2) to (4) applies subject to this sub-paragraph—
  - (a) a reference to the termination shall be treated as a reference to the cessation of ownership of the plant or machinery, and
  - (b) the amount by which profits or income are increased in accordance with section 228C(2) shall be—
    - (i) in a case falling within sub-paragraph (2)(b), the relevant fraction of the amount calculated in accordance with section 228C(3), or
    - (ii) in a case falling within sub-paragraph (3)(b), the relevant fraction of the section 226 restriction.
- (6) In sub-paragraph (5)(b)(i) and (ii) “relevant fraction” means—

(Disposal Proceeds — Restricted Qualifying Expenditure)

(Lessee Acquisition Expenditure — Restricted Qualifying Expenditure)

where “Disposal Proceeds” means the consideration due to the lessee under the taxable disposal or, if higher, the market value of the plant or machinery at the time of the taxable disposal; but—

- (a) where that amount is greater than the lessee acquisition expenditure, the Disposal Proceeds shall be the amount of the lessee acquisition expenditure, or

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- (b) where that amount is less than the restricted qualifying expenditure, the Disposal Proceeds shall be the amount of the restricted qualifying expenditure.
- (7) Where there is a taxable disposal by virtue of sub-paragraph (4)(b), this paragraph applies in relation to that disposal with the following modifications—
- (a) references in sub-paragraphs (5)(a) and (6) to the plant or machinery shall be taken to be references to the part of the plant or machinery comprised in the taxable disposal;
  - (b) the amount by which profits or income are to be increased by virtue of sub-paragraph (5)(b) shall be the partial disposal fraction of the amount given by sub-paragraph (5)(b)(i) or (ii);
  - (c) the partial disposal fraction of the restricted qualifying expenditure and of the lessee acquisition expenditure shall be used for the purposes of sub-paragraph (6) instead of those amounts of expenditure.
- (8) For the purposes of sub-paragraph (7) the partial disposal fraction is—

Apportioned Lessee Acquisition Expenditure  
 Lessee Acquisition Expenditure

where “Apportioned Lessee Acquisition Expenditure” means so much of the lessee acquisition expenditure as was attributable to the acquisition of the part of the plant or machinery comprised in the taxable disposal.

- (9) In this paragraph—
- “lessee acquisition expenditure” means the capital expenditure incurred by the lessee in acquiring the plant or machinery as described in sub-paragraph (1)(b),
- “restricted qualifying expenditure” means the qualifying expenditure under section 226, and
- “section 226 restriction” means—
- (a) the lessee acquisition expenditure, minus
  - (b) the restricted qualifying expenditure.

*Section 228D*

- 7 (1) This paragraph applies if the pre-commencement rentals are greater than the total of the actual taxed rentals for periods of account up to, but excluding, the transitional period of account.
- (2) Section 228D shall not apply in relation to—
- (a) the transitional period of account if the lessor’s excess rentals are greater than the notional taxed rental for that period, or
  - (b) a subsequent period of account if the untaxed portion of the lessor’s excess rentals is greater than the notional taxed rental for that period.
- (3) Section 228D is subject to sub-paragraph (4) in its application to—
- (a) the transitional period of account if the lessor’s excess rentals are not greater than the notional taxed rental for that period, or



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- (b) a subsequent period of account if the untaxed portion of the lessor’s excess rentals is not greater than the notional taxed rental for that period.
- (4) The permitted threshold for that period of account is the total of—
- (a) the lessor’s excess rentals (in the case of the transitional period of account) or the untaxed portion of the lessor’s excess rentals (in the case of a subsequent period of account), and
  - (b) the amount given by this calculation—

$$\text{Basic Amount} \times \frac{(\text{Notional Taxed Rental} - \text{Deductible Excess})}{\text{Notional Taxed Rental}}$$

where—

“Basic Amount” means the amount calculated in accordance with section 228D(4);

“Notional Taxed Rental” means the notional taxed rental for the period of account in question, and

“Deductible Excess” means the amount included in the permitted threshold by virtue of sub-paragraph (4)(a).

- (5) But where, in relation to the transitional period of account, the amount given by sub-paragraph (4) is less than the appropriate fraction of the notional taxed rental for that period, the permitted threshold shall be that fraction of that rental.
- (6) In this paragraph—
- (a) “the lessor’s excess rentals” means—
    - (i) the pre-commencement rentals, minus
    - (ii) the total of the actual taxed rentals referred to in sub-paragraph (1), and
  - (b) “the untaxed portion of the lessor’s excess rentals”, in relation to a period of account, means—
    - (i) the lessor’s excess rentals, minus
    - (ii) the total of the actual taxed rentals for periods of account from and including the transitional period up to, but excluding, the period in question.
- (7) In this paragraph—
- “actual taxed rental”, in relation to a period of account, means the amount that should be taken into consideration in respect of amounts receivable under the existing leaseback in calculating the lessor’s income or profits for that period of account for the purpose of income tax or corporation tax;
- “notional taxed rental”, in relation to a period of account, means the amount that would, if section 228D did not apply, be taken into consideration in respect of amounts receivable under the existing leaseback in calculating the lessor’s income or profits for that period of account for the purpose of income tax or corporation tax.
- (8) Nothing in sub-paragraphs (3) to (5) prevents the inclusion of an amount in the permitted threshold by virtue of section 228D(2).

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- (9) This paragraph does not apply in relation to any period of account later than a period of account for which the permitted threshold has been determined in accordance with sub-paragraphs (3) to (5).

*Section 228D*

- 8 (1) This paragraph applies where—
- (a) the existing leaseback terminates, and
  - (b) in the period of account immediately following that in which it terminates, paragraph 7(2)(b) or 7(3)(b) would apply were it not for the termination.
- (2) The permitted threshold for the period of account in which the leaseback terminates shall also include an amount equal to the amount that the untaxed portion of the lessor’s excess rentals would have been in the period of account immediately following.

*Section 228E*

- 9 Section 228E shall not apply where the existing leaseback terminates before 17 March 2004.

*Chargeable gains*

- 10 (1) Sub-paragraph (2) applies where—
- (a) an existing leaseback is the leaseback in a lease and finance leaseback,
  - (b) the leaseback terminates,
  - (c) on or after the termination there is a disposal, by the user, of the whole or part of the plant and machinery subject to the leaseback, and
  - (d) a chargeable gain that accrues on that disposal (“the relevant chargeable gain”) falls to be taken into account for the purposes of a chargeable gains computation.
- (2) The following fraction of the relevant chargeable gain shall instead be taken into account for the purposes of the chargeable gains computation—

$$\frac{(\text{NetRentals} - \text{TerminationCharge})}{\text{LeasePremium}}$$

where—

“Net Rentals” means—

- (a) the total of the amounts deducted in calculating the user’s income or profits, for the purpose of income tax or corporation tax, in respect of amounts payable under the leaseback, minus
- (b) the total of the amounts shown in the user’s accounts in respect of finance charges relating to the leaseback;

“Termination Charge” means the amount by which the user’s income or profits are to be increased by virtue of section 228C(2) of the CAA 2001 because of the termination;

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“Lease Premium” means the consideration relating to the leaseback referred to in section 228F(6)(b) of the CAA 2001.

(3) References in this paragraph to termination of the leaseback shall be construed in accordance with section 228H (1) of the CAA 2001.

(4) In this paragraph—

“CAA 2001” means the Capital Allowances Act 2001 (c. 2);

“chargeable gains computation” means the computation, for the purposes of the TCGA 1992, of the total amount of chargeable gains that accrue to the user in any chargeable period that ends on or after 17 March 2004;

“disposal” shall be construed in accordance with the TCGA 1992;

“lease and finance leaseback” has the same meaning as in section 228F of the CAA 2001;

“TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12);

“user” means the person who is the lessee under the leaseback.

#### *Interpretation*

11 (1) In this Schedule—

“existing leaseback” means a leaseback the term of which began before 17 March 2004;

“pre-commencement rentals”, in relation to an existing leaseback, means—

(a) any amounts payable by the lessee to the lessor under the leaseback before 17 March 2004,

(b) any amounts so payable on or after 17 March 2004 in respect of a period that ends before 17 March 2004, or

(c) where any amounts are so payable on or after 17 March 2004 in respect of a period which begins before that date and ends on or after that date, the appropriate fraction of each of those amounts;

“transitional period of account” means a period of account that includes 17 March 2004.

(2) In this Schedule the “appropriate fraction”, in respect of an amount that relates to a particular period, means this fraction—

$$\frac{\text{Pre-commencement Period}}{\text{Whole Period}}$$

where—

“Pre-commencement Period” means the number of days in the part of the period that falls before 17 March 2004, and

“Whole Period” means the number of days in the whole of the period.

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SCHEDULE 24

Section 136

MANUFACTURED DIVIDENDS

*Amendments of sections 231AA, 231AB and 233 of the Taxes Act 1988*

F109<sup>1</sup> .....

**Textual Amendments**

**F109** Sch. 24 para. 1 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Amendments of paragraph 2A of Schedule 23A to the Taxes Act 1988*

F110<sup>2</sup> .....

**Textual Amendments**

**F110** Sch. 24 para. 2 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Amendment of the Taxation of Chargeable Gains Act 1992*

3 F111(1) .....  
F112(2) .....  
F113(3) .....

**Textual Amendments**

**F111** Sch. 24 para. 3(1) omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 29 paras. 11, 52**  
**F112** Sch. 24 para. 3(2) repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)  
**F113** Sch. 24 para. 3(3) omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 29 paras. 11, 52**

SCHEDULE 25

Section 144

LLOYD’S NAMES: CONVERSION TO LIMITED LIABILITY UNDERWRITING

1 The Finance Act 1993 (c. 34) is amended as follows.  
2 After section 179A insert—

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### “179B Conversion to limited liability underwriting

Schedule 20A to this Act (which makes provision for certain reliefs to be available where a member converts to limited liability underwriting) shall have effect.”.

3 After Schedule 20 insert—

“SCHEDULE  
20A

Section 179B

LLOYD’S UNDERWRITERS: CONVERSION TO LIMITED LIABILITY UNDERWRITING

### PART 1

#### CONVERSION TO UNDERWRITING THROUGH SUCCESSOR COMPANIES

#### Introduction

- 1 (1) This Part of this Schedule applies if the following conditions are satisfied.
- (2) Condition 1 is that—
  - (a) a member gives notice of his resignation from membership of Lloyd’s in accordance with the rules or practice of Lloyd’s,
  - (b) in accordance with such rules or practice, the member does not undertake any new insurance business at Lloyd’s after the end of the member’s last underwriting year, and
  - (c) the member does not withdraw that notice.
- (3) Condition 2 is that all of the member’s outstanding syndicate capacity is disposed of by the member under a conversion arrangement to a successor company (“the syndicate capacity disposal”) with effect from the beginning of the underwriting year next following the member’s last underwriting year.
- (4) Condition 3 is that, immediately before the syndicate capacity disposal,—
  - (a) the member controls the successor company, and
  - (b) more than 50% of the ordinary share capital of the successor company is beneficially owned by the member.
- (5) Condition 4 is that the syndicate capacity disposal is made in consideration solely of the issue to the member of shares in the successor company.
- (6) Condition 5 is that the successor company starts to carry on its underwriting business in the underwriting year (“the successor company’s first underwriting year”) next following the member’s last underwriting year.
- (7) In this paragraph “the member’s last underwriting year”, in relation to a member who gives notice of his resignation from membership of Lloyd’s, means the underwriting year during which, or at the end of which, he ceases to be an underwriting member and becomes a non-underwriting member in accordance with the rules or practice of Lloyd’s.

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- (8) In this paragraph “outstanding syndicate capacity”, in relation to a member, means the syndicate capacity of the member other than any which—
- (a) the member disposes of to a person other than a successor member at or before the end of the member’s last underwriting year, or
  - (b) ceases to exist with effect from the end of that year.

**Income tax: carry forward of loss relief following conversion**

- 2 (1) This paragraph applies if—
- (a) the member’s total income for a year of assessment includes any income derived by the member from the successor company (whether by way of dividends on the shares issued to the member or otherwise), and
  - (b) throughout the period beginning with the time of the syndicate capacity disposal and ending with the end of that year of assessment, —
    - (i) the member controls the successor company, and
    - (ii) more than 50% of the ordinary share capital of the successor company is beneficially owned by the member.
- (2) The carry-forward provision shall apply as if the income so derived were profits on which the member was assessed under Schedule D in respect of the member’s underwriting business for that year.
- (3) But where under the carry-forward provision as applied by sub-paragraph (2) above a loss falls to be deducted from or set off against any income for any year of assessment, the deduction or set-off shall be made in the first place against that part, if any, of the income in respect of which the member has been, or is liable to be, assessed to tax for that year.
- (4) In this paragraph “the carry-forward provision” means section 385 of the Taxes Act 1988 (carry-forward of trading losses against subsequent profits).

**Capital gains tax: roll-over relief on disposal of syndicate capacity**

- 3 (1) This paragraph applies if—
- (a) the aggregate of any chargeable gains accruing to the member on the syndicate capacity disposal exceeds the aggregate of any allowable losses accruing to him on that disposal, and
  - (b) the member makes a claim under this paragraph to an officer of the Board.
- (2) The amount of the excess mentioned in sub-paragraph (1)(a) above (“the amount of the syndicate capacity gain”) shall for the purposes of capital gains tax be reduced by the amount of the rolled-over gain.
- (3) For the purpose of computing any chargeable gain accruing to the member on a disposal by him of any issued share or any asset directly or indirectly derived from any issued share—
- (a) the amount of the rolled-over gain shall be apportioned between the issued shares as a whole, and

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- (b) the sums allowable as a deduction under section 38(1)(a) of the Gains Tax Act shall be reduced by the amount apportioned to the issued share under paragraph (a) above; but, in the case of a derived asset, the reduction shall be by an appropriate proportion of that amount;  
and if the issued shares are not all of the same class, the apportionment between the shares under paragraph (a) above shall be in accordance with their market values at the time they were acquired by the member.
- (4) In this paragraph “the amount of the rolled-over gain” means the lesser of—
  - (a) the amount of the syndicate capacity gain, and
  - (b) the aggregate amount of any sums which would be allowable as a deduction under section 38(1)(a) of the Gains Tax Act if the issued shares were disposed of as a whole by the member in circumstances giving rise to a chargeable gain.
- (5) In this paragraph the “issued shares” means the shares in the successor company issued to the member in consideration for the syndicate capacity disposal.

#### **Capital gains tax: roll-over relief on disposal of assets of ancillary trust fund**

- 4 (1) This paragraph applies if—
- (a) at the time of, or after, the syndicate capacity disposal, assets forming some or all of the member’s ancillary trust fund are—
    - (i) withdrawn from the fund, and
    - (ii) without unreasonable delay, disposed of by him to the successor company (the “ATF disposal”),
  - (b) the aggregate of any chargeable gains accruing to the member on the ATF disposal exceeds the aggregate of any allowable losses accruing to him on that disposal,
  - (c) throughout the period beginning with the time of the syndicate capacity disposal and ending with the time of the ATF disposal,—
    - (i) the member controls the successor company, and
    - (ii) more than 50% of the ordinary share capital of the successor company is beneficially owned by the member,
  - (d) the ATF disposal is made in consideration solely of the issue to the member of shares (the “issued shares”) in the successor company, and
  - (e) the member makes a claim under this paragraph to an officer of the Board.
- (2) But this paragraph does not apply if—
- (a) the member could have made a claim under paragraph 3 above, and
  - (b) at the time the member makes a claim under this paragraph, no claim under paragraph 3 above is or has been made by him.
- (3) The amount of the excess mentioned in sub-paragraph (1)(b) above (“the amount of the ATF assets gain”) shall for the purposes of capital gains tax be reduced by the amount of the rolled-over gain.

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- (4) For the purpose of computing any chargeable gain accruing to the member on a disposal by him of any issued share or any asset directly or indirectly derived from any issued share—
- (a) the amount of the rolled-over gain shall be apportioned between the issued shares as a whole, and
  - (b) the sums allowable as a deduction under section 38(1)(a) of the Gains Tax Act shall be reduced by the amount apportioned to the issued share under paragraph (a) above; but, in the case of a derived asset, the reduction shall be by an appropriate proportion of that amount;
- and if the issued shares are not all of the same class, the apportionment between the shares under paragraph (a) above shall be in accordance with their market values at the time they were acquired by the member.
- (5) In this paragraph “the amount of the rolled-over gain” means the lesser of—
- (a) subject to sub-paragraph (6) below, the amount of the ATF assets gain, and
  - (b) the aggregate amount of any sums which would be allowable as a deduction under section 38(1)(a) of the Gains Tax Act if the issued shares were disposed of as a whole by the member in circumstances giving rise to a chargeable gain.
- (6) If the market value, immediately before the ATF disposal, of the assets disposed of under that disposal exceeds the amount of the ATF assets required, the amount of the ATF assets gain shall for the purposes of sub-paragraph (5)(a) above be reduced by multiplying it by—

$$\frac{R}{T}$$

where—

R is the amount of the ATF assets required, and

T is the market value, immediately before the ATF disposal, of the assets disposed of under that disposal.

- (7) In sub-paragraph (6) above “the amount of the ATF assets required” means the lesser of—
- (a) the amount of security required to be provided by the member in respect of his underwriting business in the member’s last underwriting year, and
  - (b) the amount of security required to be provided by the successor company in respect of its underwriting business in the successor company’s first underwriting year.
- (8) This paragraph applies only on the first occasion on or after 6th April 2004 on which the member makes an ATF disposal.
- (9) If a claim made by the member under paragraph 3 above is revoked, this paragraph shall apply as if the claim had never been made.



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### **Interpretation of this Part of this Schedule**

- 5 (1) In this Part of this Schedule—
- “control” shall be construed in accordance with section 416 of the Taxes Act 1988;
  - “ordinary share capital” has the meaning given by section 832 (1) of the Taxes Act 1988;
  - “successor company” means a corporate member (within the meaning of Chapter 5 of Part 4 of the Finance Act 1994) which is a successor member;
  - “the member’s last underwriting year” has the meaning given by paragraph 1(7) above;
  - “the successor company’s first underwriting year” has the meaning given by paragraph 1(6) above;
  - “the syndicate capacity disposal” has the meaning given by paragraph 1(3) above;
  - “underwriting business”, in relation to a successor company, has the same meaning as in Chapter 5 of Part 4 of the Finance Act 1994.
- (2) For the purposes of this Part of this Schedule, shares comprised in any letter of allotment or similar instrument shall be treated as issued unless—
- (a) the right to the shares conferred by it remains provisional until accepted, and
  - (b) there has been no acceptance.
- (3) Paragraphs 3 and 4 above (and paragraph 1 above so far as relating to those paragraphs) are to be construed as one with the Gains Tax Act.

## **PART 2**

### **CONVERSION TO UNDERWRITING THROUGH SUCCESSOR PARTNERSHIPS**

#### **Introduction**

- 6 (1) This Part of this Schedule applies if the following conditions are satisfied.
- (2) Condition 1 is that—
- (a) a member gives notice of his resignation from membership of Lloyd's in accordance with the rules or practice of Lloyd's,
  - (b) in accordance with such rules or practice, the member does not undertake any new insurance business at Lloyd's after the end of the member's last underwriting year, and
  - (c) the member does not withdraw that notice.
- (3) Condition 2 is that all of the member's outstanding syndicate capacity is disposed of by the member under a conversion arrangement to a successor partnership (“the syndicate capacity disposal”) with effect from the beginning of the underwriting year next following the member's last underwriting year.

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- (4) Condition 3 is that the member is the only person who disposes of syndicate capacity under a conversion arrangement to the successor partnership.
- (5) Condition 4 is that the successor partnership starts to carry on its underwriting business in the underwriting year next following the member's last underwriting year.
- (6) In this paragraph "the member's last underwriting year", in relation to a member who gives notice of his resignation from membership of Lloyd's, means the underwriting year during which, or at the end of which, he ceases to be an underwriting member and becomes a non-underwriting member in accordance with the rules or practice of Lloyd's.
- (7) In this paragraph "outstanding syndicate capacity", in relation to a member, means the syndicate capacity of the member other than any which—
  - (a) the member disposes of to a person other than a successor member at or before the end of the member's last underwriting year, or
  - (b) ceases to exist with effect from the end of that year.

#### **Income tax: carry forward of loss relief following conversion**

- 7 (1) This paragraph applies if—
- (a) the member's total income for a year of assessment includes profits of the successor partnership's underwriting business, and
  - (b) throughout the period beginning with the time of the syndicate capacity disposal and ending with the end of that year of assessment, the member is beneficially entitled to more than 50% of the profits of that business.
- (2) Section 385 of the Taxes Act 1988 (carry-forward of trading losses against subsequent profits) shall have effect, in its application in relation to the losses of the old underwriting business, as if the profits of the successor partnership's underwriting business to which the member is beneficially entitled for that year were profits on which the member was assessed under Schedule D in respect of the old underwriting business for that year.
- (3) In sub-paragraph (2) above "the old underwriting business" means the member's underwriting business carried on otherwise than through the successor partnership.

#### **Interpretation of this Part of this Schedule**

- 8 In this Part of this Schedule—
- "successor partnership" means a limited partnership formed under the law of Scotland which is a successor member;
  - "the syndicate capacity disposal" has the meaning given by paragraph 6(3) above.

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### PART 3

#### SUPPLEMENTARY PROVISIONS

##### Withdrawal of resignation notice

- 9 (1) This paragraph applies if a member—
- (a) makes a claim for relief under or by virtue of this Schedule, and
  - (b) subsequently withdraws the notice of his resignation from membership of Lloyd's.
- (2) The member must give written notice of such withdrawal to an officer of the Board.
- (3) Such a notice must be given no later than six months from the date of the withdrawal of the notice of resignation.
- (4) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required as a result of the withdrawal of the notice of resignation (notwithstanding any limitation on the time within which any adjustment may be made).
- (5) If a member fails, fraudulently or negligently, to comply with sub-paragraphs (2) and (3) above, section 95 of the Taxes Management Act 1970 shall apply to him as if he had fraudulently or negligently made an incorrect return, statement or declaration in connection with the claim for relief made by him under or by virtue of this Schedule.
- (6) In this paragraph “tax” means income tax, capital gains tax or inheritance tax.

##### Interpretation of this Schedule

- 10 In this Schedule—
- “conversion arrangement” means a conversion arrangement made under the rules or practice of Lloyd's;
  - “successor member” has the meaning given by the rules or practice of Lloyd's;
  - “syndicate capacity”, in relation to a member, means an asset comprising the rights of the member under a syndicate in which he participates.

##### Application of this Schedule

- 11 (1) Paragraphs 2 and 3 above (and the other provisions of this Schedule so far as relating to those paragraphs) have effect in relation to syndicate capacity disposals (within the meaning of Part 1 of this Schedule) made on or after 6th April 2004.
- (2) Paragraph 4 above (and the other provisions of this Schedule so far as relating to that paragraph) have effect in relation to ATF disposals (within the meaning of that paragraph) made on or after 6th April 2004 (even if the

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syndicate capacity disposal mentioned in that paragraph was made before that date).

- (3) Paragraph 7 above (and the other provisions of this Schedule so far as relating to that paragraph) have effect in relation to syndicate capacity disposals (within the meaning of Part 2 of this Schedule) made on or after 6th April 2004.”.

## SCHEDULE 26

Section 145

### OFFSHORE FUNDS

#### *Computation of UK equivalent profits: creditor relationships*

- 1 <sup>F114</sup>(1) .....
- (2) Paragraph 3 of Schedule 10 to the Finance Act 1996 (c. 8) (assumptions to be made in relation to creditor relationships) shall cease to have effect.
- (3) In relation to a fund established on or before the day on which this Act is passed, this paragraph only has effect if an election that it should have effect has been made by or on behalf of the fund.
- (4) Any such election—
- (a) must be made by notice to an officer of the Board, in such form and within such time as the Board may determine, and
  - (b) is irrevocable.
- (5) For the purpose of determining the United Kingdom equivalent profits of an offshore fund for the first account period of the fund in relation to which this paragraph has effect—
- (a) any profits, gains or losses arising from a creditor relationship that were taken into account in determining the United Kingdom equivalent profits of the fund for the preceding account period shall be disregarded, and
  - (b) any profits, gains or losses arising from a creditor relationship that—
    - (i) arose in, or in respect of, the preceding account period, but
    - (ii) were not taken into account in determining the United Kingdom equivalent profits of the fund for that period,
 shall be taken into account.
- (6) In this paragraph—
- “creditor relationship” has the same meaning as in [<sup>F115</sup>Part 5 of the Corporation Tax Act 2009]; and
- “United Kingdom equivalent profits” has the meaning given in paragraph 5 of Schedule 27 to the Taxes Act 1988.

#### **Textual Amendments**

**F114** Sch. 26 para. 1(1) repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

**F115** Words in Sch. 26 para. 1(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 581(2)** (with Sch. 2 Pts. 1, 2)

*Computation of UK equivalent profits: derivative contracts*

- 2 <sup>F116</sup>(1) .....
- (2) Paragraph 35 of Schedule 26 to the Finance Act 2002 (c. 23) (assumptions to be made in relation to derivative contracts) shall cease to have effect.
- (3) In relation to a fund established on or before the day on which this Act is passed, this paragraph only has effect if an election that it should have effect has been made by or on behalf of the fund.
- (4) Any such election—
- (a) must be made by notice to an officer of the Board, in such form and within such time as the Board may determine, and
  - (b) is irrevocable.
- (5) For the purpose of determining the United Kingdom equivalent profits of an offshore fund for the first account period of the fund in relation to which this paragraph has effect—
- (a) any profits or losses arising from a derivative contract that were taken into account in determining the United Kingdom equivalent profits of the fund for the preceding account period shall be disregarded, and
  - (b) any profits or losses arising from a derivative contract that—
    - (i) arose in, or in respect of, the preceding account period, but
    - (ii) were not taken into account in determining the United Kingdom equivalent profits of the fund for that period,shall be taken into account.
- (6) In this paragraph—
- “derivative contract” has the same meaning as in [<sup>F117</sup>Part 7 of the Corporation Tax Act 2009];
  - “United Kingdom equivalent profits” has the meaning given in paragraph 5 of Schedule 27 to the Taxes Act 1988.

**Textual Amendments**

- F116** Sch. 26 para. 2(1) repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**
- F117** Words in Sch. 26 para. 2(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 581(3)** (with Sch. 2 Pts. 1, 2)

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 3 At the beginning of Chapter 5 of Part 17 of that Act (offshore funds) insert—

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### *“Meaning of offshore fund*

#### **General definition of offshore fund**

756A) In this Chapter references to an offshore fund are to a collective investment scheme constituted by—

- (a) a company that is resident outside the United Kingdom, or
- (b) a unit trust scheme the trustees of which are not resident in the United Kingdom, or
- (c) arrangements not falling within paragraph (a) or (b) taking effect by virtue of the law of a territory outside the United Kingdom and which under that law create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of any part of the United Kingdom).

(2) Subsection (1) has effect subject to—  
section 756B (treatment of umbrella funds), and  
section 756C (treatment of funds comprising more than one class of interest).

(3) In this section “collective investment scheme” has the meaning given by section 235 of the Financial Services and Markets Act 2000.

### *Treatment of umbrella funds*

#### **Treatment of umbrella funds**

756B) In this Chapter, an “umbrella fund” means an offshore fund—

- (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them; and
- (b) under which the participants are entitled to exchange rights in one pool for rights in another;

and references in this Chapter to a part of an umbrella fund are to such of the arrangements as relate to a separate pool.

(2) For the purposes of this Chapter (except subsection (1))—

- (a) each part of an umbrella fund shall be regarded as a separate offshore fund, and
- (b) the umbrella fund as a whole shall not be regarded as an offshore fund.

(3) In this Chapter, in relation to a part of an umbrella fund—

- (a) a reference to the assets of an offshore fund is to such of the assets of the umbrella fund as under the arrangements form part of the separate pool to which that part of the umbrella fund relates;
- (b) a reference to the income of an offshore fund is to the income arising from those assets;
- (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest in that separate pool; and

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- (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the umbrella fund being a non-qualifying fund.

*Treatment of funds comprising more than one class of interest*

**Treatment of funds comprising more than one class of interest**

756(1) For the purposes of this Chapter where there is more than one class of interest in an offshore fund (the “main fund”)—

- (a) each class of interest shall be regarded as a separate offshore fund, and
  - (b) the main fund shall not be regarded as an offshore fund.
- (2) In this section, references to a class of interest in an offshore fund do not include—
- (a) a part of an umbrella fund which is regarded as an offshore fund by virtue of section 756B, or
  - (b) a class of interest in an offshore fund which by virtue of section 759(5), (6) or (8) is not a material interest in the fund.
- (3) In this Chapter, in relation to a class of interest in an offshore fund—
- (a) a reference to the assets of an offshore fund is to the assets of the main fund;
  - (b) a reference to the income of an offshore fund is to such of the income of the main fund as is attributable to interests of that class under the arrangements constituting the main fund;
  - (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest of that class; and
  - (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the main fund being a non-qualifying fund.”.

*Treatment of umbrella funds and funds comprising more than one class of interest*

F1184 .....

**Textual Amendments**

**F118** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Treatment of umbrella funds and funds comprising more than one class of interest*

F1185 .....

*Changes to legislation: Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**Textual Amendments**

**F118** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Treatment of umbrella funds and funds comprising more than one class of interest*

**F118**<sup>6</sup> .....

**Textual Amendments**

**F118** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Treatment of umbrella funds and funds comprising more than one class of interest*

**F118**<sup>7</sup> .....

**Textual Amendments**

**F118** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Treatment of umbrella funds and funds comprising more than one class of interest*

**F118**<sup>8</sup> .....

**Textual Amendments**

**F118** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Treatment of umbrella funds and funds comprising more than one class of interest*

**F118**<sup>9</sup> .....

**Textual Amendments**

**F118** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Treatment of umbrella funds and funds comprising more than one class of interest*

**F119**<sup>10</sup> .....



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**Textual Amendments**

**F119** Sch. 26 para. 10 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 11 In section 212 of the Taxation of Chargeable Gains Act 1992 (c. 12) (annual deemed disposal of holdings of unit trusts etc.) in subsection (6A)—
- (a) in paragraph (a), for “paragraphs (a) to (c) of subsection (1) of section 759” substitute “ paragraphs (a) to (c) of subsection (1) of section 756A ”;
  - (b) in paragraph (b), for “that section” substitute “ section 759 of that Act ”.

*Treatment of umbrella funds and funds comprising more than one class of interest*

**F120** 12 .....

**Textual Amendments**

**F120** Sch. 26 para. 12 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Investment conditions to be met by funds seeking certification as distributing fund*

**F121** 13 .....

**Textual Amendments**

**F121** Sch. 26 paras. 13-16 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Investment conditions to be met by funds seeking certification as distributing fund*

**F121** 14 .....

**Textual Amendments**

**F121** Sch. 26 paras. 13-16 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Exchange of interests of different classes*

**F121** 15 .....

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**Textual Amendments**

**F121** Sch. 26 paras. 13-16 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Correction of cross-reference*

**F121** 16 .....

.....

**Textual Amendments**

**F121** Sch. 26 paras. 13-16 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

*Transitional provision*

- 17 (1) This paragraph applies for the purposes of determining whether an offshore fund that is—
- (a) a part of an umbrella fund (which is treated as an offshore fund under section 756B of the Taxes Act 1988), or
  - (b) a class of interest in a part of an umbrella fund (which is treated as an offshore fund under section 756C of that Act),
- may be certified as a distributing fund under Chapter 5 of Part 17 of that Act in respect of an account period ending on or after the day on which this Act is passed and on or before 31st December 2005.
- (2) Where this paragraph applies—
- (a) subsection (3) of section 760 of the Taxes Act 1988 shall not have effect, and
  - (b) the fund shall not be certified as a distributing fund in respect of a period if at any time in that period—
    - (i) more than 5 per cent by value of the assets of that offshore fund consists of interests in other offshore funds, and
    - (ii) more than 5 per cent by value of the assets of the umbrella fund consists of interests in other offshore funds.
- (3) Where this paragraph applies, references to subsection (3) of section 760 of the Taxes Act 1988 shall have effect as references to sub-paragraph (2)(b) above.
- (4) Words used in Chapter 5 of Part 17 of the Taxes Act 1988 have the same meaning in this paragraph as they have in that Chapter.

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## SCHEDULE 27

Section 146

### MEANING OF “OFFSHORE INSTALLATION”

#### PART 1

##### THE NEW DEFINITION

F122<sub>1</sub> .....

.....

**Textual Amendments**

**F122** Sch. 27 paras. 1-3 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F122<sub>2</sub> .....

.....

**Textual Amendments**

**F122** Sch. 27 paras. 1-3 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F122<sub>3</sub> .....

.....

**Textual Amendments**

**F122** Sch. 27 paras. 1-3 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

#### PART 2

##### MINOR AND CONSEQUENTIAL AMENDMENTS

###### *The Taxes Act 1988*

F123<sub>4</sub> .....

.....

**Textual Amendments**

**F123** Sch. 27 para. 4 repealed (with effect in accordance with s. 1034(1)(3) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 3 Pts. 1, 2** (with Sch. 2)

###### *The Taxes Act 1988*

F124<sub>5</sub> .....

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**Textual Amendments**

**F124** Sch. 27 para. 5 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Finance Act 2000 (c. 17)*

- 6 (1) Schedule 15 to the Finance Act 2000 (the corporate venturing scheme) is amended as set out in sub-paragraphs (2) to (4).
- (2) In paragraph 23 (the trading activities requirement), in sub-paragraph (8)(a)(i) for “oil rigs” substitute “ offshore installations ”.
- (3) In paragraph 28 (excluded activities: leasing of ships), in sub-paragraph (1) for “oil rigs” substitute “ offshore installations ”.
- (4) In paragraph 28(6) omit the definition of “oil rig”.
- (5) This paragraph has effect in relation to shares issued on or after 6th April 2004.
- (6) Nothing in this paragraph affects the operation of Schedule 15 to the Finance Act 2000 in relation to shares issued before that date.

*Finance Act 2000 (c. 17)*

- 7 (1) In Schedule 22 to the Finance Act 2000 (tonnage tax), in paragraph 20 (vessels excluded from being qualifying ships) omit sub-paragraph (5).
- (2) This paragraph has effect for accounting periods ending on or after 1st April 2004.

*Capital Allowances Act 2001 (c. 2)*

- 8 In section 94 of the Capital Allowances Act 2001 (expenditure on ships that is not long-life asset expenditure) omit subsections (2)(b) and (3).

*Capital Allowances Act 2001 (c. 2)*

- 9 (1) Section 153 of the Capital Allowances Act 2001 (ships that are not qualifying ships) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) A ship is not a qualifying ship at any time when it is an offshore installation.”
- (3) Omit subsection (3).

*Capital Allowances Act 2001 (c. 2)*

- 10 In Part 2 of Schedule 1 to the Capital Allowances Act 2001 (index of defined expressions) at the appropriate place insert—

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“offshore installation (except in Chapter section 837C of ICTA”  
 13 of Part 2)

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*Capital Allowances Act 2001 (c. 2)*

- 11 (1) Paragraphs 8 to 10 have effect—
- (a) for income tax purposes, as respects allowances and charges falling to be made for chargeable periods ending on or after 6th April 2004;
  - (b) for corporation tax purposes, as respects allowances and charges falling to be made for chargeable periods ending on or after 1st April 2004.
- (2) In this paragraph “chargeable period” has the meaning given by section 6 of the Capital Allowances Act 2001.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 12 In section 40 of the Income Tax (Earnings and Pensions) Act 2003 (duties on board vessel or aircraft), in subsection (5) for paragraph (b) (meaning of ship) substitute—
- “(b) “ship” does not include an offshore installation;”.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 13 In section 305 of the Income Tax (Earnings and Pensions) Act 2003 (offshore oil and gas workers: mainland transfers), in subsection (6) omit the definition of “offshore installation”.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 14 For section 385 of the Income Tax (Earnings and Pensions) Act 2003 substitute—

**“385 Meaning of “ship”**

In this Chapter “ship” does not include an offshore installation.”

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 15 In Part 2 of Schedule 1 to the Income Tax (Earnings and Pensions) Act 2003 (index of defined expressions) at the appropriate place insert—

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“offshore installation	section 837C of ICTA”
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*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 16 Paragraphs 12 to 15 have effect for the year 2004-05 and subsequent years of assessment.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 17 (1) Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (enterprise management incentives) is amended as follows.
- (2) In paragraph 18 (excluded activities: leasing of certain ships), in sub-paragraph (1) for “oil rigs” substitute “ offshore installations ”.
- (3) In paragraph 18(2) for “oil rig” substitute “ offshore installation ”.

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- (4) In paragraph 18(8) omit the definition of “oil rig”.
- (5) In paragraph 59 (index of defined expressions) at the appropriate place insert—

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“offshore installation	section 837C of ICTA”
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- (6) This paragraph has effect in relation to a right to acquire shares in a company granted on or after 6th April 2004.
- (7) Nothing in this paragraph affects the operation of Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 in relation to a right to acquire shares in a company granted before that date.

SCHEDULE 28 Sections 165 and 167

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

*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.

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

**C2** Sch. 28 para. 1 modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), **Sch. 3 Pt. 1**

*Scheme pension*

- 2 <sup>F125</sup>(1) .....

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- (2) [<sup>F126</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>F127</sup>at any time during any] relevant 12 month period is not less than the rate payable [<sup>F128</sup>at the relevant time].
- [<sup>F129</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>F130</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>F131</sup> ...
  - <sup>F132</sup>(c) .....
  - [<sup>F133</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>F134</sup>(4A) In sub-paragraph (4) references to the reduction of a pension include its ceasing to be payable (whether temporarily or permanently).]
- <sup>F135</sup>(4B) .....
- <sup>F136</sup>(5) .....
- <sup>F137</sup>(5A) .....
- (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>F138</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>F139</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>F140</sup>(8) Regulations under sub-paragraph [<sup>F141</sup>(4)(e) or (h) <sup>F142</sup>...] may include provision having effect in relation to times before they are made.]
- [<sup>F143</sup>(9) Where, under a collective money purchase arrangement—
- (a) a scheme pension has become payable to the member, and
  - (b) the member subsequently becomes entitled to income payable by virtue of section 36(7)(b) or 87(7)(b) of the Pension Schemes Act 2021 (periodic income paid while pursuing continuity option 1),
- the income so payable is to be treated for the purposes of this Part as a continuation of the scheme pension.
- (10) Where, under a collective money purchase arrangement—
- (a) the member becomes entitled to income payable by virtue of section 36(7)(b) or 87(7)(b) of the Pension Schemes Act 2021 (periodic income paid while pursuing continuity option 1), and
  - (b) no scheme pension was previously payable to the member,
- the income so payable is to be treated for the purposes of this Part as a scheme pension.]

#### Textual Amendments

- F125** 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](#)
- F126** Word in Sch. 28 para. 2(2) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(3\), 64\(1\)](#)
- F127** 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\(1\)](#)
- F128** 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\(1\)](#)
- F129** Sch. 28 para. 2(3A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 11\(5\), 64\(1\)](#)
- F130** Sch. 28 para. 2(4)(a) substituted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 7\(2\), 24\(3\)](#)
- F131** 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](#)
- F132** [Sch. 28 para. 2\(4\)\(c\)](#) omitted (with effect in accordance with s. 20(6) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [s. 20\(2\)\(6\)](#); S.I. 2016/1005, [reg. 2](#) (with [regs. 1\(2\), 3, 4](#))



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- F133** Sch. 28 para. 2(4)(d)-(h) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 11(6)**, 64(1)
- F134** Sch. 28 para. 2(4A) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 11(7)**, 64(1)
- F135** Sch. 28 para. 2(4B) omitted (with effect in accordance with s. 20(6) of the amending Act) by virtue of Finance Act 2016 (c. 24), **s. 20(3)(6)**; S.I. 2016/1005, reg. 2 (with regs. 1(2), 3, 4)
- F136** Sch. 28 para. 2(5) omitted (with effect in accordance with s. 20(6) of the amending Act) by virtue of Finance Act 2016 (c. 24), **s. 20(3)(6)**; S.I. 2016/1005, reg. 2 (with regs. 1(2), 3, 4)
- F137** Sch. 28 para. 2(5A) omitted (with effect in accordance with s. 20(6) of the amending Act) by virtue of Finance Act 2016 (c. 24), **s. 20(3)(6)**; S.I. 2016/1005, reg. 2 (with regs. 1(2), 3, 4)
- F138** 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)**
- F139** Sch. 28 para. 2(6A) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 11(8)**, 64(1)
- F140** Sch. 28 para. 2(8) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 11(9)**, 64(1)
- F141** 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)**
- F142** Words in Sch. 28 para. 2(8) omitted (with effect in accordance with s. 20(6) of the amending Act) by virtue of Finance Act 2016 (c. 24), **s. 20(4)(6)**; S.I. 2016/1005, reg. 2 (with regs. 1(2), 3, 4)
- F143** Sch. 28 para. 2(9)(10) inserted (1.8.2022) by Finance Act 2021 (c. 26), **Sch. 5 paras. 20(2)**, 25(1); S.I. 2022/874, reg. 2

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

- C3** Sch. 28 para. 2(3) modified (6.4.2023) by The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 (S.I. 2023/113), regs. 1(2), **27(3)** (with reg. 1(3))

[<sup>F144</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—
- by reason of not complying with paragraph (a) of that sub-paragraph, or
  - 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>F145</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.

[ But for the purposes of sub-paragraph (2)(b), no substantial reduction occurs in the <sup>F146</sup>(3A) rate of a pension if—

- the pension is payable in respect of a collective money purchase arrangement, and
- the reduction is in accordance with the rules of the scheme.]

- (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.

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- (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

- F144** Sch. 28 para. 2A inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 12](#), 64(1)
- F145** 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\(3\)](#)
- F146** [Sch. 28 para. 2A\(3A\)](#) inserted (1.8.2022) by [Finance Act 2021 \(c. 26\)](#), [Sch. 5 paras. 20\(3\)](#), 25(1); [S.I. 2022/874](#), reg. 2

### *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,
  - [<sup>F147</sup>(ba) the member becomes entitled to it before 6 April 2015,]
  - (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
  - [<sup>F148</sup>(d) its amount either cannot decrease or falls to be determined in any manner prescribed by regulations made by the Board of Inland Revenue.]
- [<sup>F149</sup>(1A) For the purposes of this Part, but subject to any provision made under sub-paragraph (2C)(za), an annuity payable to the member is also a lifetime annuity if—
- (a) it is payable by an insurance company,
  - (b) the member becomes entitled to it on or after 6 April 2015, and
  - (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.]
- (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,
  - [<sup>F150</sup>(aa) entering into a civil partnership,]
  - (b) reaching the age of 18, or
  - (c) ceasing to be in full-time education.
- [<sup>F151</sup>(2A) An annuity does not fail to satisfy sub-paragraph (1)(d) by reason of the operation of
- [<sup>F152</sup>(a)] a pension sharing order or provision [<sup>F153</sup>, or]

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[ an order under section 377A of the Financial Services and Markets Act 2000  
F154(b) (court order writing down liabilities of insurer).]

(2B) The Board of Inland Revenue may by regulations make provision in relation to cases in which a lifetime annuity payable by an insurance company (“the original lifetime annuity”) ceases to be payable and in consequence of that—

- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another lifetime annuity (a “new lifetime annuity”) or a scheme pension, short-term annuity, dependants' scheme pension, dependants' annuity[F155, nominees' annuity] or dependants' short-term annuity by the other insurance company, or
- (b) sums or assets are transferred to the relevant registered pension scheme.

(2C) The regulations may provide that—

- [ in a case where—  
F156(za) (i) a new annuity becomes payable,  
(ii) the member becomes entitled to it on or after 6 April 2015,  
(iii) it would be a lifetime annuity if any provision made under this paragraph were ignored,  
(iv) the terms of the contract for it are such that there will or could be decreases in its amount other than allowed decreases (see sub-paragraph (2E)), and  
(v) any other conditions prescribed by the regulations are met,  
the new annuity is not a lifetime annuity for the purposes of this Part,]
- (a) in a case where a new lifetime annuity becomes payable, the new lifetime annuity 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 lifetime annuity, and
- (b) in [F157 a case other than one where a new lifetime annuity becomes payable], the relevant registered pension scheme is to be treated as making an unauthorised payment to the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.

F158(2CA) . . . . .

(2D) For the purposes of sub-paragraphs (2B) and (2C) a registered pension scheme is the relevant registered pension scheme if the original lifetime annuity was acquired using sums or assets held for the purposes of the pension scheme.]

[F159(2E) In sub-paragraph (2C)(za)(iv) “allowed decreases” means decreases from time to time allowed by regulations under sub-paragraph (1)(d); and any such regulations are to be treated as having effect for this purpose.]

F160(3) . . . . .

F160(4) . . . . .

F160(5) . . . . .

F160(6) . . . . .

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### Textual Amendments

- F147** Sch. 28 para. 3(1)(ba) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 43**
- F148** Sch. 28 para. 3(1)(d) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 13(2)**, 64(1)
- F149** Sch. 28 para. 3(1A) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 37**
- F150** Sch. 28 para. 3(2)(aa) inserted (22.2.2007) by [The Tax and Civil Partnership Regulations 2007 \(S.I. 2007/493\)](#), regs. 1, **2(2)**
- F151** Sch. 28 para. 3(2A)-(2D) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 13(3)**, 64(1)
- F152** Words in Sch. 28 para. 3(2A) renumbered as Sch. 28 para. 3(2A)(a) (11.7.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), **s. 33(2)(a)**
- F153** Word in Sch. 28 para. 3(2A)(a) inserted (11.7.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), **s. 33(2)(b)**
- F154** Sch. 28 para. 3(2A)(b) inserted (11.7.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), **s. 33(2)(c)**
- F155** Words in Sch. 28 para. 3(2B)(a) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), **Sch. 4 para. 13(2)**
- F156** Sch. 28 para. 3(2C)(za) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 44(1)(a)**
- F157** Words in Sch. 28 para. 3(2C)(b) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 44(1)(b)**
- F158** Sch. 28 para. 3(2CA) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), **s. 75(2)(d)**
- F159** Sch. 28 para. 3(2E) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 44(2)**
- F160** Sch. 28 para. 3(3)-(6) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 13\(4\)](#), 64(1), **Sch. 11 Pt. 4**

### *[<sup>F161</sup>Drawdown pension]*

### Textual Amendments

- F161** Sch. 28 para. 4 cross-heading substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 3(2)**

- 4 “<sup>F162</sup>Drawdown pension” means—
- (a) a short-term annuity, or
  - (b) income withdrawal.

### Textual Amendments

- F162** Words in Sch. 28 para. 4 substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 3(1)**

<sup>F163</sup>5 .....

### Textual Amendments

- F163** Sch. 28 para. 5 omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 78(a)**

### *Short-term annuity*

- 6 (1) [<sup>F164</sup>For the purposes of this Part an] annuity payable to the member is a short-term annuity if—

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- (a) it is purchased by the application of sums or assets representing the whole or any part of the [<sup>F165</sup>member's drawdown 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,
  - [<sup>F166</sup>(ca) the member becomes entitled to it before 6 April 2015,]
  - (d) it is payable for a term which does not exceed five years <sup>F167</sup> ..., and
  - [<sup>F168</sup>(e) its amount either cannot decrease or falls to be determined in any manner prescribed by regulations made by the Board of Inland Revenue.]
- [<sup>F169</sup>(1ZA) For the purposes of this Part, but subject to any provision made under subparagraph (1C)(za), an annuity payable to the member is also 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 drawdown pension fund, or of the member's flexi-access drawdown fund, in respect of an arrangement,
  - (b) it is payable by an insurance company,
  - (c) the member becomes entitled to it on or after 6 April 2015, and
  - (d) it is payable for a term which does not exceed five years.]
- [<sup>F170</sup>(1A) An annuity does not fail to satisfy sub-paragraph (1)(e) by reason of the operation of a pension sharing order or provision.
- (1B) The Board of Inland Revenue may by regulations make provision in relation to cases in which a short-term annuity payable by an insurance company (“the original short-term annuity”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another short-term annuity (a “new short-term annuity”) or a scheme pension, lifetime annuity, dependants' scheme pension, dependants' annuity [<sup>F171</sup>, nominees' annuity] or dependants' short-term annuity by the other insurance company, or
  - (b) sums or assets are transferred to the relevant registered pension scheme.
- (1C) The regulations may provide that—
- [ in a case where—
  - [<sup>F172</sup>(za) (i) a new annuity becomes payable,
  - (ii) the member becomes entitled to it on or after 6 April 2015,
  - (iii) it would be a short-term annuity if any provision made under this paragraph were ignored,
  - (iv) the terms of the contract for it are such that there will or could be decreases in its amount other than allowed decreases (see subparagraph (1E)), and
  - (v) any other conditions prescribed by the regulations are met,
- the new annuity is not a short-term annuity for the purposes of this Part,]
- (a) in a case where a new short-term annuity becomes payable, the new short-term annuity 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 short-term annuity, and

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(b) in [<sup>F173</sup>a case other than one where a new short-term annuity becomes payable], the relevant registered pension scheme is to be treated as making an unauthorised payment to the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.

(1D) For the purposes of sub-paragraphs (1B) and (1C) a registered pension scheme is the relevant registered pension scheme if the original short-term annuity was acquired using sums or assets held for the purposes of the pension scheme.]

[<sup>F174</sup>(1E) In sub-paragraph (1C)(za)(iv) “allowed decreases” means decreases from time to time allowed by regulations under sub-paragraph (1)(e); and any such regulations are to be treated as having effect for this purpose.]

<sup>F175</sup>(2) .....

#### Textual Amendments

**F164** Words in Sch. 28 para. 6(1) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 14\(2\)](#), 64(1)

**F165** Words in Sch. 28 para. 6(1)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 4\(a\)](#)

**F166** Sch. 28 para. 6(1)(ca) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 45](#)

**F167** Words in Sch. 28 para. 6(1)(d) omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 4\(b\)](#)

**F168** Sch. 28 para. 6(1)(e) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 14\(3\)](#), 64(1)

**F169** Sch. 28 para. 6(1ZA) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 38](#)

**F170** Sch. 28 para. 6(1A)-(1D) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 14\(4\)](#), 64(1)

**F171** Words in Sch. 28 para. 6(1B)(a) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 13\(3\)](#)

**F172** Sch. 28 para. 6(1C)(za) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 46\(1\)\(a\)](#)

**F173** Words in Sch. 28 para. 6(1C)(b) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 46\(1\)\(b\)](#)

**F174** Sch. 28 para. 6(1E) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 46\(2\)](#)

**F175** Sch. 28 para. 6(2) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 14\(5\)](#), 64(1), [Sch. 11 Pt. 4](#)

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

**C4** Sch. 28 para. 6 modified (27.7.2010) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 3 para. 3\(1\)](#)

**C5** Sch. 28 para. 6 modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 87](#)

#### *Income withdrawal*

[<sup>F176</sup> Income withdrawal” means an amount (other than an annuity) which the member is entitled to be paid from the member's drawdown pension fund in respect of an arrangement [<sup>F177</sup>or from the member's flexi-access drawdown fund in respect of an arrangement].]

#### Textual Amendments

**F176** Sch. 28 para. 7 substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 5](#)

**F177** Words in Sch. 28 para. 7 inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 19](#)

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

- C6 Sch. 28 para. 7 modified (27.7.2010) by Finance (No. 2) Act 2010 (c. 31), Sch. 3 para. 2(1)(2)(b)(i) (with Sch. 2 para. 2(1))

*[<sup>F178</sup>Member's drawdown pension fund]*

**Textual Amendments**

- F178 Sch. 28 para. 8 cross-heading substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), Sch. 16 para. 6(6)

8 (1) For the purposes of this Part the [<sup>F179</sup>member's drawdown pension fund] in respect of an arrangement consists of such of the sums or assets held for the purposes of the arrangement [<sup>F180</sup>as are member-designated funds.]

[<sup>F181</sup>(1A) For the purposes of this Part sums or assets held for the purposes of an arrangement are member-designated funds if <sup>F182</sup>...—

(a) [<sup>F183</sup>they have, at any time before 6 April 2015, been designated] under the arrangement as available for the payment of [<sup>F184</sup>drawdown pension],

[<sup>F185</sup>(aa) they have, at any time on or after 6 April 2015, been designated under the arrangement as available for the payment of drawdown pension, and—

(i) sums or assets held for the purposes of the arrangement have, at any time before 6 April 2015, been designated under the arrangement as so available, and

(ii) section 165(3A) did not apply to the arrangement immediately before 6 April 2015.] or

(b) [<sup>F186</sup>they] arise, or (directly or indirectly) derive, from [<sup>F187</sup>member-designated funds under paragraph (a) or (aa) or from sums or assets] which so arise or derive,

and have not been applied towards the provision of a scheme pension.]

<sup>F188</sup>(2) .....

<sup>F188</sup>(3) .....

[<sup>F189</sup>(4) If any sums or assets representing the member's [<sup>F190</sup>drawdown pension fund] in respect of an arrangement under the pension scheme would (apart from this subparagraph) come to be taken to represent another unsecured pension fund of his under the pension scheme, or a dependant's [<sup>F190</sup>drawdown pension fund] of his under the pension scheme, they are to be treated as not doing so.]

**Textual Amendments**

- F179 Words in Sch. 28 para. 8(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), Sch. 16 para. 6(2)

- F180 Words in Sch. 28 para. 8(1) substituted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 18(2), 64(1)

- F181 Sch. 28 para. 8(1A) inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 18(3), 64(1)

- F182 Word in Sch. 28 para. 8(1A) omitted (17.12.2014) by virtue of Taxation of Pensions Act 2014 (c. 30), Sch. 1 para. 2(a)



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- F183** Words in Sch. 28 para. 8(1A)(a) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 2\(b\)](#)
- F184** Words in Sch. 28 para. 8(1A)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 6\(3\)](#)
- F185** Sch. 28 para. 8(1A)(aa) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 2\(c\)](#)
- F186** Word in Sch. 28 para. 8(1A)(b) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 2\(d\)\(i\)](#)
- F187** Words in Sch. 28 para. 8(1A)(b) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 2\(d\)\(ii\)](#)
- F188** Sch. 28 para. 8(2)(3) omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 6\(4\)](#)
- F189** Sch. 28 para. 8(4) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 18\(5\)](#), 64(1)
- F190** Words in Sch. 28 para. 8(4) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 6\(5\)](#)

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

- C7** Sch. 28 para. 8 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [29\(1\)-\(3\)](#)
- C8** Sch. 28 para. 8 modified (27.7.2010) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 3 para. 8\(1\)\(2\)](#)
- C9** Sch. 28 para. 8(1A) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 88](#)

*[<sup>F191</sup>Member's flexi-access drawdown fund*

**Textual Amendments**

- F191** Sch. 28 paras. 8A-8D and cross-headings inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 3(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 3\(1\)](#)

- 8A** (1) For the purposes of this Part the member's flexi-access drawdown fund in respect of an arrangement consists of such of the sums or assets held for the purposes of the arrangement as are newly-designated funds.
- (2) For the purposes of this Part sums or assets held for the purposes of an arrangement are newly-designated funds if—
- (a) they—
- (i) have, at any time on or after 6 April 2015, been designated under the arrangement as available for the payment of drawdown pension, and
- (ii) are not member-designated funds, or
- (b) they were member-designated funds immediately before 6 April 2015 and section 165(3A) applied to the arrangement at that time, or
- (c) they have become newly-designated funds by the operation of paragraph 8B, 8C or 8D, or
- (d) they arise, or (directly or indirectly) derive, from newly-designated funds under paragraph (a), (b) or (c) or from sums or assets which so arise or derive.
- (3) Any sums or assets that become newly-designated funds under sub-paragraph (2)(b) cease to be member-designated funds as from the start of 6 April 2015.



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*Conversion of certain drawdown pension funds into flexi-access drawdown funds*

- 8B (1) Sub-paragraph (2) applies if—
- (a) a member's drawdown pension fund in respect of an arrangement came into being before 6 April 2015,
  - (b) section 165(3A) did not apply to the arrangement immediately before 6 April 2015, and
  - (c) at a time on or after 6 April 2015, a payment—
    - (i) of income withdrawal from the fund, or
    - (ii) of a short-term annuity purchased using sums or assets out of the fund,is made that (apart from sub-paragraph (2)) would breach the cap.
- (2) The sums and assets that make up the fund immediately before the payment is made become newly-designated funds immediately before the payment is made (so that the payment is made out of the member's flexi-access drawdown fund in respect of the arrangement and therefore is not part of the total capped by pension rule 5).
- (3) For the purposes of sub-paragraph (1)(c), a payment of drawdown pension in respect of an arrangement is one that would breach the cap if, when its amount is added to the amounts of any drawdown pension in respect of the arrangement—
- (a) paid—
    - (i) before it is made, but
    - (ii) in the same drawdown pension year in respect of the arrangement, or
  - (b) paid at the time it is made,
- the total is greater than the cap set by pension rule 5 for that drawdown pension year.
- 8C (1) Sub-paragraph (2) applies if—
- (a) a member's drawdown pension fund in respect of an arrangement came into being before 6 April 2015,
  - (b) section 165(3A) did not apply to the arrangement immediately before 6 April 2015, and
  - (c) the member notifies the [F192scheme manager] that the member wishes the fund to become the member's flexi-access drawdown fund in respect of the arrangement.
- (2) At—
- (a) the time the [F192scheme manager] accepts the notification, or
  - (b) the start of 6 April 2015 if that is later,
- the sums and assets that then make up that fund become newly-designated funds, if they have not previously done so by the operation of paragraph 8B.

**Textual Amendments**

**F192** Words in Sch. 28 paras. 8C, 8D substituted by S.I. 2006/207, reg. 14(3)(ba) (as inserted (6.4.2015) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 33\(3\)\(a\)\(4\)](#) (with [Sch. 1 para. 33\(5\)](#))

- 8D (1) Sub-paragraphs (2) and (3) apply if—
- (a) there is a recognised transfer from one registered pension scheme (“the old scheme”) to another registered pension scheme (“the new scheme”) of

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- member-designated funds held for the purposes of an arrangement under the old scheme, and
- (b) the sums or assets transferred are, under the arrangement under the new scheme for whose purposes they are first held after the transfer, designated as available for the payment of drawdown pension.
- (2) If the member, when or before making the designation, notifies the [<sup>F192</sup>scheme manager] of the new scheme that the member wishes the sums or assets to be newly-designated funds, the sums or assets become newly-designated funds and do so—
- (a) when the designation is made, or
- (b) if later, immediately after the transfer,
- except that, if both the designation and transfer are made before 6 April 2015, the sums or assets become newly-designated funds at the start of 6 April 2015.
- (3) If sub-paragraph (2) does not provide for the sums or assets to become newly-designated funds, the sums or assets become member-designated funds and do so—
- (a) when the designation is made, or
- (b) if later, immediately after the transfer.]

#### Textual Amendments

**F192** Words in Sch. 28 paras. 8C, 8D substituted by S.I. 2006/207, reg. 14(3)(ba) (as inserted (6.4.2015) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 33\(3\)\(a\)\(4\)](#) (with [Sch. 1 para. 33\(5\)](#))

*[<sup>F193</sup>Drawdown pension year and basis amount for drawdown pension year]*

#### Textual Amendments

**F193** Sch. 28 para. 9 cross-heading substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 7\(4\)](#)

- 9 (1) [<sup>F194</sup>“Drawdown pension year”] means—
- (a) the period of 12 months beginning with the day on which the member first becomes entitled to [<sup>F195</sup>drawdown pension] in respect of the arrangement, and
- (b) each succeeding period of 12 months.
- [<sup>F196</sup>This is subject to paragraph 10B.]
- [<sup>F197</sup>(2) The drawdown pension year in which the member dies is the last drawdown pension year and ends immediately before the member's death.]

#### Textual Amendments

**F194** Words in Sch. 28 para. 9(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 7\(2\)\(a\)](#)

**F195** Words in Sch. 28 para. 9(1)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 7\(2\)\(b\)](#)

**F196** Words in Sch. 28 para. 9(1) inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 7\(2\)\(c\)](#)

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**F197** Sch. 28 para. 9(2) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 7(3)**

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

- C10** Sch. 28 para. 9(1) modified (6.4.2006) by **The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572)**, arts. 1(1), **29(1)(2)(4)**
- C11** Sch. 28 para. 9(1)(a) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 92(2)**
- C12** Sch. 28 para. 9(1)(a) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 89(2)**
- C13** Sch. 28 para. 9(1)(a) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 93(2)**
- C14** Sch. 28 para. 9(1)(a) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 92(4)**
- C15** Sch. 28 para. 9(2) modified (27.7.2010) by Finance (No. 2) Act 2010 (c. 31), **Sch. 3 para. 2(1)(2)(b)(ii)** (with Sch. 2 para. 2(1))

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

**[F198]**(A1) This paragraph applies in relation to drawdown pension years beginning on or before the member's 75th birthday.

(1) Subject as follows, the period of three drawdown pension years beginning with the first drawdown pension year, and each succeeding period of three drawdown pension years, is a “reference period”.

(1ZA) But the reference period in which the member reaches the age of 75 ends with the drawdown pension year in which the member reaches that age.]

**[F199]**(1A) Sub-paragraph (1B) applies if, at any time during a reference period (“the current reference period”), the member notifies the scheme administrator that the member wishes a new reference period to begin on the next day that is an anniversary of the reference date in relation to the current reference period.

(1B) The scheme administrator may determine—

- (a) that the current reference period is to end immediately before that day (so that sub-paragraph (1) no longer applies), and
- (b) that (subject to **[F200]** sub-paragraph (1ZA) and] any further operation of this sub-paragraph) the period of **[F201]** three drawdown pension years] beginning with that day, and each succeeding period of **[F201]** three drawdown pension years], is to be a reference period.

(1C) The first day of each reference period is, in relation to that period, “the reference date”.]

(2) For the first **[F202]** drawdown 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 **[F203]** member's drawdown 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

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(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 [<sup>F204</sup>drawdown 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 [<sup>F205</sup>member's drawdown pension fund]—

(a) if there has been no recent annuity purchase[<sup>F206</sup>, recent additional fund designation or recent pension sharing event], on the nominated date, and

(b) otherwise, immediately after the last annuity purchase[<sup>F207</sup>, additional fund designation or pension sharing event],

(but subject to sub-paragraph (5)).

(5) On the occasion of each additional fund designation during [<sup>F208</sup>a drawdown pension year], the basis amount for [<sup>F209</sup>that drawdown pension year] is to be recalculated in accordance with sub-paragraph (6).

(6) The basis amount for the [<sup>F210</sup>drawdown 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 [<sup>F211</sup>member's drawdown pension fund] immediately after the additional fund designation.

[<sup>F212</sup>(6A) But sub-paragraph (5) does not apply where the operation of that sub-paragraph in relation to an additional fund designation during a drawdown pension year would reduce the basis amount for that drawdown pension year.]

(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 [<sup>F213</sup>member's drawdown 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 [<sup>F214</sup>drawdown pension].

[<sup>F215</sup>(8A) “Pension sharing event” means the coming into operation of a pension sharing order or provision relating to the sums and assets representing the [<sup>F216</sup>member's drawdown pension fund].]

(9) An annuity purchase[<sup>F217</sup>, additional fund designation or pension sharing event] 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 [<sup>F218</sup>drawdown pension year].

(10) Paragraph 14 defines “relevant annuity”.

[<sup>F219</sup>(11) . . . . .]

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### Textual Amendments

- F198** Sch. 28 para. 10(1)(1ZA)(A1) substituted for Sch. 28 para. 10(1) (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(2\)](#)
- F199** Sch. 28 para. 10(1)-(1C) substituted (19.7.2007) for Sch. 28 para. 10(1) (with effect in accordance with Sch. 20 para. 24(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 para. 8\(2\)](#)
- F200** Words in Sch. 28 para. 10(1B)(b) inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(3\)\(a\)](#)
- F201** Words in Sch. 28 para. 10(1B)(b) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(3\)\(b\)](#)
- F202** Words in Sch. 28 para. 10(2) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(4\)\(a\)](#)
- F203** Words in Sch. 28 para. 10(2) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(4\)\(b\)](#)
- F204** Words in Sch. 28 para. 10(4) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(4\)\(a\)](#)
- F205** Words in Sch. 28 para. 10(4) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(4\)\(b\)](#)
- F206** Words in Sch. 28 para. 10(4)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 19\(2\)\(a\)](#), 64(1)
- F207** Words in Sch. 28 para. 10(4)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 19\(2\)\(b\)](#), 64(1)
- F208** Words in Sch. 28 para. 10(5) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(5\)\(a\)](#)
- F209** Words in Sch. 28 para. 10(5) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(5\)\(b\)](#)
- F210** Words in Sch. 28 para. 10(6) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(6\)\(a\)](#)
- F211** Words in Sch. 28 para. 10(6) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(6\)\(b\)](#)
- F212** Sch. 28 para. 10(6A) inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(7\)](#)
- F213** Words in Sch. 28 para. 10(7) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(8\)](#)
- F214** Words in Sch. 28 para. 10(8) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(9\)](#)
- F215** Sch. 28 para. 10(8A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 19\(3\)](#), 64(1)
- F216** Words in Sch. 28 para. 10(8A) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(10\)](#)
- F217** Words in Sch. 28 para. 10(9) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 19\(4\)](#), 64(1)
- F218** Words in Sch. 28 para. 10(9)(b) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 8\(11\)](#)
- F219** Sch. 28 para. 10(11) omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(i\)\(4\)](#)

### Modifications etc. (not altering text)

- C16** Sch. 28 para. 10 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), 3, 5(1)(2)
- C17** Sch. 28 para. 10 modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 90\(2\)\(b\)](#)

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- C18** Sch. 28 para. 10(4) applied (with modifications) (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 90\(7\)](#)
- C19** Sch. 28 para. 10(7)-(8A) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 90\(8\)](#)

<sup>F220</sup>10(1) This paragraph applies in relation to drawdown pension years beginning after the member's 75th birthday.

- (2) For the first drawdown pension year beginning after the member reached the age of 75, and each succeeding drawdown 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 drawdown pension fund on the nominated date.
- (3) In a case where the member first becomes entitled to drawdown pension in respect of the arrangement after reaching the age of 75, “the nominated date”, in relation to the first drawdown pension year in respect of the arrangement, is the first day of that year.
- (4) In any other case, “the nominated date”, in relation to the first drawdown pension year beginning after the member reached the age of 75, is—
  - (a) if the member and the scheme administrator so agree, the day immediately before the member's 75th birthday, or
  - (b) if they do not so agree, such day within the period of 60 days ending with the first day of the drawdown pension year as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, the first day of that year).
- (5) “The nominated date”, in relation to each other drawdown pension year, is such day within the period of 60 days ending with the first day of the drawdown pension year as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, is the first day of that year).
- (6) On the occasion of each additional fund designation during a drawdown pension year, the basis amount of that drawdown pension year is to be recalculated in accordance with sub-paragraph (7).
- (7) The basis amount for the drawdown 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 drawdown pension fund immediately after the additional fund designation.
- (8) But sub-paragraph (6) does not apply where the operation of that sub-paragraph in relation to an additional fund designation during a drawdown pension year would reduce the basis amount for that drawdown pension year.
- (9) “Additional fund designation” has the meaning given by paragraph 10(8).
- (10) Paragraph 14 defines “relevant annuity”.

<sup>F221</sup>(11) .....

**Textual Amendments**

**F220** Sch. 28 paras. 10A, 10B inserted (with effect in accordance with Sch. 16 paras. 85, 91(3) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 9](#)

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**F221** Sch. 28 para. 10A(11) omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(ii\)\(4\)](#)

- 10B (1) This paragraph applies if the member has reached the age of 75.
- (2) Sub-paragraph (3) applies if, at any time during a drawdown pension year in respect of an arrangement (“the current drawdown pension year”), the member notifies the scheme administrator that the member wishes the drawdown pension year following the current drawdown pension year to begin on the day on which the next drawdown pension year in respect of another arrangement relating to the member under the pension scheme (including any arrangement relating to that person as a dependant) will begin.
- (3) The scheme administrator may determine—
- (a) that the current drawdown pension year is to end immediately before that day, and
  - (b) that the period of 12 months beginning with that day, and each succeeding period of 12 months, is a drawdown pension year in respect of the arrangement.
- (4) The scheme administrator may not make a determination under this paragraph more than once in relation to the same arrangement.]

**Textual Amendments**

**F220** Sch. 28 paras. 10A, 10B inserted (with effect in accordance with Sch. 16 paras. 85, 91(3) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 9](#)

*Member’s alternatively secured pension fund*

**F222**<sup>11</sup> .....

**Textual Amendments**

**F222** Sch. 28 paras. 11-13 omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 78\(b\)](#)

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

**F222**<sup>12</sup> .....

**Textual Amendments**

**F222** Sch. 28 paras. 11-13 omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 78\(b\)](#)

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

**F222**<sup>13</sup> .....



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**Textual Amendments**

**F222** Sch. 28 paras. 11-13 omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 78(b)**

*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 [<sup>F223</sup>Financial Conduct Authority or the Prudential Regulation Authority], or
  - (b) material published by any other person.

**Textual Amendments**

**F223** Words in Sch. 28 para. 14(3)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 100** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

*Minimum income requirement*

<sup>F224</sup>14A .....

**Textual Amendments**

**F224** Sch. 28 paras. 14A-14E omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 32(1)(e)(iii)(4)**

<sup>F224</sup>14B .....

**Textual Amendments**

**F224** Sch. 28 paras. 14A-14E omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 32(1)(e)(iii)(4)**

*The relevant day*

<sup>F224</sup>14C .....

**Textual Amendments**

**F224** Sch. 28 paras. 14A-14E omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 32(1)(e)(iii)(4)**



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### Relevant contributions

F224 14D .....

#### Textual Amendments

**F224** Sch. 28 paras. 14A-14E omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(iii\)\(4\)](#)

### Valid and accepted declarations

F224 14E .....

#### Textual Amendments

**F224** Sch. 28 paras. 14A-14E omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(iii\)\(4\)](#)

## PART 2

### PENSION DEATH BENEFIT RULES

#### Defined benefits and money purchase arrangements

##### Meaning of “dependant”

15 (1) A person who was married to [F225, or a civil partner of,] the member at the date of the member’s death is a dependant of the member.

[F226(1A) If the rules of the pension scheme so provide, a person who was married to [F227, or a civil partner of,] the member when the member first became entitled to a pension under the pension scheme 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.

[F228(2A) A child of the member is a dependant of the member if the child—

- (a) has reached the age of 23, and
- (b) is not within sub-paragraph (2)(b).

(2B) But this paragraph, so far as it has effect for the purpose of determining the meaning of “dependant”—

- (a) in paragraphs 16 to 17 and 27A, and
- (b) in paragraph 18 of Schedule 29,

has effect with the omission of sub-paragraph (2A).]

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- (3) A person who was not married to <sup>F229</sup>[ , or a civil partner of,] 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.

**Textual Amendments**

**F225** Words in Sch. 28 para. 15(1) inserted (with effect in accordance with reg. 1(7) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **180(a)**

**F226** Sch. 28 para. 15(1A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 26**, 64(1)

**F227** Words in Sch. 28 para. 15(1A) inserted (with effect in accordance with reg. 1(7) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), **regs. 1(1)**, 180(b)

**F228** [Sch. 28 para. 15\(2A\)\(2B\)](#) inserted (with effect in accordance with Sch. 5 para. 6(5) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), **Sch. 5 para. 6(2)(4)** (with [Sch. 5 para. 6\(5\)](#))

**F229** Words in Sch. 28 para. 15(3) inserted (with effect in accordance with reg. 1(7) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **180(c)**

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

**C20** Sch. 28 para. 15(2) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **34**

**C21** Sch. 28 para. 15(2)(b) modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), **Sch. 3 Pt. 1**

**C22** Sch. 28 para. 15(3) modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), **Sch. 3 Pt. 1**

*Dependants' scheme pension*

- 16 <sup>F230</sup>(1) .....
- (2) <sup>F231</sup>[A] pension payable to a dependant is a dependants' scheme pension <sup>F232</sup>[ 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, <sup>F233</sup>...
  - <sup>F233</sup>(b) .....
- <sup>F234</sup>(2A) The Board of Inland Revenue may by regulations make provision in relation to cases in which a dependants' scheme pension payable to a dependant of a member of a registered pension scheme by an insurance company (“the original dependants' scheme pension”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another dependants' scheme pension (a “new dependants' scheme pension”) or a scheme pension, lifetime annuity, short-term annuity, dependants' annuity or dependants' short-term annuity by the other insurance company, or
  - (b) sums or assets are transferred to the relevant registered pension scheme.

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- (2B) The regulations may provide that—
- (a) in a case where a new dependants' scheme pension becomes payable, the new dependants' 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 dependants' scheme pension, and
  - (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.
- (2C) For the purposes of sub-paragraphs (2A) and (2B) a registered pension scheme is the relevant registered pension scheme if the original dependants' scheme pension was acquired using sums or assets held for the purposes of the pension scheme.]

F235(3) .....

F235(4) .....

F235(5) .....

F235(6) .....

#### Textual Amendments

**F230** Sch. 28 para. 16(1) repealed (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 27(2), 64(1), **Sch. 11 Pt. 4**

**F231** Word in Sch. 28 para. 16(2) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 27(3)(a), 64(1)**

**F232** Words in Sch. 28 para. 16(2) inserted (21.7.2008) by Finance Act 2008 (c. 9), **Sch. 28 para. 5**

**F233** Sch. 28 para. 16(2)(b) and word repealed (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 27(3)(b), 64(1), **Sch. 11 Pt. 4**

**F234** Sch. 28 para. 16(2A)-(2C) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 27(4), 64(1)**

**F235** Sch. 28 para. 16(3)-(6) repealed (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 27(5), 64(1), **Sch. 11 Pt. 4**

[<sup>F236</sup>16A) Paragraphs 16B and 16C apply where—

- (a) the member dies after 5th April 2006,
- (b) he has reached the age of 75 before his death, and
- (c) at the time of his death he is actually or prospectively entitled to one or more scheme pensions under the pension scheme.

[ Sub-paragraph (1) is subject to paragraphs 16AA and 16AB.]

<sup>F237</sup>(1A)

- (2) References in this paragraph and paragraph 16B to a scheme pension include a pension payable before 6th April 2006 which would be a scheme pension if payable after that date.

[ Where, immediately before the member's death, the member is actually or <sup>F238</sup>(3) prospectively entitled to CMP periodic income, any CMP periodic income that is at any later time payable to a dependant of the member is to be ignored for the purposes of paragraphs 16AA to 16B.]

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#### Textual Amendments

- F236** Sch. 28 paras. 16A-16C inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 28, 64\(1\)](#)  
**F237** Sch. 28 para. 16A(1A) inserted (with effect in accordance with s. 21(6)(7)(8)(a) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 21\(2\)\(6\)](#)  
**F238** Sch. 28 para. 16(A)(3) inserted (11.7.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), [s. 24\(6\)](#)

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

- C23** Sch. 28 para. 16A modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [24](#)

[ Paragraphs 16B and 16C do not apply if—

- <sup>F239</sup>16AA <sup>F240</sup>(a) . . . . .  
 (b) paragraph 12 of Schedule 36 (enhanced protection by reference to pre-6 April 2006 rights) applies in the case of the member immediately before the member's death.

#### Textual Amendments

- F236** Sch. 28 paras. 16A-16C inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 28, 64\(1\)](#)  
**F239** Sch. 28 paras. 16AA-16AE inserted (with effect in accordance with s. 21(6)(7)(8)(a) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 21\(3\)\(6\)](#)  
**F240** Sch. 28 para. 16AA(a) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 12, 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, [4](#))

16AB (1) Paragraph 16B does not apply if, at all times in the post-death year (as defined in that paragraph), the payable annual rate is less than the limit.

(2) Paragraph 16C does not apply in relation to a period of 12 months within paragraph (a) or (b) of paragraph 16C(1) if, at all times in that period of 12 months, the payable annual rate is less than the limit.

(3) “The payable annual rate”, at any time, is arrived at as follows—

- (a) identify each dependants' scheme pension payable in respect of the member under the scheme to which a dependant of the member is actually entitled at that time, and
- (b) identify the annual rate at which each pension identified at paragraph (a) is payable at that time, and
- (c) if only one pension is identified at paragraph (a), the payable annual rate is the annual rate identified at paragraph (b), and
- (d) if two or more pensions are identified at paragraph (a), the payable annual rate is the total of the annual rates identified at paragraph (b).

(4) “The limit”, at any time, is—

- (a) the general limit at that time (see paragraph 16AC), or,
- (b) if higher, the personal limit at that time (see paragraph 16AD).

#### Textual Amendments

- F236** Sch. 28 paras. 16A-16C inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 28, 64\(1\)](#)

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**F239** Sch. 28 paras. 16AA-16AE inserted (with effect in accordance with s. 21(6)(7)(8)(a) of the amending Act) by Finance Act 2016 (c. 24), s. 21(3)(6)

16AC (1) This paragraph applies for the purposes of paragraph 16AB(4).

(2) “The general limit” at a time in the tax year 2016-17 is £25,000.

(3) “The general limit” at a time in a later tax year (“year T”)—

(a) is given by—

$$G + (G \times U \%)$$

where G is the general limit at times in the tax year (“year P”) that precedes year T, or

(b) if the amount given by paragraph (a) is not a multiple of £100, is that amount rounded up to the nearest amount that is such a multiple.

(4) See paragraph 16AE for the meaning of U%.

#### Textual Amendments

**F236** Sch. 28 paras. 16A-16C inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 28, 64(1)

**F239** Sch. 28 paras. 16AA-16AE inserted (with effect in accordance with s. 21(6)(7)(8)(a) of the amending Act) by Finance Act 2016 (c. 24), s. 21(3)(6)

16AD (1) This paragraph applies for the purposes of paragraph 16AB(4).

(2) “The personal limit” at a time in the tax year in which the member dies is arrived at as follows—

(a) identify each scheme pension under the scheme to which the member is actually or prospectively entitled immediately before the member's death, and

(b) as regards each pension identified at paragraph (a)—

(i) if it is one to which the member is actually entitled immediately before the member's death, identify the annual rate at which it is payable immediately before the member's death, or

(ii) if it is one to which the member is prospectively entitled immediately before the member's death, identify the annual rate at which it would have been payable immediately before the member's death had the member been actually entitled to it immediately before the member's death, and

(c) if only one pension is identified at paragraph (a), the personal limit is the annual rate identified at paragraph (b), and

(d) if two or more pensions are identified at paragraph (a), the personal limit is the total of the annual rates identified at paragraph (b).

(3) “The personal limit” at a time in a tax year (“year S”) later than the tax year in which the member dies—

(a) is given by—

$$L + (L \times U \%)$$

where L is the personal limit at times in the tax year (“year P”) that precedes year S, or

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- (b) if the amount given by paragraph (a) is not a multiple of £100, is that amount rounded up to the nearest amount that is such a multiple.
- (4) See paragraph 16AE for the meaning of U%.
- (5) If the scheme is a public service pension scheme, ignore any abatement when identifying at sub-paragraph (2)(b) the annual rate of any scheme pension under the scheme.

#### Textual Amendments

**F236** Sch. 28 paras. 16A-16C inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 28, 64\(1\)](#)

**F239** [Sch. 28 paras. 16AA-16AE](#) inserted (with effect in accordance with s. 21(6)(7)(8)(a) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 21\(3\)\(6\)](#)

- 16AE (1) In paragraphs 16AC(3) and 16AD(3), U% means the highest of—
- (a) 5%,
  - (b) CPI% (see sub-paragraph (2)), and
  - (c) RPI% (see sub-paragraph (3)).
- (2) If the consumer prices index for September in year P is higher than the consumer prices index for September in the tax year preceding year P, CPI% is the percentage increase in the index (but is otherwise 0%).
- (3) If the retail prices index for September in year P is higher than the retail prices index for September in the tax year preceding year P, RPI% is the percentage increase in the index (but is otherwise 0%).
- (4) In this paragraph “year P” has the same meaning as in paragraph 16AC or (as the case may be) paragraph 16AD.]

#### Textual Amendments

**F236** Sch. 28 paras. 16A-16C inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 28, 64\(1\)](#)

**F239** [Sch. 28 paras. 16AA-16AE](#) inserted (with effect in accordance with s. 21(6)(7)(8)(a) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 21\(3\)\(6\)](#)

- 16B (1) Where a pension is payable under the pension scheme to a dependant of the member in the period of 12 months beginning with the date of the member's death (“the post-death year”), so much of the pension as exceeds the initial member pension limit is not a dependants' scheme pension.
- (2) But if—
- (a) more than one pension is so payable to one of the dependants of the member in the post-death year, or
  - (b) pensions are so payable to more than one dependant of the member in the post-death year,
- (or both), so much of any of the pensions as exceeds the appropriate portion of the initial member pension limit is not a dependants' scheme pension.
- (3) The “initial member pension limit” is (subject to sub-paragraph (4)) the sum of—
- (a) the aggregate of the amounts of the scheme pensions to which the member is actually entitled under the pension scheme immediately before his death

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- payable to the member in the period of 12 months ending with the date of his death (“the pre-death year”),
- (b) the aggregate of the amounts of the scheme pensions to which the member is prospectively entitled under the pension scheme at that time which would have been so payable if he had been actually entitled to the pensions throughout the pre-death year, and
  - (c) 5% of the aggregate of the <sup>[F241]</sup>uprated amounts (see sub-paragraph (6)) of the lump sums on which there is no liability to income tax to which the member has become entitled in connection with scheme pensions under the pension scheme before his death.
- (4) But if the member became (actually) entitled to a scheme pension under the pension scheme during the pre-death year, sub-paragraph (3)(a) has effect as if the amount of that scheme pension which was payable to the member under the pension scheme in the pre-death year were the amount which would have been payable to him in the period of 12 months beginning with the date on which he became entitled to it had he not died.
- (5) The “appropriate portion” of the initial member pension limit, in relation to any pension payable under the pension scheme to a dependant of the member in the post-death year, is—

PAP

where—

P is the amount of that pension payable in the post-death year, and

AP is the aggregate of the amounts of each of the pensions payable under the pension scheme to dependants of the member in the post-death year.

[ The “uprated amount” of a lump sum is the amount of the lump sum increased by <sup>F242</sup>(6) the higher of C% and R%, where—

- (a) if the consumer prices index for the month in which the member dies is higher than it was for the month in which the member became entitled to the lump sum, C% is the percentage increase in the index (but is otherwise 0%), and
- (b) if the retail prices index for the month in which the member dies is higher than it was for the month in which the member became entitled to the lump sum, R% is the percentage increase in the index (but is otherwise 0%).]

#### Textual Amendments

**F236** Sch. 28 paras. 16A-16C inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 28, 64(1)

**F241** Words in Sch. 28 para. 16B(3)(c) substituted (with effect in accordance with s. 21(6)(7)(8)(a) of the amending Act) by Finance Act 2016 (c. 24), s. 21(4)(a)(6)

**F242** Sch. 28 para. 16B(6) inserted (with effect in accordance with s. 21(6)(7)(8)(a) of the amending Act) by Finance Act 2016 (c. 24), s. 21(4)(b)(6)

- 16C (1) Where a pension is payable under the pension scheme to a dependant of the member, otherwise than in excepted circumstances, in—
- (a) the period of 12 months beginning with the end of the post-death year, or
  - (b) any succeeding period of 12 months,



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(“the 12 months in question”), so much of the pension as exceeds the current member pension limit is not a dependants' scheme pension.

(2) But if—

- (a) more than one pension is so payable to one of the dependants in the 12 months in question, or
- (b) pensions are so payable to more than one dependant of the member in the 12 months in question,

(or both), so much of any of the pensions as exceeds the appropriate portion of the current member pension limit is not a dependants' scheme pension.

(3) “Excepted circumstances” means—

- (a) that at the beginning of the <sup>F243</sup>... 12 months in question there are at least 50 pensioner members of the pension scheme, and
- (b) that the condition in [<sup>F244</sup>sub-paragraph] (4) is met.

[<sup>F245</sup>(4) The condition is that if the annual rate of a pension payable under the pension scheme to a dependant of the member is increased at any time in the period of 12 months in question—

- (a) the dependant is at that time one of a group of at least 20 pensioner members of the pension scheme, and
- (b) all the pensions being paid under the pension scheme to pensioner members of that group are at that time increased at the same rate.]

(6) The “current member pension limit”, in relation to the 12 [<sup>F246</sup>months] in question, is the initial member pension limit increased by [<sup>F247</sup>the permitted margin.]

(7) The “permitted margin” is the amount by which the initial member pension limit would be greater if it had been increased by whichever of calculation A and calculation B gives the greater amount.

(8) Calculation A involves increasing the initial member pension limit by the relevant annual percentage rate for the whole of the period—

- (a) beginning with the first month beginning after the [<sup>F248</sup>member's death] (“the opening month”), and
- (b) ending with the first month [<sup>F249</sup>ending after the start] of the 12 months in question (“the closing month”).

(9) The relevant annual percentage rate is—

- (a) if the relevant valuation factor in relation to the pension scheme is a number greater than 20, the annual rate agreed by the Inland Revenue and the scheme administrator, and
- (b) otherwise, 5% per annum.

(10) Calculation B involves increasing the initial member pension limit by the relevant indexation percentage.

(11) If the retail prices index for the closing month is higher than it was for the [<sup>F250</sup>month in which the member died], the relevant indexation percentage is the percentage increase in the retail prices index.

(12) If it is not, the relevant indexation percentage is 0%.



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<sup>F251</sup>(13) .....

<sup>F251</sup>(14) .....

- (15) The “appropriate portion” of the current member pension limit, in relation to any pension payable under the pension scheme to a dependant of the member in the 12 months in question, is—

PAP

where—

P is the amount of that pension payable in the 12 months in question, and

AP is the aggregate of the amounts of each of the pensions payable under the pension scheme to one or more dependants of the member in the 12 months in question.]

#### Textual Amendments

**F236** Sch. 28 paras. 16A-16C inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 28, 64(1)

**F243** Words in Sch. 28 para. 16C(3)(a) omitted (with effect in accordance with s. 21(6)(8)(b) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 21(5)(a)(6)

**F244** Word in Sch. 28 para. 16C(3)(b) substituted (with effect in accordance with s. 21(6)(8)(b) of the amending Act) by Finance Act 2016 (c. 24), s. 21(5)(b)(6)

**F245** Sch. 28 para. 16C(4) substituted for Sch. 28 para. 16C(4)(5) (with effect in accordance with s. 21(6)(8)(b) of the amending Act) by Finance Act 2016 (c. 24), s. 21(5)(c)(6)

**F246** Word in Sch. 28 para. 16C(6) substituted (with effect in accordance with s. 21(6)(8)(b) of the amending Act) by Finance Act 2016 (c. 24), s. 21(5)(d)(i)(6)

**F247** Words in Sch. 28 para. 16C(6) substituted (with effect in accordance with s. 21(6)(8)(b) of the amending Act) by Finance Act 2016 (c. 24), s. 21(5)(d)(ii)(6)

**F248** Words in Sch. 28 para. 16C(8)(a) substituted (with effect in accordance with s. 21(6)(8)(b) of the amending Act) by Finance Act 2016 (c. 24), s. 21(5)(e)(6)

**F249** Words in Sch. 28 para. 16C(8)(b) inserted (with effect in accordance with s. 21(6)(8)(b) of the amending Act) by Finance Act 2016 (c. 24), s. 21(5)(f)(6)

**F250** Words in Sch. 28 para. 16C(11) substituted (with effect in accordance with s. 21(6)(8)(b) of the amending Act) by Finance Act 2016 (c. 24), s. 21(5)(g)(6)

**F251** Sch. 28 para. 16C(13)(14) omitted (with effect in accordance with s. 21(6)(8)(b) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 21(5)(h)(6)

#### Money purchase arrangements

##### Dependants' annuity

- 17 (1) [<sup>F252</sup>For the purposes of this Part an] annuity payable to a dependant is a dependants' annuity if—

[<sup>F253</sup>(za) either—

- (i) it is purchased together with a lifetime annuity payable to the member and the member becomes entitled to that lifetime annuity before 6 April 2015, or

- (ii) it is purchased after the member's death and the dependant becomes entitled to it before 6 April 2015,]

- (a) it is payable by an insurance company,

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- (b) the member or dependant had an opportunity to select the insurance company,
  - <sup>[F254]</sup>(c) its amount either cannot decrease or falls to be determined in any manner prescribed by regulations made by the Board of Inland Revenue,]
  - (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<sup>[F255]</sup>, entering into a civil partnership] 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<sup>[F256]</sup>, entering into a civil partnership], ceasing to be a dependant or dying.
- <sup>[F257]</sup>(1ZA) For the purposes of this Part, but subject to any provision made under sub-paragraph (4)(za), an annuity payable to a dependant is also a dependants' annuity if—
- (a) either—
    - (i) it is purchased together with a lifetime annuity payable to the member and the member becomes entitled to that lifetime annuity on or after 6 April 2015, or
    - (ii) it is purchased after the member's death and the dependant becomes entitled to it on or after 6 April 2015,
  - (b) it is payable by an insurance company,
  - (c) where the dependant is not the member's child, it is payable until the dependant's death or until the earliest of the dependant's marrying, entering into a civil partnership or dying, and
  - (d) 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, entering into a civil partnership, ceasing to be a dependant or dying.]
- <sup>[F258]</sup>(1A) For the purposes of <sup>[F259]</sup>sub-paragraphs (1)(za) and (1ZA)(a)] a dependants' annuity is purchased together with a lifetime annuity if the dependant's annuity is related to the lifetime annuity.]
- <sup>[F260]</sup>(2) An annuity does not fail to satisfy sub-paragraph (1)(c) by reason of the operation of
- <sup>[F261]</sup>(a) a pension sharing order or provision <sup>[F262]</sup>, or]
  - <sup>[F263]</sup>(b) an order under section 377A of the Financial Services and Markets Act 2000 (court order writing down liabilities of insurer).]
- (3) The Board of Inland Revenue may by regulations make provision in relation to cases in which a dependants' annuity payable to a person (“the original dependants' annuity”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another dependants' annuity (a “new dependants' annuity”) or a scheme pension, lifetime annuity, short-term annuity, dependants' scheme pension or dependants' short-term annuity by the other insurance company, or
  - (b) sums or assets are transferred to the relevant registered pension scheme.
- (4) The regulations may provide that—
- <sup>[F264]</sup>(za) in a case where—

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- (i) a new annuity becomes payable,
  - (ii) the dependant becomes entitled to it on or after 6 April 2015,
  - (iii) it would be a dependants' annuity if any provision made under this paragraph were ignored,
  - (iv) the terms of the contract for it are such that there will or could be decreases in its amount other than allowed decreases (see sub-paragraph (6)), and
  - (v) any other conditions prescribed by the regulations are met,
- the new annuity is not a dependants' annuity for the purposes of this Part,]
- (a) in a case where a new dependants' annuity becomes payable, the new dependants' annuity 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 dependants' annuity, and
  - (b) in [<sup>F265</sup>a case other than one where a new dependants' annuity becomes payable], the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.

<sup>F266</sup>(4A) . . . . .

(5) For the purposes of sub-paragraphs (3) and (4) a registered pension scheme is the relevant registered pension scheme if the original dependants' annuity was acquired using sums or assets held for the purposes of the pension scheme.]

[<sup>F267</sup>(6) In sub-paragraph (4)(za)(iv) “allowed decreases” means decreases from time to time allowed by regulations under sub-paragraph (1)(c); and any such regulations are to be treated as having effect for this purpose.]

#### Textual Amendments

- F252** Words in Sch. 28 para. 17(1) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 15(2)**, 64(1)
- F253** Sch. 28 para. 17(1)(za) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 47**
- F254** Sch. 28 para. 17(1)(c) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 15(3)**, 64(1)
- F255** Words in Sch. 28 para. 17(1)(d) inserted (22.2.2007) by [The Tax and Civil Partnership Regulations 2007 \(S.I. 2007/493\)](#), regs. 1, **2(3)**
- F256** Words in Sch. 28 para. 17(1)(e) inserted (22.2.2007) by [The Tax and Civil Partnership Regulations 2007 \(S.I. 2007/493\)](#), regs. 1, **2(3)**
- F257** Sch. 28 para. 17(1ZA) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 39**
- F258** Sch. 28 para. 17(1A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 29(3)**, 64(1)
- F259** Words in Sch. 28 para. 17(1A) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 48**
- F260** Sch. 28 para. 17(2)-(5) substituted for Sch. 28 para. 17(2) (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 15(4)**, 64(1)
- F261** Words in Sch. 28 para. 17(2) renumbered as Sch. 28 para. 17(2)(a) (11.7.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), **s. 33(3)(a)**
- F262** Word in Sch. 28 para. 17(2)(a) inserted (11.7.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), **s. 33(3)(b)**
- F263** Sch. 28 para. 17(2)(b) inserted (11.7.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), **s. 33(3)(c)**
- F264** Sch. 28 para. 17(4)(za) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 49(1)(a)**

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- F265** Words in Sch. 28 para. 17(4)(b) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 49(1)(b)**
- F266** Sch. 28 para. 17(4A) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), **s. 75(2)(d)**
- F267** Sch. 28 para. 17(6) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 49(2)**

*[<sup>F268</sup>Dependants' drawdown pension]*

**Textual Amendments**  
**F268** Sch. 28 para. 18 cross-heading substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 13(2)**

- 18            [<sup>F269</sup>“Dependants' drawdown pension”] means—
- (a) a dependants' short-term annuity, or
  - (b) dependants' income withdrawal.

**Textual Amendments**  
**F269** Words in Sch. 28 para. 18 substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 13(1)**

<sup>F270</sup>19            .....

**Textual Amendments**  
**F270** Sch. 28 para. 19 omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 78(c)**

*Dependants' short-term annuity*

- 20        (1) [<sup>F271</sup>For the purposes of this Part 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 [<sup>F272</sup>dependant's drawdown 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,
  - [<sup>F273</sup>(ca) the dependant becomes entitled to it before 6 April 2015,]
  - (d) it is payable for a term which does not exceed five years and ends before the dependant <sup>F274</sup>... dies, and
  - [<sup>F275</sup>(e) its amount either cannot decrease or falls to be determined in any manner prescribed by regulations made by the Board of Inland Revenue.]

[<sup>F276</sup>(1ZA) For the purposes of this Part, but subject to any provision made under subparagraph (1C)(za), an annuity payable to a dependant is also a dependants' short-term annuity if—

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- (a) it is purchased by the application of sums or assets representing the whole or any part of the dependant's drawdown pension fund, or of the dependant's flexi-access drawdown fund, in respect of an arrangement,
- (b) it is payable by an insurance company,
- (c) the dependant becomes entitled to it on or after 6 April 2015, and
- (d) it is payable for a term which does not exceed five years and ends before the dependant dies.]

[<sup>F277</sup>(1A) An annuity does not fail to satisfy sub-paragraph (1)(e) by reason of the operation of a pension sharing order or provision.

(1B) The Board of Inland Revenue may by regulations make provision in relation to cases in which a dependants' short-term annuity payable to a person (“the original dependants' short-term annuity”) ceases to be payable and in consequence of that—

- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another dependants' short-term annuity (a “new dependants' short-term annuity”) or a scheme pension, lifetime annuity, short-term annuity, dependants' scheme pension or dependants' annuity by the other insurance company, or
- (b) sums or assets are transferred to the relevant registered pension scheme.

(1C) The regulations may provide that—

- [ in a case where—
  - <sup>F278</sup>(za) (i) a new annuity becomes payable,
  - (ii) the dependant becomes entitled to it on or after 6 April 2015,
  - (iii) it would be a dependants' short-term annuity if any provision made under this paragraph were ignored,
  - (iv) the terms of the contract for it are such that there will or could be decreases in its amount other than allowed decreases (see sub-paragraph (1E)), and
  - (v) any other conditions prescribed by the regulations are met,the new annuity is not a dependants' short-term annuity for the purposes of this Part,]
- (a) in a case where a new dependants' short-term annuity becomes payable, the new dependants' short-term annuity 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 dependants' short-term annuity, and
- (b) in [<sup>F279</sup>a case other than one where a new dependants' short-term annuity becomes payable], the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.

(1D) For the purposes of sub-paragraphs (1B) and (1C) a registered pension scheme is the relevant registered pension scheme if the original dependants' short-term annuity was acquired using sums or assets held for the purposes of the pension scheme.]

[<sup>F280</sup>(1E) In sub-paragraph (1C)(za)(iv) “allowed decreases” means decreases from time to time allowed by regulations under sub-paragraph (1)(e); and any such regulations are to be treated as having effect for this purpose.]

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F281 (2) .....

#### Textual Amendments

- F271** Words in Sch. 28 para. 20(1) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 16\(2\), 64\(1\)](#)
- F272** Words in Sch. 28 para. 20(1)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 14\(a\)](#)
- F273** Sch. 28 para. 20(1)(ca) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 50](#)
- F274** Words in Sch. 28 para. 20(1)(d) omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 14\(b\)](#)
- F275** Sch. 28 para. 20(1)(e) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 16\(3\), 64\(1\)](#)
- F276** Sch. 28 para. 20(1ZA) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 40](#)
- F277** Sch. 28 para. 20(1A)-(1D) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 16\(4\), 64\(1\)](#)
- F278** Sch. 28 para. 20(1C)(za) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 51\(1\)\(a\)](#)
- F279** Words in Sch. 28 para. 20(1C)(b) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 51\(1\)\(b\)](#)
- F280** Sch. 28 para. 20(1E) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 51\(2\)](#)
- F281** Sch. 28 para. 20(2) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 16\(5\), 64\(1\)](#), [Sch. 11 Pt. 4](#)

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

- C24** Sch. 28 para. 20 modified (with effect in accordance with [Sch. 16 para. 85](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 95](#)

#### *Dependants' income withdrawal*

- [<sup>F282</sup>21 Dependants' income withdrawal" means an amount (other than an annuity) which the dependant is entitled to be paid from the dependant's drawdown pension fund in respect of an arrangement [<sup>F283</sup>or from the dependant's flexi-access drawdown fund in respect of an arrangement].]

#### Textual Amendments

- F282** Sch. 28 para. 21 substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 15](#)
- F283** Words in Sch. 28 para. 21 inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 20](#)

#### *[<sup>F284</sup>Dependant's drawdown pension fund]*

#### Textual Amendments

- F284** Sch. 28 para. 22 cross-heading substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 16\(5\)](#)

- 22 (1) For the purposes of this Part a [<sup>F285</sup>dependant's drawdown pension fund] in respect of an arrangement consists of such of the sums and assets held for the purposes of the arrangement—

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- [<sup>F286</sup>(a) as are dependant-designated funds, and  
(b) have not been applied towards the provision of a dependants' scheme pension.]
- [<sup>F287</sup>(2) For the purposes of this Part sums or assets held for the purposes of an arrangement are dependant-designated funds if <sup>F288</sup>...—
- (a) [<sup>F289</sup>they have, at any time before 6 April 2015, been designated] under the arrangement as available for the payment of [<sup>F290</sup>dependants' drawdown pension]<sup>F291</sup>...,
- [<sup>F292</sup>(aa) they have, at any time on or after 6 April 2015, been designated under the arrangement as available for the payment of dependants' drawdown pension <sup>F291</sup>..., and—
- (i) sums or assets held for the purposes of the arrangement have, at any time before 6 April 2015, been designated under the arrangement as so available, and
- (ii) section 167(2A) did not apply to the arrangement immediately before 6 April 2015,] or
- (b) [<sup>F293</sup>they] arise, or (directly or indirectly) derive, from [<sup>F294</sup>dependant-designated funds under paragraph (a) or (aa) or from sums or assets] which so arise or derive.
- (3) If any sums or assets representing a [<sup>F295</sup>person's][<sup>F296</sup>dependant's drawdown pension fund] in respect of an arrangement under the pension scheme would (apart from this sub-paragraph)—
- (a) come to be taken to represent another [<sup>F296</sup>dependant's drawdown pension fund] of his under the pension scheme, or [<sup>F297</sup>a drawdown pension fund] of his under the pension scheme, or
- (b) are applied towards the provision of a scheme pension or a lifetime annuity, they are to be treated as not doing so.]

#### Textual Amendments

- F285** Words in Sch. 28 para. 22(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 16(2)**
- F286** Sch. 28 para. 22(1)(a)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 21(2)**, 64(1)
- F287** Sch. 28 para. 22(2)(3) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 21(3)**, 64(1)
- F288** Word in Sch. 28 para. 22(2) omitted (17.12.2014) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 21(a)**
- F289** Words in Sch. 28 para. 22(2)(a) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 21(b)**
- F290** Words in Sch. 28 para. 22(2)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 16(3)**
- F291** Words in Sch. 28 para. 22(2)(a)(aa) omitted (16.9.2016) by virtue of [Finance Act 2016 \(c. 24\)](#), **Sch. 5 para. 6(3)(a)(4)**
- F292** Sch. 28 para. 22(2)(aa) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 21(c)**
- F293** Word in Sch. 28 para. 22(2)(b) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 21(d)(i)**
- F294** Words in Sch. 28 para. 22(2)(b) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 21(d)(ii)**
- F295** Word in Sch. 28 para. 22(3) inserted (16.9.2016) by [Finance Act 2016 \(c. 24\)](#), **Sch. 5 para. 6(3)(b)(4)**



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**F296** Words in Sch. 28 para. 22(3) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 16\(4\)\(a\)](#)

**F297** Words in Sch. 28 para. 22(3)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 16\(4\)\(b\)](#)

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

**C25** Sch. 28 para. 22 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [30\(1\)-\(3\)](#)

**C26** Sch. 28 para. 22(2) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 96](#)

*[<sup>F298</sup>Dependant's flexi-access drawdown fund*

**Textual Amendments**

**F298** Sch. 28 paras. 22A-22D and cross-headings inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 4(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 4\(1\)](#)

22A (1) For the purposes of this Part a dependant's flexi-access drawdown fund in respect of an arrangement consists of such of the sums or assets held for the purposes of the arrangement as are newly-designated dependant funds.

(2) For the purposes of this Part sums or assets held for the purposes of an arrangement are newly-designated dependant funds if—

(a) they—

(i) have, at any time on or after 6 April 2015, been designated under the arrangement as available for the payment of dependants' drawdown pension, and

(ii) are not dependant-designated funds, or

(b) they were dependant-designated funds immediately before 6 April 2015 and section 167(2A) applied to the arrangement at that time, or

(c) they have become newly-designated dependant funds by the operation of paragraph 22B, 22C or 22D, or

(d) they arise, or (directly or indirectly) derive, from newly-designated dependant funds under paragraph (a), (b) or (c) or from sums or assets which so arise or derive.

(3) Any sums or assets that become newly-designated dependant funds under sub-paragraph (2)(b) cease to be dependant-designated funds as from the start of 6 April 2015.

**Textual Amendments**

**F298** Sch. 28 paras. 22A-22D and cross-headings inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 4(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 4\(1\)](#)

*Conversion of certain dependants' drawdown funds into flexi-access drawdown funds*

22B (1) Sub-paragraph (2) applies if—



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- (a) a dependant's drawdown pension fund in respect of an arrangement came into being before 6 April 2015,
  - (b) section 167(2A) did not apply to the arrangement immediately before 6 April 2015, and
  - (c) at a time on or after 6 April 2015, a payment—
    - (i) of dependants' income withdrawal from the fund, or
    - (ii) of a dependants' short-term annuity purchased using sums or assets out of the fund,is made that (apart from sub-paragraph (2)) would breach the cap.
- (2) The sums and assets that make up the fund immediately before the payment is made become newly-designated dependant funds immediately before the payment is made (so that the payment is made out of the dependant's flexi-access drawdown fund in respect of the arrangement and therefore is not part of the total capped by pension death benefit rule 4).
- (3) For the purposes of sub-paragraph (1)(c), a payment of dependants' drawdown pension in respect of an arrangement is one that would breach the cap if, when its amount is added to the amounts of any dependants' drawdown pension in respect of the arrangement—
- (a) paid—
    - (i) before it is made, but
    - (ii) in the same drawdown pension year in respect of the arrangement, or
  - (b) paid at the time it is made,
- the total is greater than the cap set by pension death benefit rule 4 for that drawdown pension year.

#### Textual Amendments

**F298** Sch. 28 paras. 22A-22D and cross-headings inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 4(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 4\(1\)](#)

- 22C (1) Sub-paragraph (2) applies if—
- (a) a dependant's drawdown pension fund in respect of an arrangement came into being before 6 April 2015,
  - (b) section 167(2A) did not apply to the arrangement immediately before 6 April 2015, and
  - (c) the dependant notifies the [<sup>F299</sup>scheme manager] that the dependant wishes the fund to become the dependant's flexi-access drawdown fund in respect of the arrangement.
- (2) At—
- (a) the time the [<sup>F299</sup>scheme manager] accepts the notification, or
  - (b) the start of 6 April 2015 if that is later,
- the sums and assets that then make up that fund become newly-designated dependant funds, if they have not previously done so by the operation of paragraph 22B.

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#### Textual Amendments

- F298** Sch. 28 paras. 22A-22D and cross-headings inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 4(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 4\(1\)](#)
- F299** Words in Sch. 28 paras. 22C, 22D substituted by S.I. 2006/207, reg. 14(3)(ea) (as inserted (6.4.2015) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 33\(3\)\(c\)\(4\)](#) (with [Sch. 1 para. 33\(5\)](#))

- 22D (1) Sub-paragraphs (2) and (3) apply if—
- (a) there is a recognised transfer from one registered pension scheme (“the old scheme”) to another registered pension scheme (“the new scheme”) of dependant-designated funds held for the purposes of an arrangement under the old scheme, and
  - (b) the sums or assets transferred are, under the arrangement under the new scheme for whose purposes they are first held after the transfer, designated as available for the payment of drawdown pension.
- (2) If the dependant, when or before the designation is made, notifies the [<sup>F299</sup>scheme manager] of the new scheme that the dependant wishes the sums or assets to be newly-designated dependant funds, the sums or assets become newly-designated dependant funds and do so—
- (a) when the designation is made, or
  - (b) if later, immediately after the transfer,
- except that, if both the designation and transfer are made before 6 April 2015, the sums or assets become newly-designated dependant funds at the start of 6 April 2015.
- (3) If sub-paragraph (2) does not provide for the sums or assets to become newly-designated dependant funds, the sums or assets become dependant-designated funds and do so—
- (a) when the designation is made, or
  - (b) if later, immediately after the transfer.]

#### Textual Amendments

- F298** Sch. 28 paras. 22A-22D and cross-headings inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 4(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 4\(1\)](#)
- F299** Words in Sch. 28 paras. 22C, 22D substituted by S.I. 2006/207, reg. 14(3)(ea) (as inserted (6.4.2015) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 33\(3\)\(c\)\(4\)](#) (with [Sch. 1 para. 33\(5\)](#))

*[<sup>F300</sup>Drawdown pension year and basis amount for drawdown pension year]*

#### Textual Amendments

- F300** Sch. 28 para. 23 cross-heading substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 17\(4\)](#)

- 23 (1) [<sup>F301</sup>“Drawdown pension year”] means—
- (a) the period of 12 months beginning with the day on which the dependant first becomes entitled to [<sup>F302</sup>dependants' drawdown pension] in respect of the arrangement, and

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(b) each succeeding period of 12 months.

[<sup>F303</sup>This is subject to paragraph 24B.]

[<sup>F304</sup>(2) The drawdown pension year in which the dependant dies is the last drawdown pension year and ends immediately before the dependant's death.]

#### Textual Amendments

- F301** Words in Sch. 28 para. 23(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 17\(2\)\(a\)](#)
- F302** Words in Sch. 28 para. 23(1)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 17\(2\)\(b\)](#)
- F303** Words in Sch. 28 para. 23(1) inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 17\(2\)\(c\)](#)
- F304** Sch. 28 para. 23(2) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 17\(3\)](#)

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

- C27** Sch. 28 para. 23(1) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [30\(1\)\(2\)\(4\)](#)
- C28** Sch. 28 para. 23(1)(a) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 100\(2\)](#)
- C29** Sch. 28 para. 23(1)(a) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 97\(2\)](#)
- C30** Sch. 28 para. 23(2) modified (27.7.2010) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 3 para. 2\(1\)\(2\)\(d\)\(ii\)](#) (with [Sch. 2 para. 2\(1\)](#))

<sup>24</sup>[<sup>F305</sup>(A1) This paragraph applies in relation to drawdown pension years beginning on or before the dependant's 75th birthday.

(1) Subject as follows, the period of three drawdown pension years beginning with the first drawdown pension year, and each succeeding period of three drawdown pension years, is a “reference period”.

(1ZA) But the reference period in which the dependant reaches the age of 75 ends with the drawdown pension year in which the dependant reaches that age.]

[<sup>F306</sup>(1A) Sub-paragraph (1B) applies if, at any time during a reference period (“the current reference period”), the dependant notifies the scheme administrator that the dependant wishes a new reference period to begin on the next day that is an anniversary of the reference date in relation to the current reference period.

(1B) The scheme administrator may determine—

- (a) that the current reference period is to end immediately before that day (so that sub-paragraph (1) no longer applies), and
- (b) that (subject to [<sup>F307</sup>sub-paragraph (1ZA) and] any further operation of this sub-paragraph) the period of [<sup>F308</sup>three drawdown pension years] beginning with that day, and each succeeding period of [<sup>F308</sup>three drawdown pension years], is to be a reference period.

(1C) The first day of each reference period is, in relation to that period, “the reference date”.]

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- (2) For the first [<sup>F309</sup>drawdown 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 [<sup>F310</sup>dependant's drawdown 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 [<sup>F311</sup>drawdown 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 [<sup>F312</sup>dependant's drawdown pension fund]—
- (a) if there has been no recent annuity purchase<sup>F313</sup>, recent additional fund designation or recent pension sharing event], on the nominated date, and
  - (b) otherwise, immediately after the last annuity purchase<sup>F314</sup>, additional fund designation or pension sharing event],
- (but subject to sub-paragraph (5)).
- (5) On the occasion of each additional fund designation during [<sup>F315</sup>a drawdown pension year], the basis amount for [<sup>F316</sup>that drawdown pension year] is to be recalculated in accordance with sub-paragraph (6).
- (6) The basis amount for the [<sup>F317</sup>drawdown 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 [<sup>F318</sup>dependant's drawdown pension fund] immediately after the additional fund designation.
- <sup>F319</sup>(6A) But sub-paragraph (5) does not apply where the operation of that sub-paragraph in relation to an additional fund designation during a drawdown pension year would reduce the basis amount for that drawdown pension year.]
- (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 [<sup>F320</sup>dependant's drawdown pension fund].
- (8) “Additional fund designation” means the designation under the arrangement of further [<sup>F321</sup>sums or assets] held for the purposes of the arrangement as available for the payment of [<sup>F322</sup>dependants' drawdown pension] to the dependant.
- <sup>F323</sup>(8A) “Pension sharing event” means the coming into operation of a pension sharing order or provision relating to the sums and assets representing the [<sup>F324</sup>dependant's drawdown pension fund].]
- (9) An annuity purchase<sup>F325</sup>, additional fund designation or pension sharing event] 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 [<sup>F326</sup>drawdown pension year].

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(10) Paragraph 14 defines “relevant annuity”.

<sup>F327</sup>(11) . . . . .

#### Textual Amendments

- F305** Sch. 28 para. 24(1)(1ZA)(A1) substituted for Sch. 28 para. 24(1) (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(2\)](#)
- F306** Sch. 28 para. 24(1)-(1C) substituted (19.7.2007) for Sch. 28 para. 24(1) (with effect in accordance with Sch. 20 para. 24(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 para. 8\(3\)](#)
- F307** Words in Sch. 28 para. 24(1B)(b) inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(3\)\(a\)](#)
- F308** Words in Sch. 28 para. 24(1B)(b) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(3\)\(b\)](#)
- F309** Words in Sch. 28 para. 24(2) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(4\)\(a\)](#)
- F310** Words in Sch. 28 para. 24(2) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(4\)\(b\)](#)
- F311** Words in Sch. 28 para. 24(4) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(4\)\(a\)](#)
- F312** Words in Sch. 28 para. 24(4) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(4\)\(b\)](#)
- F313** Words in Sch. 28 para. 24(4)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 22\(2\)\(a\)](#), [64\(1\)](#)
- F314** Words in Sch. 28 para. 24(4)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 22\(2\)\(b\)](#), [64\(1\)](#)
- F315** Words in Sch. 28 para. 24(5) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(5\)\(a\)](#)
- F316** Words in Sch. 28 para. 24(5) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(5\)\(b\)](#)
- F317** Words in Sch. 28 para. 24(6) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(6\)\(a\)](#)
- F318** Words in Sch. 28 para. 24(6) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(6\)\(b\)](#)
- F319** Sch. 28 para. 24(6A) inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(7\)](#)
- F320** Words in Sch. 28 para. 24(7) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(8\)](#)
- F321** Words in Sch. 28 para. 24(8) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(9\)\(a\)](#)
- F322** Words in Sch. 28 para. 24(8) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(9\)\(b\)](#)
- F323** Sch. 28 para. 24(8A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 22\(3\)](#), [64\(1\)](#)
- F324** Words in Sch. 28 para. 24(8A) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(10\)](#)
- F325** Words in Sch. 28 para. 24(9) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 22\(4\)](#), [64\(1\)](#)
- F326** Words in Sch. 28 para. 24(9)(b) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 18\(11\)](#)
- F327** Sch. 28 para. 24(11) omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(iv\)\(4\)](#)

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

- C31** Sch. 28 para. 24 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), 3, 5(1)(3)
- C32** Sch. 28 para. 24 modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 98\(2\)\(b\)](#)
- C33** Sch. 28 para. 24(4) applied (with modifications) (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 98\(7\)](#)
- C34** Sch. 28 para. 24(7)-(8A) modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 98\(8\)](#)

<sup>F328</sup>24A(1) This paragraph applies in relation to drawdown pension years beginning after the dependant's 75th birthday.

- (2) For each drawdown pension year beginning after the dependant reached the age of 75, 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 drawdown 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 drawdown pension year as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, is the first day of that year).
- (4) On the occasion of each additional fund designation during a drawdown pension year, the basis amount of that drawdown pension year is to be recalculated in accordance with sub-paragraph (5).
- (5) The basis amount for the drawdown 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 drawdown pension fund immediately after the additional fund designation.
- (6) But sub-paragraph (4) does not apply where the operation of that sub-paragraph in relation to an additional fund designation during a drawdown pension year would reduce the basis amount for that drawdown pension year.
- (7) “Additional fund designation” has the meaning given by paragraph 24(8).
- (8) Paragraph 14 defines “relevant annuity”.

<sup>F329</sup>(9) .....

**Textual Amendments**

- F328** Sch. 28 paras. 24A, 24B inserted (with effect in accordance with Sch. 16 paras. 85, 99(3) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 19](#)
- F329** Sch. 28 para. 24A(9) omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(v\)\(4\)](#)

24B (1) This paragraph applies if the dependant has reached the age of 75.

- (2) Sub-paragraph (3) applies if, at any time during a drawdown pension year in respect of an arrangement (“the current drawdown pension year”), the dependant notifies the scheme administrator that the dependant wishes the drawdown pension year following the current drawdown pension year to begin on the day on which the next drawdown pension year in respect of another arrangement relating to the dependant

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under the pension scheme (including any arrangement relating to that person as a member of the scheme) will begin.

- (3) The scheme administrator may determine—
- (a) that the current drawdown pension year is to end immediately before that day, and
  - (b) that the period of 12 months beginning with that day, and each succeeding period of 12 months, is a drawdown pension year in respect of the arrangement.
- (4) The scheme administrator may not make a determination under this paragraph more than once in relation to the same arrangement.]

**Textual Amendments**

**F328** Sch. 28 paras. 24A, 24B inserted (with effect in accordance with Sch. 16 paras. 85, 99(3) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 19](#)

*Minimum income requirement*

<sup>F330</sup>24C .....

**Textual Amendments**

**F330** Sch. 28 paras. 24C-24G omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(vi\)\(4\)](#)

<sup>F330</sup>24D .....

**Textual Amendments**

**F330** Sch. 28 paras. 24C-24G omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(vi\)\(4\)](#)

*The relevant day*

<sup>F330</sup>24E .....

**Textual Amendments**

**F330** Sch. 28 paras. 24C-24G omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(vi\)\(4\)](#)

*Relevant contributions*

<sup>F330</sup>24F .....



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**Textual Amendments**  
**F330** Sch. 28 paras. 24C-24G omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(vi\)\(4\)](#)

*Valid and accepted declarations*

<sup>F330</sup>24G .....

**Textual Amendments**  
**F330** Sch. 28 paras. 24C-24G omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(e\)\(vi\)\(4\)](#)

*Dependant’s alternatively secured pension fund*

<sup>F331</sup>25 .....

**Textual Amendments**  
**F331** Sch. 28 paras. 25-27 omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 78\(d\)](#)

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

<sup>F331</sup>26 .....

**Textual Amendments**  
**F331** Sch. 28 paras. 25-27 omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 78\(d\)](#)

<sup>F331</sup>27 .....

**Textual Amendments**  
**F331** Sch. 28 paras. 25-27 omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 78\(d\)](#)

<sup>F332</sup>*Meaning of “nominee”*

**Textual Amendments**  
**F332** Sch. 28 paras. 27A-27K and cross-headings inserted (17.12.2014) (with effect in accordance with Sch. 2 para. 3(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 3\(1\)](#)

27A (1) “Nominee of the member” means an individual—



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- (a) nominated by the member, or
  - (b) nominated by the scheme administrator,  
who is not a dependant of the member, but see sub-paragraph (2).
- (2) In relation to any particular benefits under an arrangement, no individual nominated by the scheme administrator counts as a nominee of the member at any time when there is—
- (a) a dependant of the member, or
  - (b) an individual, or charity, nominated by the member in relation to the benefits.
- (3) The reference in sub-paragraph (2)(b) to being nominated in relation to particular benefits under an arrangement includes—
- (a) a reference to being nominated in relation to the scheme,
  - (b) a reference to being nominated in relation to arrangements that include the arrangement,
  - (c) a reference to being nominated in relation to the arrangement, and
  - (d) a reference to being nominated in relation to benefits that include the particular benefits.

### *<sup>F333</sup>Nominees' annuity*

#### **Textual Amendments**

**F333** Sch. 28 para. 27AA and cross-heading inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 3\(2\)](#) (with [Sch. 4 para. 3\(4\)](#))

- 27AA (1) For the purposes of this Part an annuity payable to a nominee is a nominees' annuity if—
- (a) either—
    - (i) it is purchased together with a lifetime annuity payable to the member and the member becomes entitled to that lifetime annuity on or after 6 April 2015, or
    - (ii) it is purchased after the member's death, the member dies on or after 3 December 2014 and the nominee becomes entitled to the annuity on or after 6 April 2015,
  - (b) it is payable by an insurance company, and
  - (c) it is payable until the nominee's death or until the earliest of the nominee's marrying, entering into a civil partnership or dying.
- (2) For the purposes of sub-paragraph (1)(a) a nominees' annuity is purchased together with a lifetime annuity if the nominees' annuity is related to the lifetime annuity.
- (3) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision in relation to cases in which a nominees' annuity payable to a person (“the original nominees' annuity”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied—
    - (i) towards the provision of another nominees' annuity (a “new nominees' annuity”) by the other insurance company, or
    - (ii) otherwise, or

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- (b) sums or assets are transferred to the relevant registered pension scheme.
- (4) The regulations may provide that—
- (a) in a case where a new nominees' annuity becomes payable, the new nominees' annuity 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 nominees' annuity, and
  - (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the sums, and the market value of the assets, transferred.
- (5) For the purposes of sub-paragraphs (3) and (4) a registered pension scheme is the relevant registered pension scheme if the original nominees' annuity was acquired using sums or assets held for the purposes of the pension scheme.]

*Nominees' drawdown pension*

- 27B “Nominees' drawdown pension” means—
- (a) a nominees' short-term annuity, or
  - (b) nominees' income withdrawal.

*Nominees' short-term annuity*

- 27C (1) For the purposes of this Part an annuity payable to a nominee is a nominees' short-term annuity if—
- (a) it is purchased by the application of sums or assets representing the whole or any part of the nominee's flexi-access drawdown fund in respect of an arrangement,
  - (b) it is payable by an insurance company,
  - (c) the nominee becomes entitled to it on or after 6 April 2015, and
  - (d) it is payable for a term which does not exceed five years and ends before the nominee dies.
- (2) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision in relation to cases in which a nominees' short-term annuity payable to a person (“the original nominees' short-term annuity”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied—
    - (i) towards the provision of another nominees' short-term annuity (a “new nominees' short-term annuity”) by the other insurance company, or
    - (ii) otherwise, or
  - (b) sums or assets are transferred to the relevant registered pension scheme.
- (3) The regulations may provide that—
- (a) in a case where a new nominees' short-term annuity becomes payable, the new nominees' short-term annuity 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 nominees' short-term annuity, and

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- (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the sums, and the market value of the assets, transferred.
- (4) For the purposes of sub-paragraphs (2) and (3) a registered pension scheme is the relevant registered pension scheme if the original nominees' short-term annuity was acquired using sums or assets held for the purposes of the pension scheme.

*Nominees' income withdrawal*

27D “Nominees' income withdrawal” means an amount (other than an annuity) which the nominee is entitled to be paid from the nominee's flexi-access drawdown fund in respect of an arrangement.

*Nominee's flexi-access drawdown fund*

- 27E (1) For the purposes of this Part a nominee's flexi-access drawdown fund in respect of an arrangement consists of such of the sums or assets held for the purposes of the arrangement as are newly-designated nominee funds.
- (2) For the purposes of this Part sums or assets held for the purposes of an arrangement are newly-designated nominee funds if—
- (a) they—
- (i) have, at any time on or after 6 April 2015, been designated under the arrangement as available for the payment of nominees' drawdown pension, and
- (ii) were, immediately before being so designated, unused drawdown funds or unused uncrystallised funds, or
- (b) they arise, or (directly or indirectly) derive, from newly-designated nominee funds under paragraph (a) or from sums or assets which so arise or derive.
- (3) Sums or assets held for the purposes of an arrangement after the member's death are unused drawdown funds if—
- (a) immediately before the member's death, they were held for the purposes of the arrangement and represented (whether alone or with other sums or assets) the member's flexi-access drawdown fund, or drawdown pension fund, in respect of the arrangement, or
- (b) they arise, or (directly or indirectly) derive, from unused drawdown funds under paragraph (a) or from sums or assets which so arise or [<sup>F334</sup>derive,]
- [<sup>F335</sup>and since the member's death they have not been designated as available for the payment of dependants' drawdown pension, not been designated as available for the payment of nominees' drawdown pension, not been applied towards the provision of a dependants' annuity, not been applied towards the provision of a nominees' annuity and not been applied towards the provision of a dependants' scheme pension.]
- (4) In the case of a cash balance arrangement, sums or assets held for the purposes of the arrangement after the member's death are unused uncrystallised funds if—
- (a) they represent the whole or any part of the sum that would have been available immediately before the member's death for the provision of benefits to or in respect of the member if entitlement had arisen immediately

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- before the member's death to all benefits under the arrangement to which entitlement had not previously arisen, and
- (b) since the member's death they have not been designated as available for the payment of dependants' drawdown pension, not been designated as available for the payment of nominees' drawdown pension, not been applied towards the provision of a dependants' annuity<sup>F336</sup>, not been applied towards the provision of a nominees' annuity] and not been applied towards the provision of a dependants' scheme pension.
- (5) In the case of any other money purchase arrangement, sums or assets held for the purposes of the arrangement after the member's death are unused uncrystallised funds if—
- (a) immediately before the member's death they were held for the purposes of the arrangement and at that time—
- (i) were not member-designated funds,
  - (ii) were not newly-designated funds,
  - (iii) had not been applied towards the provision of a scheme pension, and
  - (iv) had not been applied towards the provision of a dependants' scheme pension, or
- (b) they arise, or (directly or indirectly) derive, from unused uncrystallised funds under paragraph (a) or from sums or assets which so arise or derive,
- and since the member's death they have not been designated as available for the payment of dependants' drawdown pension, not been designated as available for the payment of nominees' drawdown pension, not been applied toward the provision of a dependants' annuity<sup>F337</sup>, not been applied towards the provision of a nominees' annuity] and not been applied toward the provision of a dependants' scheme pension.

#### Textual Amendments

- F334** Word in Sch. 28 para. 27E(3)(b) substituted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 13\(4\)](#)  
**(a)**
- F335** Words in Sch. 28 para. 27E(3) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 13\(4\)\(b\)](#)
- F336** Words in Sch. 28 para. 27E(4)(b) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 13\(5\)](#)
- F337** Words in Sch. 28 para. 27E(5) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 13\(5\)](#)

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

- C35** Sch. 28 paras. 27E(3)-(5) applied by 2003 c. 1, s. 646B(5) (as inserted (with effect in accordance with Sch. 4 para. 17(2) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 17\(1\)](#))
- C36** Sch. 28 paras. 27E(3)-(5) applied by 2003 c. 1, s. 646D(5) (as inserted (with effect in accordance with Sch. 4 para. 17(2) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 17\(1\)](#))
- C37** Sch. 28 para. 27E(4)(5) applied by 2003 c. 1, s. 646C(9) (as inserted (with effect in accordance with Sch. 4 para. 17(2) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 17\(1\)](#))
- C38** Sch. 28 para. 27E(4) applied (17.12.2014) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [s. 579CZA\(9\)](#) (as inserted (with effect in accordance with Sch. 2 para. 25(7)) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 25\(5\)](#))
- C39** Sch. 28 paras. 27E(5) applied (17.12.2014) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [s. 579CZA\(9\)](#) (as inserted (with effect in accordance with Sch. 2 para. 25(7)) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 25\(5\)](#))

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*Meaning of “successor”*

- 27F (1) “Successor of the member” means an individual—
- (a) nominated by a dependant of the member,
  - (b) nominated by a nominee of the member,
  - (c) nominated by a successor of the member, or
  - (d) nominated by the scheme administrator,
- but see sub-paragraph (2).
- (2) In relation to any particular benefits under an arrangement relating to a dependant, nominee or successor of the member (“the beneficiary”) in that capacity, no individual nominated by the scheme administrator counts as a successor of the member at any time after the beneficiary's death when there is an individual, or charity, nominated by the beneficiary in relation to the benefits.
- (3) A reference in sub-paragraph (2) to being nominated in relation to particular benefits under an arrangement includes—
- (a) a reference to being nominated in relation to the scheme,
  - (b) a reference to being nominated in relation to arrangements that include the arrangement,
  - (c) a reference to being nominated in relation to the arrangement, and
  - (d) a reference to being nominated in relation to benefits that include the particular benefits.
- (4) Where a successor of the member is an individual who is also a dependant of the member, the individual in the capacity of a successor of the member is to be treated as not also being a dependant of the member.

*<sup>F338</sup>Successors' annuity*

**Textual Amendments**

**F338** Sch. 28 para. 27FA and cross-heading inserted (26.3.2015) by Finance Act 2015 (c. 11), **Sch. 4 para. 3(3)** (with Sch. 4 para. 3(4))

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

**C40** Sch. 28 para. 27FA(2) applied by 2003 c. 1, s. 646D(6) (as inserted (with effect in accordance with Sch. 4 para. 17(2) of the amending Act) by Finance Act 2015 (c. 11), **Sch. 4 para. 17(1)**)

**C41** Sch. 28 para. 27FA(2) applied by 2003 c. 1, s. 646B(6) (as inserted (with effect in accordance with Sch. 4 para. 17(2) of the amending Act) by Finance Act 2015 (c. 11), **Sch. 4 para. 17(1)**)

- 27FA (1) For the purposes of this Part an annuity payable to a successor is a successors' annuity if—
- (a) the successor becomes entitled to it on or after 6 April 2015,
  - (b) it is payable by an insurance company,
  - (c) it is payable until the successor's death or until the earliest of the successor's marrying, entering into a civil partnership or dying,
  - (d) it is purchased after the death of a dependant, nominee or successor of the member (“the beneficiary”),
  - (e) it is purchased using undrawn funds, and
  - (f) the beneficiary dies on or after 3 December 2014.

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- (2) For the purposes of sub-paragraph (1)(e), sums or assets held for the purposes of an arrangement after the beneficiary's death are undrawn funds if—
- (a) immediately before the beneficiary's death, they were held for the purposes of the arrangement and, as the case may be, represented (alone or with other sums or assets) the beneficiary's—
    - (i) dependant's flexi-access drawdown fund,
    - (ii) dependant's drawdown pension fund,
    - (iii) nominee's flexi-access drawdown fund, or
    - (iv) successor's flexi-access drawdown fund,
 in respect of the arrangement, or
  - (b) they arise, or (directly or indirectly) derive, from undrawn funds under paragraph (a) or from sums or assets which so arise or derive.
- (3) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision in relation to cases in which a successors' annuity payable to a person (“the original successors' annuity”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied—
    - (i) towards the provision of another successors' annuity (a “new successors' annuity”) by the other insurance company, or
    - (ii) otherwise, or
  - (b) sums or assets are transferred to the relevant registered pension scheme.
- (4) The regulations may provide that—
- (a) in a case where a new successors' annuity becomes payable, the new successors' annuity 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 successors' annuity, and
  - (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the sums, and the market value of the assets, transferred.
- (5) For the purposes of sub-paragraphs (3) and (4) a registered pension scheme is the relevant registered pension scheme if the original successors' annuity was acquired using sums or assets held for the purposes of the pension scheme.]

*Successors' drawdown pension*

- 27G “Successors' drawdown pension” means—
- (a) a successors' short-term annuity, or
  - (b) successors' income withdrawal.

*Successors' short-term annuity*

- 27H (1) For the purposes of this Part an annuity payable to a successor is a successors' short-term annuity if—
- (a) it is purchased by the application of sums or assets representing the whole or any part of the successor's flexi-access drawdown fund in respect of an arrangement,

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- (b) it is payable by an insurance company,
  - (c) the successor becomes entitled to it on or after 6 April 2015, and
  - (d) it is payable for a term which does not exceed five years and ends before the successor dies.
- (2) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision in relation to cases in which a successors' short-term annuity payable to a person (“the original successors' short-term annuity”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied—
    - (i) towards the provision of another successors' short-term annuity (a “new successors' short-term annuity”) by the other insurance company, or
    - (ii) otherwise, or
  - (b) sums or assets are transferred to the relevant registered pension scheme.
- (3) The regulations may provide that—
- (a) in a case where a new successors' short-term annuity becomes payable, the new successors' short-term annuity 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 successors' short-term annuity, and
  - (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the sums, and the market value of the assets, transferred.
- (4) For the purposes of sub-paragraphs (2) and (3) a registered pension scheme is the relevant registered pension scheme if the original successors' short-term annuity was acquired using sums or assets held for the purposes of the pension scheme.

*Successors' income withdrawal*

27J “Successors' income withdrawal” means an amount (other than an annuity) which the successor is entitled to be paid from the successor's flexi-access drawdown fund in respect of an arrangement.

*Successor's flexi-access drawdown fund*

- 27K (1) For the purposes of this Part a successor's flexi-access drawdown fund in respect of an arrangement consists of such of the sums or assets held for the purposes of the arrangement as are newly-designated successor funds.
- (2) For the purposes of this Part sums or assets held for the purposes of an arrangement are newly-designated successor funds if—
- (a) they—
    - (i) have, at any time on or after 6 April 2015, been designated under the arrangement as available for the payment of successors' drawdown pension, and
    - (ii) were, immediately before being so designated, unused drawdown funds of the same deceased dependant, nominee or successor of the member, or

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- (b) they arise, or (directly or indirectly) derive, from newly-designated successor funds under paragraph (a) or from sums or assets which so arise or derive.
- (3) Sums or assets held for the purposes of an arrangement after the death of a dependant, nominee or successor (“the beneficiary”) are unused drawdown funds of the beneficiary's if—
- (a) immediately before the beneficiary's death, they were held for the purposes of the arrangement and represented (whether alone or with other sums or assets) the beneficiary's—
- (i) dependant's flexi-access drawdown fund,
  - (ii) dependant's drawdown pension fund,
  - (iii) nominee's flexi-access drawdown fund, or
  - (iv) successor's flexi-access drawdown fund,
- in respect of the arrangement, or
- (b) they arise, or (directly or indirectly) derive, from unused drawdown funds of the beneficiary's under paragraph (a) or from sums or assets which so arise or [<sup>F339</sup>derive,]]
- [<sup>F340</sup>and since the beneficiary's death they have not been designated as available for the payment of successors' drawdown pension and not been applied towards the provision of a successors' annuity.]

#### Textual Amendments

- F339** Word in Sch. 28 para. 27K(3)(b) substituted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 13\(6\)\(a\)](#)
- F340** Words in Sch. 28 para. 27K(3) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 13\(6\)\(b\)](#)

## SCHEDULE 29

Sections 166 and 168

### REGISTERED PENSION SCHEMES: AUTHORISED LUMP SUMS—SUPPLEMENTARY

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

- C42** Sch. 29 modified (6.4.2006) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\) Regulations 2006 \(S.I. 2006/207\)](#), regs. 1(1), **15** (as amended: (13/8/2009) by [S.I. 2009/2047](#), regs. 1(1), **2-10**; (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 2012/1795](#), regs. 1(1), **6**; (with effect in accordance with [Sch. 1 para. 96\(16\)\(a\)](#) of the amending Act) by [2014 c. 30](#), [Sch. 1 para. 96\(3\)-\(14\)](#) (with [Sch. 1 para. 96\(16\)\(b\)](#)); and (for the tax year 2024-25 and subsequent tax years) by [2024 c. 3](#), [Sch. 9 paras. 62\(6\), 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4))
- C43** Sch. 29 modified by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), [art. 23C](#) (as inserted (1.6.2009) by [S.I. 2009/1172](#), arts. 1, 3 (as amended (with effect in accordance with [s. 42\(9\)](#) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 42\(5\)](#); and as amended by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 72\(1\)](#) (with [Sch. 1 para. 72\(2\)\(b\)](#)))



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## PART 1

### LUMP SUM RULE

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

- C44** Sch. 29 Pt. 1 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **25(1)(2)(4)**
- C45** Sch. 29 Pt. 1 applied (with modifications) (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **11**

#### *Pension commencement lump sum*

- 1 (1) For the purposes of this Part a lump sum is a pension commencement lump sum if—
- <sup>F341</sup>(a) .....
  - <sup>F342</sup>(aa) the member becomes entitled to it in connection with becoming entitled to a relevant pension (or dies after becoming entitled to it but before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to it),
  - (b) it is paid when all or part of the member's <sup>F343</sup>lump sum allowance is available, and all or part of the member's lump sum and death benefit allowance is available (see paragraph 12A),]
  - (c) it is paid within the period [<sup>F344</sup>beginning six months before, and ending one year after,] the day on which the member becomes entitled to it [<sup>F345</sup>, and]
  - (d) it is paid when the member has reached normal minimum pension age (or the ill-health condition is satisfied),
  - <sup>F346</sup>(e) ..... <sup>F347</sup> ...
  - <sup>F347</sup>(f) .....
- (2) But if a lump sum falling within sub-paragraph (1) exceeds the permitted maximum, the excess is not a pension commencement lump sum.
- (3) A pension is a relevant pension if—
- (a) it is income withdrawal, a lifetime annuity or a scheme pension, and
  - (b) the member becomes entitled to it <sup>F348</sup> ... [<sup>F349</sup>under the pension scheme] under which the member becomes entitled to the lump sum.
- <sup>F350</sup>(3A) .....
- <sup>F351</sup>(4) .....
- <sup>F352</sup>(4A) .....
- (5) Paragraph 2 defines the permitted maximum.
- <sup>F353</sup>(6) .....

#### Textual Amendments

- F341** Sch. 29 para. 1(1)(a) omitted (with effect in accordance with Sch. 16 paras. 85, 101 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 24\(2\)\(a\)](#)

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- F342** Sch. 29 para. 1(1)(a)(aa) substituted (retrospective to 6.4.2006) for Sch. 29 para. 1(1)(a) by Finance Act 2007 (c. 11), **Sch. 20 paras. 11(2)(a), 24(3)**
- F343** Words in Sch. 29 para. 1(1)(b) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), **Sch. 9 paras. 26(2)(a)(i), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F344** Words in Sch. 29 para. 1(1)(c) substituted (retrospective to 6.4.2006) by Finance Act 2007 (c. 11), **Sch. 20 paras. 11(2)(b), 24(3)**
- F345** Word in Sch. 29 para. 1(1)(c) inserted (24.5.2024) by Finance (No. 2) Act 2024 (c. 12), **s. 24(6)(a)**
- F346** Words in Sch. 29 para. 1(1)(e) omitted (retrospective to 6.4.2006) by virtue of Finance Act 2007 (c. 11), **Sch. 20 paras. 11(2)(c), 24(3)**
- F347** Sch. 29 para. 1(1)(f) and preceding word omitted (24.5.2024) by virtue of Finance (No. 2) Act 2024 (c. 12), **s. 24(6)(b)**
- F348** Words in Sch. 29 para. 1(3)(b) omitted (with effect in accordance with Sch. 16 paras. 85, 101 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 16 para. 79(2)**
- F349** Words in Sch. 29 para. 1(3)(b) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 34(2), 64(1)**
- F350** Sch. 29 para. 1(3A) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 26(2)(b), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F351** Sch. 29 para. 1(4) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 26(2)(b), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F352** Sch. 29 para. 1(4A) omitted (24.5.2024) by virtue of Finance (No. 2) Act 2024 (c. 12), **s. 24(6)(c)**
- F353** Sch. 29 para. 1(6) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 26(2)(b), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

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

- C46** Sch. 29 para. 1 modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), **28**
- C47** Sch. 29 para. 1 modified (27.7.2010) by Finance (No. 2) Act 2010 (c. 31), **Sch. 3 para. 7**
- C48** Sch. 29 para. 1(1) modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), **18**

**F354** 1A .....

**Textual Amendments**

- F354** Sch. 29 para. 1A omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 26(3), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**F355** 1B .....

**Textual Amendments**

- F355** Sch. 29 para. 1B omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 26(3), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**F356** 2 In paragraph 1 “the permitted maximum”, in relation to a lump sum, means the lowest of the following amounts—

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- (a) the applicable amount in relation to the relevant pension (see paragraphs 2A to 2D);
- (b) so much of the member’s lump sum allowance as is available on the individual becoming entitled to the lump sum (see paragraph 12A);
- (c) so much of the member’s lump sum and death benefit allowance as is available on the individual becoming entitled to the lump sum (see paragraph 12A).]

#### Textual Amendments

**F356** Sch. 29 para. 2 substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 26\(4\)](#), [124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), [regs. 1, 4](#))

<sup>F357</sup>2A(1) This paragraph defines “the applicable amount” in relation to a relevant pension in a case in which the relevant pension is income withdrawal.

- (2) The applicable amount is one third of the scheme pension capital value.
- (3) The scheme pension capital value is (subject to sub-paragraph (4)) the aggregate of—
  - (a) the sums designated as available for the payment of drawdown pension on that occasion, and
  - (b) the market value of the assets so designated.
- (4) There is to be deducted from the amount determined under sub-paragraph (3) so much (if any) of the sums and assets designated as mentioned in sub-paragraph (3) (a) or (b) as represent rights attributable to a disqualifying pension credit.

#### Textual Amendments

**F357** Sch. 29 paras. 2A-2D substituted for Sch. 29 para. 3 (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 26\(5\)](#), [124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), [regs. 1, 4](#))

2B (1) This paragraph defines “the applicable amount” in relation to a relevant pension in a case in which the relevant pension is a lifetime annuity.

- (2) The applicable amount is one third of the annuity purchase price.
- (3) The annuity purchase price is (subject to sub-paragraph (4)) the aggregate of—
  - (a) such of the sums held for the purposes of the pension scheme, and
  - (b) the market value of such of the assets held for the purposes of the pension scheme,as are applied in (or in connection with) the purchase of the lifetime annuity and any related dependants’ annuity and any related nominees’ annuity.
- (4) There is to be deducted from the amount determined under sub-paragraph (3)—
  - (a) if the sums or assets applied in (or in connection with) the purchase of the annuity or any related dependants’ annuity or any related nominees’ annuity consist of, or include, sums or assets representing the whole or part of the member’s drawdown pension fund or of the member’s flexi-access drawdown fund, the aggregate of those sums and the market value of those assets, and

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- (b) in any case, so much (if any) of the sums or assets applied in (or in connection with) the purchase of the annuity or any related dependants' annuity or any related nominees' annuity as represents rights which are attributable to a disqualifying pension credit.

#### Textual Amendments

**F357** Sch. 29 paras. 2A-2D substituted for Sch. 29 para. 3 (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 26\(5\)](#), [124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

- 2C (1) This paragraph defines “the applicable amount” in relation to a relevant pension in a case in which the relevant pension is—

- (a) a scheme pension under a defined benefits arrangement, or  
 (b) a collective money purchase arrangement.

- (2) The applicable amount is (subject to sub-paragraph (3))—

$$A+(B\times C)D$$

where—

A is the amount of the lump sum;

B is the relevant revaluation factor (see section 276);

C is the amount of the pension which will be payable to the member in the period of 12 months beginning with the day on which the member becomes entitled to the pension (assuming that it remains payable throughout that period at the rate at which it is payable on that day);

D is so much (if any) of A or C as represents rights which are attributable to a disqualifying pension credit.

- (3) In determining C for the purposes of subsection (2) in a case in which the pension is under a public service pension scheme, any abatement of the pension is to be left out of account.

#### Textual Amendments

**F357** Sch. 29 paras. 2A-2D substituted for Sch. 29 para. 3 (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 26\(5\)](#), [124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

- 2D (1) This paragraph defines “the applicable amount” in relation to a relevant pension in a case in which the relevant pension is a scheme pension under a money purchase arrangement that is not a collective money purchase arrangement.

- (2) The applicable amount is one third of the scheme pension purchase price.

- (3) The scheme pension purchase price is (subject to sub-paragraph (4)) the aggregate of—

- (a) such of the sums held for the purposes of the pension scheme, and  
 (b) the market value of such of the assets held for the purposes of the pension scheme,

as are applied in (or in connection with) the purchase or provision of the scheme pension and any related dependants' scheme pension.

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- (4) There is to be deducted from the amount determined under sub-paragraph (3)—
- (a) if the scheme pension is funded (in whole or in part) by the application of sums or assets representing the whole or part of the member’s drawdown pension fund or of the member’s flexi-access drawdown fund, the aggregate of those sums and the market value of those assets, and
  - (b) in any case, so much (if any) of the sums and assets referred to in sub-paragraph (3)(a) and (b) as represent rights which are attributable to a disqualifying pension credit.]

**Textual Amendments**

**F357** Sch. 29 paras. 2A-2D substituted for Sch. 29 para. 3 (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 26(5), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**F357**3 .....

**Textual Amendments**

**F357** Sch. 29 paras. 2A-2D substituted for Sch. 29 para. 3 (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 26(5), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

*[<sup>F358</sup>Pension commencement lump sums: anti-avoidance]*

**Textual Amendments**

**F358** Sch. 29 para. 3A cross-heading inserted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 26(6), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

<sup>F359</sup>3A(1) Where this paragraph applies in relation to a pension commencement lump sum paid to the member, the pension scheme is to be treated as making to the member an unauthorised payment of the appropriate amount.

(2) Subject to <sup>F360</sup>sub-paragraphs (3) to (4A)], this paragraph applies in relation to a pension commencement lump sum if—

- (a) because of the lump sum, the amount of the contributions paid by or on behalf of, or in respect of, the member to the pension scheme, or to any other registered pension scheme, is significantly greater than it otherwise would be, and
- (b) the member envisaged at the relevant time that that would be so.

(3) This paragraph does not apply in relation to any lump sum paid to the member on any day if the amount of the lump sum, when added to any other pension commencement lump sum paid to the member within the period of 12 months ending with that day, does not exceed <sup>F361</sup>£7,500].

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- (4) This paragraph does not apply if the amount by which the contributions paid as mentioned in sub-paragraph (2)(a) is greater than it otherwise would be because of the lump sum does not exceed 30% of the amount of the lump sum.
- [ This paragraph does not apply if—
- <sup>F362</sup>(4A) (a) the member has reached the age of 75 when the contributions are paid as mentioned in sub-paragraph (2)(a), and
- (b) the contributions are not paid by an employer of the member.]
- [<sup>F363</sup>(5) “The appropriate amount” is [<sup>F364</sup>the amount of the lump sum].
- (6) “The relevant time” is—
- (a) if paragraph (a) of sub-paragraph (2) is satisfied before the lump sum is paid, the time when that paragraph is first satisfied, and
- (b) otherwise, the time when the lump sum is paid.]]

#### Textual Amendments

- F359** Sch. 29 para. 3A inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 159\(1\)\(2\)](#)
- F360** Words in Sch. 29 para. 3A(2) substituted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 16 para. 27\(2\)](#)
- F361** Sum in Sch. 29 para. 3A(3) substituted (17.12.2014) (with effect in accordance with Sch. 1 para. 70(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\), Sch. 1 para. 70\(1\)](#)
- F362** Sch. 29 para. 3A(4A) inserted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 16 para. 27\(3\)](#)
- F363** Sch. 29 para. 3A(5) substituted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 16 para. 27\(4\)](#)
- F364** Words in Sch. 29 para. 3A(5) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\), Sch. 9 paras. 26\(7\), 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

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

- C49** Sch. 29 para. 3A excluded (N.I.) (1.4.2015) by [The Teachers Pension Scheme Regulations \(Northern Ireland\) 2014 \(S.R. 2014/310\), regs. 1, 167\(1\)](#)
- C50** Sch. 29 para. 3A excluded (E.W.) (1.4.2015) by [The Teachers' Pension Scheme Regulations 2014 \(S.I. 2014/512\), reg. 167\(1\)](#) (with reg. 183)

- [<sup>F365</sup>3B(1) Sub-paragraph (2) applies if—
- (a) sums or assets held for the purposes of, or representing accrued rights under, a money purchase arrangement relating to the member under a registered pension scheme (“member money purchase funds”) are subject to a relevant surrender or a relevant transfer,
- (b) the sole or main purpose of the relevant surrender or relevant transfer is to increase the applicable amount for the purposes of paragraph 2 on the member becoming entitled to a scheme pension, and
- (c) the member becomes entitled to a scheme pension under a relevant defined benefits arrangement.
- (2) The pension scheme under which the relevant defined benefits arrangement is an arrangement is to be treated as making an unauthorised payment to the member of the amount by which—

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- (a) the applicable amount in relation to the relevant defined benefits arrangement (as determined under paragraph 2C), exceeds
  - (b) what would be the applicable amount (as determined under paragraph 2D) if the arrangement were a money purchase arrangement.
- (3) For the purposes of sub-paragraph (1)—
- (a) member money purchase funds are subject to a “relevant surrender” if they are surrendered and, in consequence of the surrender, there is a corresponding increase in the sums or assets held for the purposes of, or representing rights under, a defined benefits arrangement relating to the member under the pension scheme (or such an arrangement is established), and
  - (b) member money purchase funds are subject to a “relevant transfer” if they are transferred so as to become held for the purposes of, or to represent rights under, a defined benefits arrangement relating to the member under any other registered pension scheme.
- (4) In this paragraph “relevant defined benefits arrangement” means—
- (a) the defined benefits arrangement mentioned in paragraph (a) or (b) of sub-paragraph (3), or
  - (b) any other defined benefits arrangement relating to the member (under the pension scheme or any other registered pension scheme) in the case of which any of the sums or assets held for the purposes of, or representing accrued rights under, the arrangement directly or indirectly represent sums or assets previously held for the purposes of, or representing accrued rights under, the defined benefits arrangement so mentioned.]

#### Textual Amendments

**F365** Sch. 29 para. 3B inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 26\(8\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

#### <sup>F366</sup>Pension commencement excess lump sum

#### Textual Amendments

**F366** Sch. 29 para. 3C and cross-heading inserted ( for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 26\(9\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

- 3C (1) For the purposes of this Part a lump sum is a pension commencement excess lump sum if—
- (a) the member becomes entitled to it in connection with becoming entitled to a relevant pension (or dies after becoming entitled to it but before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to it);
  - (b) it is paid when none of the member’s lump sum allowance [<sup>F367</sup>, or when none of the individual’s lump sum and death benefit allowance,] is available (see paragraph 12A);



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- (c) it is paid within the period beginning six months before, and ending one year after, the day on which the member becomes entitled to it;
- (d) it does not reduce the rate of payment of any pension to which the member has become (actually) entitled, or extinguish the member's entitlement to payment of any such pension;
- (e) it is paid when the member has reached normal minimum pension age (or the ill-health condition is met); and
- (f) it is not an excluded lump sum (see sub-paragraph (4)).

<sup>F368</sup>(2) .....

<sup>F369</sup>(3) .....

(4) A lump sum is an “excluded lump sum” if—

- (a) it would, apart from this paragraph, be permitted to be paid under the lump sum rule in section 166, <sup>F370</sup>...

<sup>F370</sup>(b) .....

(5) In determining for the purposes of this paragraph—

- (a) whether any of a member's lump sum allowance [<sup>F371</sup>or lump sum and death benefit allowance] is available on the payment of a lump sum, <sup>F372</sup>...

<sup>F372</sup>(b) .....

the member is treated as having already become entitled to any pension commencement lump sum that is paid to the member in connection with becoming entitled to the relevant pension.]

#### Textual Amendments

**F367** Words in Sch. 29 para. 3C(1)(b) inserted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, **3(10)(a)**

**F368** Sch. 29 para. 3C(2) omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, **3(10)(b)**

**F369** Sch. 29 para. 3C(3) omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, **3(10)(b)**

**F370** Sch. 29 para. 3C(4)(b) and preceding word omitted (24.5.2024) by virtue of Finance (No. 2) Act 2024 (c. 12), s. **24(7)**

**F371** Words in Sch. 29 para. 3C(5)(a) inserted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, **3(10)(c)(i)**

**F372** Sch. 29 para. 3C(5)(b) and word omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, **3(10)(c)(ii)**

#### *Serious ill-health lump sum*

- 4 (1) For the purposes of this Part a lump sum is a serious ill-health lump sum if—



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(a) before it is paid the scheme administrator has received evidence from a registered medical practitioner that the member is expected to live for less than one year, [<sup>F373</sup>and]

<sup>F374</sup>(b) .....

[<sup>F375</sup>(ca) either—

(i) it is paid in respect of an uncrystallised arrangement, and it extinguishes the member's entitlement to benefits under the arrangement, or

(ii) it is paid in respect of uncrystallised rights of the member under an arrangement other than an uncrystallised arrangement, and it extinguishes the member's uncrystallised rights under the arrangement.]

<sup>F376</sup>(e) .....

(2) An uncrystallised arrangement is an arrangement [<sup>F377</sup>under which the member has not previously become entitled to any pension or lump sum].

[<sup>F378</sup>(2A) In subsection (1)(ca)(ii) “uncrystallised rights”, in relation to the member, means rights of the member that are uncrystallised rights as defined by section 212(1) and (2).]

<sup>F379</sup>(3) .....

#### Textual Amendments

**F373** Word in Sch. 29 para. 4(1)(a) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 27\(2\)\(a\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F374** Sch. 29 para. 4(1)(b) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 27\(2\)\(b\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F375** Sch. 29 para. 4(1)(ca) substituted for Sch. 29 para. 4(1)(c)(d) (with effect in accordance with Sch. 5 para. 4 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 5 para. 1\(4\)\(b\)](#)

**F376** Sch. 29 para. 4(1)(e) and word omitted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 28\(2\)\(b\)](#)

**F377** Words in Sch. 29 para. 4(2) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 27\(3\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F378** Sch. 29 para. 4(2A) inserted (with effect in accordance with Sch. 5 para. 4 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 5 para. 1\(5\)](#)

**F379** Sch. 29 para. 4(3) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 27\(4\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

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

**C51** Sch. 29 para. 4(1) modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), [Sch. 3 Pt. 1](#)

**C52** Sch. 29 para. 4(2) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [33\(1\)-\(3\)](#)

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*<sup>F380</sup>Uncrystallised funds pension lump sum*

**Textual Amendments**  
**F380** Sch. 29 para. 4A and cross-heading inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 57](#)

- 4A (1) For the purposes of this Part a lump sum is an uncrystallised funds pension lump sum if—
- (a) it is paid on or after 6 April 2015 in respect of a money purchase arrangement [<sup>F381</sup>that is not a collective money purchase arrangement],
  - <sup>F382</sup>(b) .....
  - (c) it is paid when the member has reached normal minimum pension age (or the ill-health condition is met),
  - (d) it is not a pension commencement lump sum,
  - (e) it is not a lump sum that, for the purposes of Part 9 of ITEPA 2003 (pension income), is treated by regulations under section 164(1)(f) and (2) as a trivial commutation lump sum paid to the member, [<sup>F383</sup>and]
  - (f) immediately before the member becomes entitled to it, the sums or assets that are to be used to provide it—
    - (i) represent rights of the member under the scheme that are uncrystallised rights as defined by section 212(1) and (2), but
    - (ii) do not to any extent represent rights attributable to a disqualifying pension credit, <sup>F384</sup> ...
  - <sup>F385</sup>(g) .....
- <sup>F386</sup>(2) .....
- <sup>F387</sup>(3) .....
- <sup>F387</sup>(4) .....
- <sup>F387</sup>(5) .....
- <sup>F387</sup>(6) .....
- <sup>F388</sup>(7) .....

[ For further provision about circumstances in which a lump sum is not an <sup>F389</sup>(8) uncrystallised funds pension lump sum, see the following provisions of Part 2 of Schedule 36 (transitional provision and saving: pre-commencement rights: enhancement of allowances)—

- (a) paragraph 7(8) (enhancement of allowances: primary protection);
- (b) paragraph 12(3H) (enhancement of allowances: enhanced protection);
- (c) paragraph 18(7) (enhancement of allowances: pre-commencement pension credits);
- (d) paragraph 20A(8) (pension credits from previously crystallised rights);
- (e) paragraph 20B(8) (individuals who are not always relevant UK individuals);
- (f) paragraph 20E(9) (transfers from recognised overseas pension schemes).]

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### Textual Amendments

- F381** Words in Sch. 29 para. 4A(1)(a) inserted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 21(5), 25(1); S.I. 2022/874, reg. 2
- F382** Sch. 29 para. 4A(1)(b) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 28(2), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F383** Word in Sch. 29 para. 4A(1)(e) inserted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 63(2)(a), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F384** Word in Sch. 29 para. 4A(1)(f) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 63(2)(b), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F385** Sch. 29 para. 4A(1)(g) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 63(2)(c), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F386** Sch. 29 para. 4A(2) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 28(3), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F387** Sch. 29 para. 4A(3)-(6) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 63(3), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F388** Sch. 29 para. 4A(7) omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, 3(11)
- F389** Sch. 29 para. 4A(8) inserted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 63(4), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

### *Short service refund lump sum*

- 5 (1) For the purposes of this Part a lump sum is a short service refund lump sum if—
- (a) the pension scheme is an occupational pension scheme,
  - (b) the member's pensionable service was terminated before normal pension age but the member is not entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (c. 48) (basic principle as to short service benefit),
  - <sup>[F390]</sup>(c) the member has not previously become entitled to any pension or lump sum under the pension scheme,
  - (d) it extinguishes the member's entitlement to benefits under the pension scheme <sup>[F391]</sup>(except to the extent that it is prohibited from being extinguished by the payment of a lump sum by reason of the operation of provision made by or under any enactment)], and
  - (e) it is paid when the member has not reached the age of 75.
- (2) But if a lump sum falling within sub-paragraph (1) exceeds an amount equal to the aggregate of the member's contributions under the pension scheme, the excess is not a short service refund lump sum.

- <sup>[F392]</sup>(2A) In sub-paragraph (2) the reference to the member's contributions includes—
- (a) any amount paid under section 7 of the Social Security Act 1986 (incentive payments to schemes becoming contracted-out between 1986 and 1993),

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- (b) any amount paid by the Commissioners for Her Majesty's Revenue and Customs under section 42A(3) of the Pension Schemes Act 1993 or section 38A(3) of the Pension Schemes (Northern Ireland) Act 1993 (rebates), and
  - (c) any amount recovered by the member's employer under regulations falling within sub-paragraph (2B) in respect of minimum payments made to the scheme in relation to any period before 6 April 2012.
- (2B) Those regulations are regulations which were made under—
- (a) section 8(3) of the Pension Schemes Act 1993 (recovery of minimum payments), or
  - (b) section 4(3) of the Pension Schemes (Northern Ireland) Act 1993 (corresponding provision for Northern Ireland).]
- (3) “Pensionable service”, “normal pension age” and “short service benefit” have the same meaning as in the Pension Schemes Act 1993 (see section 181 (1) of that Act).

#### Textual Amendments

**F390** Sch. 29 para. 5(1)(c) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 29\(2\), 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), [regs. 1, 4](#))

**F391** Words in Sch. 29 para. 5(1)(d) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [s. 161\(2\)](#), [Sch. 23 para. 27](#)

**F392** Sch. 29 para. 5(2A)(2B) inserted (retrospective to 6.4.2013) by [Finance Act 2013 \(c. 29\)](#), [s. 52\(8\)\(10\)](#)

#### *Refund of excess contributions lump sum*

- 6 (1) A lump sum is a refund of excess contributions lump sum if—
- (a) it is paid in respect of a tax year in which the excess contributions condition is met in respect of the member, and
  - (b) it is paid before the end of the period of six years beginning with the last day of the tax year in respect of which it is paid.
- (2) But if a lump sum falling within sub-paragraph (1) exceeds the member’s available excess contributions allowance for the tax year in respect of which it is paid, the excess is not a refund of excess contributions lump sum.
- (3) The excess contributions condition is met in respect of a member and a tax year if the amount of relievable pension contributions (see section 188(2) and (3)) paid in respect of the member in the tax year exceeds the maximum amount of relief to which the member is entitled for the tax year under section 190 (annual limit for relief).
- (4) If no refund of excess contributions lump sum has been paid to the member in respect of a tax year (by any registered pension scheme), the available excess contributions allowance for that tax year is [<sup>F393</sup>(subject to sub-paragraph (7))]—

## RPC – MAR

- (5) If one or more refund of excess contributions lump sums have been paid to the member in respect of a tax year, the available excess contributions allowance for that tax year is [<sup>F394</sup>(subject to sub-paragraph (7))]—

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## RPC – MAR – ALS

or, if the amount resulting from that calculation is negative, is nil.

(6) In this paragraph—

RPC is the amount of the relievable pension contributions paid in respect of the member in the tax year,

MAR is the maximum amount of relief to which the member is entitled for the tax year under section 190, and

ALS is the aggregate of the refund of excess contributions lump sums previously paid to the member in respect of the tax year.

[<sup>F395</sup>(7) If any relief given in accordance with section 192(1) in relation to any contribution included in RPC is in excess of the maximum amount of relief to which the member is entitled under section 190, RPC is to be taken to be reduced by the amount of that excess.]

### Textual Amendments

**F393** Words in Sch. 29 para. 6(4) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 28\(2\)](#)

**F394** Words in Sch. 29 para. 6(5) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 28\(2\)](#)

**F395** Sch. 29 para. 6(7) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 28\(3\)](#)

### *Trivial commutation lump sum*

- 7 (1) For the purposes of this Part a lump sum is a trivial commutation lump sum if—
- (a) it is paid when no trivial commutation lump sum has previously been paid to the member (by any registered pension scheme) or, if such a lump sum has previously been paid, before the end of the commutation period,
  - [<sup>F396</sup>(aa) it is paid in respect of a defined benefits arrangement, [<sup>F397</sup>or in respect of a collective money purchase arrangement,][<sup>F398</sup>or in respect of a scheme pension payable by the scheme administrator to which the member has become entitled under a money purchase arrangement [<sup>F399</sup>that is not a collective money purchase arrangement] (an “in-payment money-purchase in-house scheme pension”), [<sup>F400</sup>or in respect of any combination of such arrangements and scheme pensions],]
  - (b) on the nominated date, the value of the member’s pension rights does not exceed the commutation limit,
  - (c) it is paid when all or part of the member’s [<sup>F401</sup>lump sum allowance is available (see paragraph 12A)],
  - (d) it extinguishes [<sup>F402</sup>any entitlement to defined benefits [<sup>F403</sup>, and any entitlement to collective money purchase benefits,][<sup>F404</sup>, and any entitlement to payments of in-payment money-purchase in-house scheme pensions,] that the member has] under the pension scheme, and

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- (e) it is paid when the member has reached [<sup>F405</sup>normal minimum pension age (or the ill-health condition is met)]<sup>F406</sup> ....
- (2) The commutation period is the period beginning with the day on which a trivial commutation lump sum is first paid to the member and ending 12 months after that day.
- (3) The nominated date is the day within the period of three months ending with the first day of the commutation period nominated by the member (or, if no date is nominated, is the first day of the commutation period).
- (4) The commutation limit is [<sup>F407</sup>£30,000].
- <sup>F408</sup>(4A) The Treasury may by order substitute for the amount for the time being specified in sub-paragraph (4) such larger amount as is specified in the order.]
- (5) The value of the member's pension rights on the nominated date is the aggregate of—
- (a) the value of the member's relevant crystallised pension rights on that date (calculated in accordance with paragraph 8), and
  - (b) the value of the member's uncrystallised rights on that date (calculated in accordance with paragraph 9).

#### Textual Amendments

- F396** Sch. 29 para. 7(1)(aa) inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 71(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 71\(1\)\(a\)](#)
- F397** Words in Sch. 29 para. 7(1)(aa) inserted (1.8.2022) by [Finance Act 2021 \(c. 26\)](#), [Sch. 5 paras. 21\(6\)\(a\)\(i\)](#), 25(1); S.I. 2022/874, reg. 2
- F398** Words in Sch. 29 para. 7(1)(aa) inserted (with effect in accordance with Sch. 5 para. 9 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 5 para. 7\(2\)](#)
- F399** Words in Sch. 29 para. 7(1)(aa) inserted (1.8.2022) by [Finance Act 2021 \(c. 26\)](#), [Sch. 5 paras. 21\(6\)\(a\)\(ii\)](#), 25(1); S.I. 2022/874, reg. 2
- F400** Words in Sch. 29 para. 7(1)(aa) substituted (1.8.2022) by [Finance Act 2021 \(c. 26\)](#), [Sch. 5 paras. 21\(6\)\(a\)\(iii\)](#), 25(1); S.I. 2022/874, reg. 2
- F401** Words in Sch. 29 para. 7(1)(c) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 30\(1\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by S.I. 2024/356, regs. 1, 4)
- F402** Words in Sch. 29 para. 7(1)(d) substituted (17.12.2014) (with effect in accordance with Sch. 1 para. 71(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 71\(1\)\(b\)](#)
- F403** Words in Sch. 29 para. 7(1)(d) inserted (1.8.2022) by [Finance Act 2021 \(c. 26\)](#), [Sch. 5 paras. 21\(6\)\(b\)](#), 25(1); S.I. 2022/874, reg. 2
- F404** Words in Sch. 29 para. 7(1)(d) inserted (with effect in accordance with Sch. 5 para. 9 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 5 para. 7\(3\)](#)
- F405** Words in Sch. 29 para. 7(1)(e) substituted (17.12.2014) (with effect in accordance with Sch. 1 para. 71(2) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 71\(1\)\(c\)](#)
- F406** Words in Sch. 29 para. 7(1)(e) omitted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 29](#)
- F407** Sum in Sch. 29 para. 7(4) substituted (with effect in accordance with s. 42(8) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 42\(1\)](#)
- F408** Sch. 29 para. 7(4A) inserted (with effect in accordance with Sch. 18 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 18 para. 4\(3\)](#)



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

**C53** Sch. 29 para. 7(1)(a)(b) excluded (6.4.2023) by The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 (S.I. 2023/113), regs. 1(2), **25(2)** (with reg. 1(3))

8 (1) The value of the member’s relevant crystallised pension rights on the nominated date is <sup>F409</sup> ...—

<sup>F410</sup>(a) .....

[<sup>F411</sup>(b) the amount given by the formula—

$$((AB) \times 4) + C$$

where—

“A” is the member’s lump sum allowance;

“B” is the amount of the member’s lump sum allowance that is available (see paragraph 12A) on the payment of the lump sum in question;

“C” is the amount of any serious ill health lump sum already paid to the member so far as it was not chargeable to income tax.]

<sup>F412</sup>(2) .....

<sup>F412</sup>(3) .....

**Textual Amendments**

**F409** Words in Sch. 29 para. 8(1) omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, **3(12)(a)**

**F410** Sch. 29 para. 8(1)(a) and word omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, **3(12)(b)**

**F411** Sch. 29 para. 8(1)(b) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. **30(2)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**F412** Sch. 29 para. 8(2)(3) omitted (with effect in accordance with s. 42(8) of the amending Act) by virtue of Finance Act 2014 (c. 26), s. **42(2)(c)**

9 (1) The value of the member’s uncrystallised rights on the nominated date is the aggregate value of the member’s uncrystallised rights on that date under each arrangement relating to the member under a registered pension scheme.

(2) The value on the nominated date of the member’s uncrystallised rights under such an arrangement is to be calculated in accordance with section 212 (valuation of uncrystallised rights for purposes of section 210).

*Winding-up lump sum*

10 (1) For the purposes of this Part a lump sum is a winding-up lump sum if—

(a) the pension scheme is an occupational pension scheme,

(b) the pension scheme is being wound-up,

(c) [<sup>F413</sup>any person by whom the member is employed at the time when the lump sum is paid, and who has made contributions under the pension scheme in

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respect of the member within the period of five years ending with the day on which it is paid,] meets the conditions in sub-paragraph (3),

- (d) it is paid when all or part of the member’s [<sup>F414</sup>lump sum allowance is available (see paragraph 12A)], [<sup>F415</sup>and]
- (e) it extinguishes the member’s entitlement to benefits under the pension scheme, <sup>F416</sup>...

<sup>F416</sup>(f) .....

(2) But if a lump sum falling within sub-paragraph (1) exceeds [<sup>F417</sup>£18,000,] the excess is not a winding-up lump sum.

[<sup>F418</sup>(2A) The Treasury may by order substitute for the amount for the time being specified in sub-paragraph (2) such larger amount as is specified in the order.]

(3) The conditions [<sup>F419</sup>referred to in paragraph (c) of sub-paragraph (1) are that the person mentioned in that paragraph]—

- <sup>F420</sup>(a) .....
- (b) is not making contributions under any other registered pension scheme in respect of the member, and
- (c) undertakes to the Inland Revenue not to make such contributions during the period of one year beginning with the day on which the lump sum is paid.

**Textual Amendments**

**F413** Words in Sch. 29 para. 10(1)(c) substituted (19.7.2007) (with effect in accordance with Sch. 20 para. 24(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 20 para. 12(2)**

**F414** Words in Sch. 29 para. 10(1)(d) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), **Sch. 9 paras. 31, 124** (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F415** Word in Sch. 29 para. 10(1)(d) inserted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 30(a)**

**F416** Sch. 29 para. 10(1)(f) and word omitted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 30(b)**

**F417** Word in Sch. 29 para. 10(2) substituted (with effect in accordance with Sch. 18 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 18 para. 5(2)**

**F418** Sch. 29 para. 10(2A) inserted (with effect in accordance with Sch. 18 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 18 para. 5(3)**

**F419** Words in Sch. 29 para. 10(3) substituted (19.7.2007) (with effect in accordance with Sch. 20 para. 24(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 20 para. 12(3)(a)**

**F420** Sch. 29 para. 10(3)(a) repealed (19.7.2007) (with effect in accordance with Sch. 20 para. 24(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 para. 12\(3\)\(b\)](#), **Sch. 27 Pt. 3(2)**

<sup>F421</sup> ...

**Textual Amendments**

**F421** Sch. 29 para. 11 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), **Sch. 9 paras. 32, 124** (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)



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F421 11 .....

F422 ...

**Textual Amendments**

F422 Sch. 29 para. 11A and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 33, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F422 11A .....

*Interpretation* <sup>F423</sup> ...

**Textual Amendments**

F423 Words in Sch. 29 para. 12 cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 34, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

12 (1) Expressions used in this Part of this Schedule and in Schedule 28 have the same meaning in this Part of this Schedule as in Schedule 28.

F424 (1A) .....

F424 (2) .....

F424 (3) .....

F424 (4) .....

(5) Where by virtue of paragraph 1(2), [<sup>F425</sup>3C(2)], 5(2), 6(2) or 10(2) an excess is not an authorised lump sum of one description, that does not prevent the excess being an authorised lump sum of another description.

(6) “Authorised lump sum” means a lump sum authorised to be paid by the lump sum rule.

**Textual Amendments**

F424 Sch. 29 para. 12(1A)-(4) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 35(2), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F425 Word in Sch. 29 para. 12(5) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 35(3), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

[<sup>F426</sup>12(A)] In this Part of this Schedule, a reference to the amount of an individual’s lump sum allowance that is available on the individual becoming entitled to a lump sum, or being paid a lump sum, is to the amount of that allowance that would be so available on the following assumption.

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- (2) The assumption is that the individual becoming entitled to or (as the case may be) being paid the lump sum was a relevant benefit crystallisation event within the meaning of section 637Q of ITEPA 2003 (availability of individual’s lump sum allowance).
- (3) In this Part of this Schedule, a reference to the amount of an individual’s lump sum and death benefit allowance that is available on the individual becoming entitled to a lump sum, or being paid a lump sum, is to the amount of that allowance that would be so available on the following assumption.
- (4) The assumption is that the individual becoming entitled to or (as the case may be) being paid the lump sum was a relevant benefit crystallisation event within the meaning of section 637S of ITEPA 2003 (availability of individual’s lump sum and death benefit allowance).]

**Textual Amendments**  
**F426** Sch. 29 para. 12A inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 36, 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**PART 2**

LUMP SUM DEATH BENEFIT RULE

**Modifications etc. (not altering text)**  
**C54** Sch. 29 Pt. 2 applied (with modifications) (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, 14  
**C55** Sch. 29 Pt. 2 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), 6, 8(1)(3)

*Defined benefits arrangements*

*Defined benefits lump sum death benefit*

- 13<sup>F427</sup>(1)] For the purposes of this Part a lump sum death benefit is a defined benefits lump sum death benefit if—
- <sup>F428</sup>(a) .....
  - (b) it is paid in respect of a defined benefits arrangement,
  - <sup>F429</sup>(c) ..... and
  - (d) it is not a pension protection lump sum death benefit, [<sup>F430</sup>or] trivial commutation lump sum death benefit<sup>F431</sup>....
- <sup>F432</sup> ...
- <sup>F433</sup>(2) .....

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### Textual Amendments

- F427** Sch. 29 para. 13 renumbered as Sch. 29 para. 13(1) (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 33\(2\)](#)
- F428** Sch. 29 para. 13(1)(a) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 33\(3\)\(a\)](#)
- F429** Sch. 29 para. 13(1)(c) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 33\(3\)\(b\)](#)
- F430** Word in Sch. 29 para. 13(1)(d) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 37\(2\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F431** Words in Sch. 29 para. 13(1)(d) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 37\(3\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F432** Words in [Sch. 29 para. 13\(1\)](#) omitted (with effect in accordance with s. 21(10) of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [s. 21\(8\)\(a\)](#)
- F433** [Sch. 29 para. 13\(2\)](#) omitted (with effect in accordance with s. 21(10) of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [s. 21\(8\)\(b\)](#)

### *Pension protection lump sum death benefit*

- 14 (1) For the purposes of this Part a lump sum death benefit is a pension protection lump sum death benefit if—
- <sup>F434</sup>(a) . . . . .
- (b) it is paid in respect of a defined benefits arrangement,
- (c) it is paid in respect of a scheme pension to which the member was entitled at the date of the member’s death, and
- (d) the member has specified that it is to be treated as a pension protection lump sum death benefit (instead of a defined benefits lump sum death benefit).
- (2) But if the amount of a lump sum falling within sub-paragraph (1) exceeds the pension protection limit, the excess is not a pension protection lump sum death benefit.
- (3) The pension protection limit is—

## AC – AP – TPLS

where—

[<sup>F435</sup>AC is—

- (a) in a case where the member became entitled to the pension before reaching the age of 75, the amount crystallised by reason of the member becoming entitled to the pension, and
- (b) in a case where the member became entitled to the pension after having reached that age, the amount that would have been so crystallised but for paragraph 2 of Schedule 32,]

AP is the amount of the pension paid in respect of the period between the member becoming entitled to the pension and the member’s death, and

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TPLS is the total amount of pension protection lump sum death benefit previously paid in respect of the pension under this paragraph.

#### Textual Amendments

**F434** Sch. 29 para. 14(1)(a) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 34\(2\)](#)

**F435** Words in Sch. 29 para. 14(3) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 34\(3\)](#)

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

**C56** Sch. 29 para. 14(3) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [33\(1\)\(2\)\(4\)](#)

### *Money purchase arrangements*

#### *Uncrystallised funds lump sum death benefit*

15 (1) For the purposes of this Part a lump sum death benefit is an uncrystallised funds lump sum death benefit if—

- <sup>F436</sup>(a) .....
- (b) it is paid in respect of a money purchase arrangement,
- <sup>F437</sup>(c) .....
- (d) it is paid in respect of relevant uncrystallised funds<sup>F438</sup>, and
- (e) it is not a charity lump sum death benefit.]

<sup>F439</sup> .....

<sup>F440</sup>(1A) .....

(2) “Relevant uncrystallised funds” means such of the sums and assets held for the purposes of the arrangement at the member’s death as—

- (a) had not been applied for purchasing a scheme pension, a lifetime annuity, [<sup>F441</sup>a nominees’ annuity,] a dependants’ scheme pension or a dependants’ annuity, and
- (b) had not been designated under the arrangement as available for the payment of [<sup>F442</sup>drawdown pension].

<sup>F443</sup>(2A) Where—

- (a) the arrangement is a cash balance arrangement,
- (b) under the arrangement, a dependant of the member is entitled to be paid after the member’s death an amount by way of a lump sum,
- (c) the dependant’s entitlement to a lump sum of that amount under the arrangement comes into being at a time no later than the member’s death,
- (d) such of the sums and assets held for the purposes of the arrangement immediately after the member’s death as are held for the purpose of meeting the liability to pay the lump sum are insufficient for that purpose (including where that is because none are held for that purpose), and

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- (e) a person who was an employer in relation to the member pays a contribution to the scheme—
  - (i) for or towards making good that insufficiency, and
  - (ii) of no more than is needed for making good the insufficiency,the sums and assets held for the purposes of the arrangement that represent the contribution are to be treated as “relevant uncrystallised funds” for the purposes of this paragraph.]
- (3) But if an amount falling within sub-paragraph (1) exceeds the permitted maximum, the excess is not an uncrystallised funds lump sum death benefit.
- (4) The permitted maximum is the aggregate of—
  - (a) the amount of the sums, and
  - (b) the market value of the assets,which constitute the relevant uncrystallised funds immediately before the payment is made.

#### Textual Amendments

- F436** Sch. 29 para. 15(1)(a) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 35\(2\)\(a\)](#)
- F437** Sch. 29 para. 15(1)(c) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 35\(2\)\(a\)](#)
- F438** Sch. 29 para. 15(1)(e) and word inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 35\(2\)\(b\)](#)
- F439** Words in Sch. 29 para. 15(1) omitted (17.12.2014) (with application in accordance with Sch. 2 para. 20 of the amending Act) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 19\(1\)\(a\)](#)
- F440** Sch. 29 para. 15(1A) omitted (17.12.2014) (with application in accordance with Sch. 2 para. 20 of the amending Act) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 19\(1\)\(b\)](#)
- F441** Words in Sch. 29 para. 15(2)(a) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 15](#)
- F442** Words in Sch. 29 para. 15(2)(b) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 79\(4\)](#)
- F443** [Sch. 29 para. 15\(2A\)](#) inserted (with effect in accordance with Sch. 5 para. 10(2) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 5 para. 10\(1\)](#)

#### *Annuity protection lump sum death benefit*

- 16 (1) For the purposes of this Part a lump sum death benefit is an annuity protection lump sum death benefit if—
- <sup>F444</sup>(a) .....
  - (b) it is paid in respect of a money purchase arrangement, and
  - (c) it is paid in respect of a scheme pension or lifetime annuity to which the member was entitled at the date of the member’s death.
- (2) But if the amount of a lump sum falling within sub-paragraph (1) exceeds the annuity protection limit, the excess is not an annuity protection lump sum death benefit.
- (3) The annuity protection limit is—

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where—

[<sup>F445</sup>AC is—

- (a) in a case where the member became entitled to the pension or annuity before reaching the age of 75, the amount crystallised by reason of the member becoming entitled to the pension or annuity, disregarding paragraphs 3 and 4 of Schedule 32, and
- (b) in a case where the member became entitled to the pension or annuity after having reached that age, the amount that would have been so crystallised (disregarding those paragraphs) but for paragraph 2 of that Schedule.]

AP is the amount of the pension paid in respect of the period between the member becoming entitled to the pension or annuity and the member's death, and

TPLS is the total amount of annuity protection lump sum death benefit previously paid in respect of the pension or annuity under this paragraph.

#### Textual Amendments

**F444** Sch. 29 para. 16(1)(a) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 36\(2\)](#)

**F445** Words in Sch. 29 para. 16(3) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 36\(3\)](#)

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

**C57** Sch. 29 para. 16(3) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [33\(1\)\(2\)\(5\)](#)

*[<sup>F446</sup>Drawdown pension fund lump sum death benefit]*

#### Textual Amendments

**F446** Sch. 29 para. 17 cross-heading substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 37\(6\)](#)

17 [<sup>F447</sup>(1) For the purposes of this Part a lump sum death benefit is a drawdown pension fund lump sum death benefit if—

- (a) it is paid in respect of income withdrawal to which the member was entitled [<sup>F448</sup>to be paid from the member's drawdown pension fund in respect of] an arrangement at the date of the member's death, and
- (b) it is not a charity lump sum death benefit.]

(2) A lump sum death benefit is also [<sup>F449</sup>a drawdown pension fund lump sum death benefit] if—

- (a) it is paid on the death of a dependant of the member,
- <sup>F450</sup>(b) .....
- (c) it is paid in respect of dependants' income withdrawal to which the dependant was entitled at the date of the dependant's death [<sup>F451</sup>to be paid from the dependant's drawdown pension fund] in respect of an arrangement relating to the member [<sup>F452</sup>, and

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- (d) it is not a charity lump sum death benefit.]
- (3) But if the amount of a lump sum falling within sub-paragraph (1) or (2) exceeds the permitted maximum, the excess is not [<sup>F453</sup>a drawdown pension fund lump sum death benefit].
- (4) The permitted maximum is the aggregate of—
- (a) the amount of the sums, and
  - (b) the market value of the assets,
- representing the member's or dependant's [<sup>F454</sup>drawdown pension fund] in respect of the arrangement immediately before the payment is made.

#### Textual Amendments

- F447** Sch. 29 para. 17(1) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 37\(2\)](#)
- F448** Words in Sch. 29 para. 17(1)(a) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 23\(a\)](#)
- F449** Words in Sch. 29 para. 17(2) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 37\(3\)\(a\)](#)
- F450** Sch. 29 para. 17(2)(b) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 37\(3\)\(b\)](#)
- F451** Words in Sch. 29 para. 17(2)(c) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 23\(b\)](#)
- F452** Sch. 29 para. 17(2)(d) and word inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 37\(3\)\(c\)](#)
- F453** Words in Sch. 29 para. 17(3) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 37\(4\)](#)
- F454** Words in Sch. 29 para. 17(4) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 37\(5\)](#)

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

- C58** Sch. 29 para. 17 modified (27.7.2010) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 3 para. 2\(1\)\(2\)\(e\)](#) (with [Sch. 2 para. 2\(1\)](#))

*[<sup>F455</sup>Flexi-access drawdown fund lump sum death benefit*

#### Textual Amendments

- F455** Sch. 29 para. 17A and cross-heading inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 24](#)

- 17A (1) For the purposes of this Part a lump sum death benefit is a flexi-access drawdown fund lump sum death benefit if—
- (a) it is paid in respect of income withdrawal to which the member was entitled to be paid from the member's flexi-access drawdown fund in respect of an arrangement at the date of the member's death, and
  - (b) it is not a charity lump sum death benefit.
- (2) A lump sum death benefit is also a flexi-access drawdown fund lump sum death benefit if—



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- (a) it is paid on the death of a dependant of the member,
  - (b) it is paid in respect of dependants' income withdrawal to which the dependant was at the date of the dependant's death entitled to be paid from the dependant's flexi-access drawdown fund in respect of an arrangement relating to the member, and
  - (c) it is not a charity lump sum death benefit.
- (3) A lump sum death benefit is also a flexi-access drawdown fund lump sum death benefit if—
- (a) it is paid on the death of a nominee of the member,
  - (b) it is paid in respect of nominees' income withdrawal to which the nominee was at the date of the nominee's death entitled to be paid from the nominee's flexi-access drawdown fund in respect of an arrangement relating to the member, and
  - (c) it is not a charity lump sum death benefit.
- (4) A lump sum death benefit is also a flexi-access drawdown fund lump sum death benefit if—
- (a) it is paid on the death of a successor of the member,
  - (b) it is paid in respect of successors' income withdrawal to which the successor was at the date of the successor's death entitled to be paid from the successor's flexi-access drawdown fund in respect of an arrangement relating to the member, and
  - (c) it is not a charity lump sum death benefit.
- (5) But if the amount of a lump sum falling within sub-paragraph (1), (2), (3) or (4) exceeds the permitted maximum, the excess is not a flexi-access drawdown fund lump sum death benefit.
- (6) The permitted maximum is the aggregate of—
- (a) the amount of the sums, and
  - (b) the market value of the assets,
- representing the member's, dependant's, nominee's or successor's flexi-access drawdown fund in respect of the arrangement immediately before the payment is made.]

#### Textual Amendments

**F455** Sch. 29 para. 17A and cross-heading inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 24](#)

#### *Charity lump sum death benefit*

- 18 (1) A lump sum death benefit is a charity lump sum death benefit if—
- <sup>F456</sup>(a) .....
  - (b) there are no dependants of the member,
  - (c) it is paid [<sup>F457</sup>in respect of the member's drawdown pension fund] in respect of an arrangement[<sup>F458</sup>, or in respect of the member's flexi-access drawdown fund in respect of an arrangement,] at the date of the member's death, and
  - (d) it is paid to a charity nominated by the member <sup>F459</sup>...



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- [<sup>F460</sup>(1A) A lump sum death benefit is also a charity lump sum death benefit if—
- (a) the member had reached the age of 75 at the date of the member's death,
  - (b) there are no dependants of the member,
  - (c) it is paid in respect of relevant uncrystallised funds in respect of a money purchase arrangement at the date of the member's death, and
  - (d) it is paid to a charity nominated by the member.

(1B) “Relevant uncrystallised funds” has the meaning given by paragraph 15(2).]

- (2) A lump sum death benefit is also a charity lump sum death benefit if—
- (a) it is paid on the death of a dependant of the member,
  - <sup>F461</sup>(b) . . . . .
  - (c) there are no other dependants of the member,
  - (d) it is paid in respect of [<sup>F462</sup>the dependant's drawdown pension fund][<sup>F463</sup>, or the dependant's flexi-access drawdown fund,] at the date of the dependant's death in respect of an arrangement relating to the member, and
  - (e) it is paid to a charity nominated by the member [<sup>F464</sup>or, if the member made no nomination, by the dependant <sup>F465</sup> ... .]

- [<sup>F466</sup>(2A) A lump sum death benefit is also a charity lump sum death benefit if—
- (a) it is paid on the death of an individual who is—
    - (i) a nominee of the member, or
    - (ii) a successor of the member,
  - (b) there are no dependants of the member,
  - (c) it is paid in respect of the individual's nominee's flexi-access drawdown fund or successor's flexi-access drawdown fund at the date of the individual's death in respect of an arrangement relating to the individual in the capacity of a nominee or successor of the member, and
  - (d) it is paid to a charity nominated by the member or, if the member made no nomination, by the individual.]

(3) But if the amount of a lump sum falling within sub-paragraph (1)[<sup>F467</sup>, (2) or (2A)] exceeds the permitted maximum, the amount of the excess is not a charity lump sum death benefit.

- (4) The permitted maximum is the aggregate of—
- (a) the amount of the sums, and
  - (b) the market value of the assets,  
[<sup>F468</sup>representing what is the member's or dependant's drawdown pension fund][<sup>F469</sup>, or flexi-access drawdown fund,] in respect of the arrangement[<sup>F470</sup>, or the nominee's or successor's flexi-access drawdown fund in respect of the arrangement,] immediately before the payment is made.

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**Textual Amendments**

**F456** Sch. 29 para. 18(1)(a) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 38\(2\)\(a\)](#)

**F457** Words in Sch. 29 para. 18(1)(c) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 38\(2\)\(b\)](#)

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- F458** Words in Sch. 29 para. 18(1)(c) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 25\(a\)](#)
- F459** Words in Sch. 29 para. 18(1)(d) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 38\(2\)\(c\)](#)
- F460** Sch. 29 para. 18(1A)(1B) inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 38\(3\)](#)
- F461** Sch. 29 para. 18(2)(b) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 38\(4\)\(a\)](#)
- F462** Words in Sch. 29 para. 18(2)(d) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 38\(4\)\(b\)](#)
- F463** Words in Sch. 29 para. 18(2)(d) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 25\(b\)](#)
- F464** Words in Sch. 29 para. 18(2)(e) substituted (19.7.2007 (with effect in accordance with Sch. 19 para. 29(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 16\(5\)](#)
- F465** Words in Sch. 29 para. 18(2)(e) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 38\(4\)\(c\)](#)
- F466** Sch. 29 para. 18(2A) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 15\(2\)](#)
- F467** Words in Sch. 29 para. 18(3) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 15\(3\)](#)
- F468** Words in Sch. 29 para. 18(4) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 38\(5\)](#)
- F469** Words in Sch. 29 para. 18(4) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 25\(c\)](#)
- F470** Words in Sch. 29 para. 18(4) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 15\(4\)](#)

*Transfer lump sum death benefit*

F471 19 .....

**Textual Amendments**

- F471** Sch. 29 para. 19 repealed (19.7.2007) (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 9](#), [Sch. 27 Pt. 3\(1\)](#)

*Defined benefits and money purchase arrangements*

*Trivial commutation lump sum death benefit*

20 (1) A lump sum death benefit is a trivial commutation lump sum death benefit <sup>F472</sup>if condition A or B is met.]

<sup>F473</sup>(1A) Condition A is that the lump sum—

- (a) is paid to a dependant entitled under the pension scheme to pension death benefit in respect of the member, and
- (b) extinguishes the dependant's entitlement under the pension scheme to pension death benefit and lump sum death benefit in respect of the member.

(1B) Condition B is that—

- (a) the lump sum is paid after the member's death to an individual entitled to be paid a pension under the scheme—

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- (i) which the member was entitled to be paid immediately before the member's death, and
  - (ii) which is payable to the individual under pension rule 2 (see section 165),
  - (b) if the pension is an annuity or scheme pension payable by an insurance company, the lump sum extinguishes all entitlements in respect of the member under the contract concerned, and
  - (c) if the pension is a scheme pension payable by the scheme administrator, the lump sum extinguishes all entitlements to receive a scheme pension in respect of the member from the scheme administrator under pension rule 2.]
- (2) But if the amount of a lump sum falling within sub-paragraph (1) exceeds [<sup>F474</sup>£30,000], the excess is not a trivial commutation lump sum death benefit.
- [<sup>F475</sup>(3) The Treasury may by order substitute for the amount for the time being specified in sub-paragraph (2) such larger amount as is specified in the order.]

#### Textual Amendments

- F472** Words in Sch. 29 para. 20(1) substituted (17.12.2014) (with effect in accordance with Sch. 1 para. 74(6) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 74\(2\)](#)
- F473** Sch. 29 para. 20(1A)(1B) inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 74(6) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 74\(3\)](#)
- F474** Sum in Sch. 29 para. 20(2) substituted (17.12.2014) (with effect in accordance with Sch. 1 para. 74(6) of the amending Act) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 74\(4\)](#)
- F475** Sch. 29 para. 20(3) inserted (with effect in accordance with Sch. 18 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 18 para. 6\(3\)](#)

<sup>F476</sup>21 .....

#### Textual Amendments

- F476** Sch. 29 para. 21 omitted (17.12.2014) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 75\(1\)](#)

### Interpretation

#### Interpretation of Part 2

- 22 (1) Expressions used in this Part of this Schedule and in Schedule 28 have the same meaning in this Part of this Schedule as in Schedule 28.
- (2) Where by virtue of paragraph 14(2), 20(2) or 21(2) an excess is not an authorised lump sum death benefit of one description, that does not prevent the excess being an authorised lump sum death benefit of another description.
- (3) “Authorised lump sum death benefit” means a lump sum death benefit authorised to be paid by the lump sum death benefit rule.

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## [<sup>F477</sup>SCHEDULE 29A

Section 174A

### TAXABLE PROPERTY HELD BY INVESTMENT-REGULATED PENSION SCHEMES

#### Textual Amendments

**F477** Sch. 29A inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 158(2), Sch. 21 para. 13

### PART 1

#### INVESTMENT-REGULATED PENSION SCHEMES

##### *Schemes other than occupational pension schemes*

- 1 (1) For the purposes of the taxable property provisions a registered pension scheme which is not an occupational pension scheme is an investment-regulated pension scheme if one or more of its members meets the condition in sub-paragraph (2).
- (2) The condition is that either—
- (a) the member, or
  - (b) a person related to the member,
- is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any of the sums and assets held for the purposes of an arrangement under the pension scheme relating to the member.
- (3) In this Part “the taxable property provisions” means—
- (a) section 173(7A) (exception from benefit charge where taxable property held by investment-regulated pension scheme),
  - (b) section 174A and this Schedule,
  - (c) sections 185A to 185I (income and gains from taxable property),
  - (d) section 273ZA (member liability for scheme sanction charge where pension scheme non-UK resident), and
  - (e) paragraphs 37A to 37I of Schedule 36 (transitional provisions).

##### *Occupational pension schemes*

- 2 (1) For the purposes of the taxable property provisions a registered pension scheme which is an occupational pension scheme is an investment-regulated pension scheme if—
- (a) there are 50 or fewer members of the pension scheme, and one or more of those members meets the condition in sub-paragraph (2), <sup>F478</sup>...
  - <sup>F478</sup>(b) .....
- (2) The condition is that either—
- (a) the member, or
  - (b) a person related to the member,
- is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any of the sums and assets held for the purposes of the pension scheme.

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### Textual Amendments

**F478** Sch. 29A para. 2(1)(b) and word omitted (retrospective to 6.4.2006) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 29 para. 3\(1\)\(2\)](#)

#### *Separate self-controlled section*

- 3 (1) This paragraph applies in the case of an arrangement under a registered pension scheme if—
- (a) the pension scheme is an occupational pension scheme,
  - (b) the pension scheme is not an investment-regulated pension scheme by virtue of paragraph 2, and
  - (c) one or more members of the pension scheme meet the condition in sub-paragraph (2).
- (2) The condition is that either—
- (a) the member, or
  - (b) a person related to the member,
- is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any sums or assets which are linked to an arrangement relating to the member.
- (3) For the purposes of sub-paragraph (2) sums or assets are linked to an arrangement relating to a member if—
- (a) they are held for the purposes of an arrangement under the pension scheme relating to the member, but
  - (b) they are not held for the purposes of the arrangement merely by virtue of a just and reasonable apportionment of the sums and assets held for the purposes of the pension scheme.
- (4) Where this paragraph applies the arrangement is to be treated for the purposes of this Part as if it were an investment-regulated pension scheme.
- (5) The Treasury may by regulations—
- (a) amend sub-paragraph (3), and
  - (b) provide for any of the provisions of this Part to apply to the arrangement with modifications.

#### *Related persons*

- 4 (1) For the purposes of this Part of this Schedule a person is related to a member of a pension scheme if—
- (a) the person and the member are connected persons, or
  - (b) the person acts on behalf of the member or a person connected with the member.
- [<sup>F479</sup>(2) For the purposes of sub-paragraph (1) whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]

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### Textual Amendments

**F479** Sch. 29A para. 4(2) 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. 484** (with [Sch. 2](#))

### *Arrangements*

- 5 Where sums or assets held for the purposes of an investment-regulated pension scheme—
- (a) are held otherwise than for the purposes of the administration or management of the pension scheme, and
  - (b) would not, apart from this paragraph, be treated as held for the purposes of any arrangement relating to a member under the pension scheme,
- for the purposes of the taxable property provisions the sums or assets are to be treated as held for the purposes of the arrangements under the pension scheme by reference to the respective rights under the scheme of the members to which the arrangements relate.

## PART 2

### TAXABLE PROPERTY

#### *Taxable property*

- 6 For the purposes of the taxable property provisions property is taxable property if—
- (a) it is residential property (see paragraphs 7 to 10), or
  - (b) it is tangible moveable property (but subject to paragraph 11).

#### *Residential property*

- 7 (1) Subject as follows, for the purposes of the taxable property provisions “residential property” means—
- (a) a building that is used or suitable for use as a dwelling,
  - (b) any land consisting of, or forming part of, the garden or grounds of such a building (including a building on any such land) which is used or intended for use for a purpose connected with the enjoyment of the building,
  - (c) hotel or similar accommodation (but see paragraph 14(2)), or
  - (d) a beach hut,
- in the United Kingdom or elsewhere.
- (2) For the purposes of the taxable property provisions “building” includes—
- (a) a structure, and
  - (b) part of a building or structure.
- 8 (1) For the purposes of the taxable property provisions a building used for any of the following purposes is not residential property—
- (a) a home or other institution providing residential accommodation for children;
  - (b) a hall of residence for students;

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- (c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder;
- (d) a hospital or hospice;
- (e) a prison or similar establishment.

(2) Where—

- (a) a building is used for a purpose specified in sub-paragraph (1),
- (b) a building which is not in use was, immediately before it ceased to be in use, used for such a purpose, or
- (c) a building which has never been in use is more suitable for use for such a purpose than for use for any other purpose,

no account is to be taken for the purposes of the taxable property provisions of its suitability for use as a dwelling.

9 (1) The Treasury may by order amend this Part of this Schedule to specify descriptions of buildings which are, or are not, to be treated as residential property.

<sup>F480</sup>(2) .....

**Textual Amendments**

**F480** Sch. 29A para. 9(2) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\), s. 75\(2\)\(e\)](#)

10 (1) Residential property is not taxable property in relation to a pension scheme if Condition A or B is met.

(2) Condition A is met if the property is (or, if unoccupied, is to be) occupied by an employee who—

- (a) is neither a member of the pension scheme nor connected with such a member,
- (b) is not connected with the employer, and
- (c) is required as a condition of employment to occupy the property.

(3) Condition B is met if the property is (or, if unoccupied, is to be)—

- (a) occupied by a person who is neither a member of the pension scheme nor connected with such a member, and
- (b) used in connection with business premises held as an investment of the pension scheme.

(4) [<sup>F481</sup>Section 1122 of the Corporation Tax Act 2010] (connected persons) applies for the purposes of this paragraph.

**Textual Amendments**

**F481** Words in [Sch. 29A para. 10\(4\)](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 431\(5\)\(a\)](#) (with [Sch. 2](#))

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### *Tangible moveable property*

- 11 (1) The Treasury may by order provide that, for the purposes of the taxable property provisions, any specified description of tangible moveable property is treated as not being taxable property.
- (2) An order under this paragraph may include provision having effect in relation to times before it is made.

## PART 3

### ACQUISITION AND HOLDING OF TAXABLE PROPERTY

#### *Acquisition*

- 12 (1) For the purposes of the taxable property provisions an investment-regulated pension scheme acquires an interest in property if it comes to hold the interest.
- (2) Sub-paragraph (1) applies however the pension scheme comes to hold the interest, whether that is—
- (a) by act of the parties to a transaction,
  - (b) by order of a court or other authority,
  - (c) by or under any statutory provision, or
  - (d) by operation of law.
- (3) For instances of deemed acquisition, see paragraphs 27 to 29.

#### *Holding*

- 13 (1) For the purposes of the taxable property provisions an investment-regulated pension scheme holds an interest in property if the scheme holds the interest directly or indirectly.
- (2) In the taxable property provisions references to a person holding an interest in property include, in the case of—
- (a) an investment-regulated pension scheme,
  - (b) an arrangement under a pension scheme, or
  - (c) a trust which is not a pension scheme,
- references to the interest in the property being held for the purposes of the pension scheme, the arrangement or the trust.

#### *Direct holding*

- 14 (1) For the purposes of the taxable property provisions a person holds an interest in property directly if the person (whether jointly, in common or alone)—
- (a) holds the property or any estate, interest, right or power in or over the property,
  - (b) has the right to use, or participate in arrangements relating to the use of, that property or a description of property to which that property belongs, or
  - (c) has the benefit of any obligation, restriction or condition affecting the value of any estate, interest, right or power in or over the property,



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under the law of any country or territory.

- (2) But a person does not hold an interest in residential property consisting of hotel accommodation directly unless—
- (a) the person holds part only of the hotel accommodation or any estate, interest, right or power in or over such a part and, as a result, any person has a right to use or occupy that or any other part of the hotel accommodation, or
  - (b) the person has a right to use, or participate in arrangements relating to the use of, part only of the hotel accommodation or a description of property to which that part belongs.
- (3) For the purposes of the taxable property provisions a person holds an interest in property directly if the person is entitled (whether jointly, in common or alone) to receive payments determined by reference to the value of or the income from the property.
- (4) Sub-paragraph (3) is subject to paragraph 15.

*Exception to direct holding*

- 15 (1) A person does not hold an interest in taxable property directly by virtue of paragraph 14(3) where Conditions A to C are met.
- (2) Condition A is that—
- (a) the person is entitled to receive the payments by virtue of a policy of life insurance, a contract for a life annuity or a capital redemption policy, and
  - (b) the policy or contract is issued by an insurance company.
- (3) Condition B is that the property—
- (a) does not constitute a linked asset, or
  - (b) has been appropriated by the insurance company to an internal linked fund.
- (4) Condition C is that—
- (a) where the person is an occupational pension scheme, the policy or contract, either by itself or taken together with one or more associated policies, does not entitle the pension scheme, either alone or together with one or more associated persons, to receive payments representing 10% or more of the market value of or the income from the property,
  - (b) where the person is a pension scheme other than an occupational pension scheme, the policy or contract, either by itself or taken together with one or more associated policies, does not entitle an arrangement under the pension scheme, either alone or together with one or more associated persons, to receive such payments, or
  - (c) otherwise, the policy or contract does not entitle the person to receive such payments.
- (5) But for the purposes of applying paragraph 14(3) for determining whether a pension scheme holds an interest in taxable property directly or indirectly, this paragraph does not apply if the purpose or one of the purposes for which the person holds rights under the policy or contract is to enable a member of the pension scheme or a person connected with such a member to occupy or use the property.

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- (6) For the purposes of sub-paragraph (4) “associated policy” means a policy or contract which entitles an associated person to receive payments determined by reference to the value of or the income from the property.
- (7) For the definition of “associated person” see paragraph 30.
- (8) For the purposes of this paragraph—  
 “capital redemption policy” means a contract made in the course of a capital redemption business, as defined in section 458(3) of ICTA;  
 “internal linked fund” has the meaning given by—  
 (a) the Interim Prudential Sourcebook for Insurers made by the [F482 Prudential Regulation Authority] under FISMA 2000, or  
 (b) rules made by the [F483 Prudential Regulation Authority] under that Act and having effect for the time being in place of the Sourcebook; and  
 “linked asset” means an asset of the insurance company which is identified in its records as an asset by reference to the value of which benefits provided for under a policy or contract are to be determined.
- (9) For the purposes of this paragraph an annuity is a life annuity if it is—  
 (a) granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life, and  
 (b) payable for a term ending at a time ascertainable only by reference to the end of a human life,  
 and for this purpose it does not matter that the annuity may in some circumstances end before or after the life.

#### Textual Amendments

**F482** Words in Sch. 29A para. 15(8) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), [Sch. para. 7\(a\)](#)

**F483** Words in Sch. 29A para. 15(8) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), [Sch. para. 7\(b\)](#)

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

**C59** Sch. 29A para. 15 modified by S.I. 2006/207, reg. 4C (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), [reg. 9](#))

#### *Indirect holding*

- 16 (1) For the purposes of the taxable property provisions a person holds an interest in property indirectly if the person does not hold the interest directly but (whether jointly, in common or alone)—  
 (a) holds an interest in a person who holds the interest in the property directly, or  
 (b) holds an interest in a person who holds the interest in the property indirectly by virtue of paragraph (a) or this paragraph.
- (2) For the purposes of the taxable property provisions a person holds an interest in another person if—  
 (a) the person holds an interest, right or power in or over that other person, or

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- (b) the person lends money to that other person to fund the acquisition by that other person of an interest in taxable property.
  - (3) But sub-paragraph (2)(b) does not apply where—
    - (a) the loan is an authorised employer loan made by a pension scheme to or in respect of a sponsoring employer (see section 179),
    - (b) the interest in the property is acquired so that the property may be used for the purposes of a trade, profession or vocation carried on by the sponsoring employer or for the purposes of the sponsoring employer's administration or management, and
    - (c) after the acquisition, the property is not occupied or used by a member of the pension scheme or a person connected with such a member.
  - (4) In the taxable property provisions references to a person holding an interest in another person include, in the case of—
    - (a) an investment-regulated pension scheme,
    - (b) an arrangement under a pension scheme, or
    - (c) a trust which is not a pension scheme,references to the interest in the other person being held for the purposes of the pension scheme, the arrangement or the trust.
  - (5) Paragraphs 17 to 19 explain what it means for a person to hold an interest in another person by virtue of sub-paragraph (2)(a) in a case where that other person is a company, collective investment scheme or trust.
  - (6) The Treasury may by regulations—
    - (a) amend paragraphs 17 to 19, or
    - (b) amend this Part of this Schedule for the purposes of explaining what it means for a person to hold an interest, right or power in or over another person in other cases.
  - (7) This paragraph is subject to paragraphs 20 to 26.
- 17 (1) For the purposes of paragraph 16 a person holds an interest in a company if—
- (a) the person has, or is entitled to acquire, share capital or voting rights in the company,
  - (b) the person has, or is entitled to acquire, a right to receive or participate in distributions of the company,
  - (c) the person is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for the person's benefit, or
  - (d) the person, either alone or together with other persons, has control of the company.
- (2) In sub-paragraph (1) references to a person being entitled to do anything apply where a person—
- (a) is currently entitled to do it at a future date, or
  - (b) will at a future date be entitled to do it.
- (3) In sub-paragraph (1) “control” has the meaning given by [F484sections 450 and 451 of the Corporation Tax Act 2010].

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### Textual Amendments

**F484** Words in Sch. 29A para. 17(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 431\(2\)](#) (with [Sch. 2](#))

- 18 (1) For the purposes of paragraph 16 a person holds an interest in a collective investment scheme if the person is a participant in the scheme.
- (2) In this Schedule—
- (a) “collective investment scheme” has the meaning given by section 235 of FISMA 2000, and
  - (b) “participant”, in relation to such a scheme, has the meaning given by subsection (2) of that section.
- 19 (1) For the purposes of paragraph 16 a pension scheme holds an interest in a trust if Condition A or B is met.
- (2) Condition A is that—
- (a) the pension scheme has a relevant interest in the trust,
  - (b) the pension scheme, a member of the pension scheme or a person connected with such a member has made a payment to the trust on or after the acquisition of the interest, and
  - (c) the payment is not one to which sub-paragraph (7) applies.
- (3) Condition B is that—
- (a) a member of the pension scheme or a person connected with such a member has a relevant interest in the trust,
  - (b) the pension scheme has made a payment to the trust on or after the acquisition of the interest, and
  - (c) the payment is not one to which sub-paragraph (7) applies.
- (4) For the purposes of applying paragraph 16 for determining whether a pension scheme holds an interest in property indirectly, a person other than the pension scheme holds an interest in a trust if —
- (a) the person has a relevant interest in the trust,
  - (b) the person has made a payment to the trust on or after the acquisition of the interest, and
  - (c) the payment is not one to which sub-paragraph (7) applies.
- (5) For the purposes of this paragraph a person has a relevant interest in a trust if—
- (a) any property which may at any time be comprised in the trust or any derived property is, or will or may become, payable to or applicable for the benefit of the person in any circumstances, or
  - (b) the person enjoys a benefit deriving directly or indirectly from any property which is comprised in the trust or any derived property.
- (6) In sub-paragraph (5) “derived property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or income from, that property.
- (7) This sub-paragraph applies to a payment if—
- (a) it is made as part of an arm's length transaction by which property or a benefit is to be provided in return for the payment, and

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- (b) it is made otherwise than for the purposes of enabling a member of the pension scheme or a person connected with such a member to occupy or use any property.
- (8) [<sup>F485</sup>Section 1122 of the Corporation Tax Act 2010] (connected persons) applies for the purposes of this paragraph.
- (9) This paragraph does not apply in relation to a unit trust scheme within the meaning of section 237(1) of FISMA 2000 (but see paragraph 18).

#### Textual Amendments

**F485** Words in [Sch. 29A para. 19\(8\)](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 431\(5\)\(b\)](#) (with [Sch. 2](#))

#### *Exceptions to indirect holding*

- 20 (1) A pension scheme does not hold an interest in property indirectly through a vehicle through which the pension scheme would otherwise hold the interest in the property indirectly where one of the following paragraphs applies in relation to the vehicle, and, in particular—
- (a) paragraph 21 makes provision in relation to holding through vehicles which carry on trading activities,
  - (b) [<sup>F486</sup>paragraphs 22, 24 and 25 make] provision in relation to holding through Real Estate Investment Trusts,
  - (c) paragraphs 23 to 25 make provision in relation to holding through other kinds of vehicles, and
  - (d) paragraph 26 makes provision in relation to holding through a vehicle which holds the interest in the property directly by virtue of paragraph 14(3) (receipt of payments determined by reference to value of or income from property).
- (2) In the taxable property provisions “vehicle”, in relation to a pension scheme which holds an interest in taxable property indirectly, means a person through whom the pension scheme holds the interest in the property.
- (3) For the purposes of the taxable property provisions a person holds an interest in a vehicle directly if the person holds an interest of the kind mentioned in paragraph 16(2) in the vehicle.
- (4) For the purposes of the taxable property provisions a person holds an interest in a vehicle indirectly if the person does not hold the interest directly but—
- (a) holds an interest in a person who holds an interest in the vehicle directly, or
  - (b) holds an interest in a person who holds the interest in the vehicle indirectly by virtue of paragraph (a) or this paragraph.

#### Textual Amendments

**F486** Words in [Sch. 29A para. 20\(1\)\(b\)](#) substituted (retrospective to 1.1.2007) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 14\(2\), 24\(8\)](#)

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- 21 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where—
- (a) the vehicle's main activity is the carrying on of a trade, profession or vocation,
  - (b) the pension scheme does not, whether alone or together with one or more associated persons, have control of the vehicle, and
  - (c) neither a member of the pension scheme nor a person connected with such a member is a controlling director of the vehicle or any other vehicle which holds an interest in the vehicle directly or indirectly.
- (2) But this paragraph does not apply if the purpose or one of the purposes for which the pension scheme holds the interest in the vehicle is to enable a member of the pension scheme or a person connected with such a member to occupy or use the property.
- (3) In sub-paragraph (1)—
- (a) “control” has the same meaning as in [F487sections 450 and 451 of the Corporation Tax Act 2010] (reading references in [F488those sections] to a company as references to the vehicle and references to associates as including associated persons), and
  - (b) “controlling director”, in relation to a vehicle, means a director to whom [F489section 452(2)(b)] of that Act applies (reading the reference to associates in [F490section 452(3) of that Act] as including associated persons).
- (4) For the purposes of this paragraph a pension scheme or an arrangement under a pension scheme has control of a vehicle if the pension scheme or the arrangement holds such interest as would, if the pension scheme or the arrangement were a person, mean that the person had control of the vehicle.
- (5) [F491Section 1122 of the Corporation Tax Act 2010] (connected persons) applies for the purposes of this paragraph.
- (6) For the definition of “associated person” see paragraph 30.

#### Textual Amendments

**F487** Words in Sch. 29A para. 21(3)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 431\(3\)\(a\)\(i\)](#) (with [Sch. 2](#))

**F488** Words in Sch. 29A para. 21(3)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 431\(3\)\(a\)\(ii\)](#) (with [Sch. 2](#))

**F489** Words in Sch. 29A para. 21(3)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 431\(3\)\(b\)\(i\)](#) (with [Sch. 2](#))

**F490** Words in Sch. 29A para. 21(3)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 431\(3\)\(b\)\(ii\)](#) (with [Sch. 2](#))

**F491** Words in Sch. 29A para. 21(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 431\(5\)\(c\)](#) (with [Sch. 2](#))

- 22 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where the vehicle [F492is a company which is, or is a member of, a UK REIT within the meaning of Part 12 of the Corporation Tax Act 2010 (Real Estate Investment Trusts)] [F493and paragraph 24 applies to the pension scheme's interest in the vehicle.]

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F<sup>494</sup>(2) .....

(3) [F<sup>495</sup>Section 1122 of the Corporation Tax Act 2010] (connected persons) applies for the purposes of sub-paragraph (2).

#### Textual Amendments

**F492** Words in Sch. 29A para. 22(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\)](#), [Sch. 1 para. 431\(4\)](#) (with [Sch. 2](#))

**F493** Words in Sch. 29A para. 22(1) inserted (retrospective to 1.1.2007) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 14\(3\)\(a\), 24\(8\)](#)

**F494** Sch. 29A para. 22(2) repealed (retrospective to 1.1.2007) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 14\(3\)\(b\), 24\(8\), Sch. 27 Pt. 3\(2\)](#)

**F495** Words in Sch. 29A para. 22(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\)](#), [Sch. 1 para. 431\(5\)\(d\)](#) (with [Sch. 2](#))

23 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where—

- (a) Conditions A to C are met in relation to the vehicle, and
- (b) paragraph 24 applies to the pension scheme's interest in the vehicle.

(2) Condition A is that—

- (a) the total value of the assets held directly by the vehicle is at least £1 million, or
- (b) the vehicle holds directly at least three assets which consist of an interest in residential property,

and no asset held directly by the vehicle which consists of an interest in taxable property has a value which exceeds 40% of the total value of the assets held directly by the vehicle.

(3) Condition B is that, if the vehicle is a company—

- (a) it is resident in the United Kingdom and is not a close company, or
- (b) it is not resident in the United Kingdom and would not be a close company if it were resident in the United Kingdom.

(4) Condition C is that the vehicle does not have as its main purpose, or one of its main purposes, the direct or indirect holding of an animal or animals used for sporting purposes.

(5) For the purposes of sub-paragraph (2)—

- (a) assets must be valued in accordance with generally accepted accounting practice,
- (b) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically), and
- (c) where generally accepted accounting practice offers a choice of valuation between cost basis and fair value, fair value must be used.

(6) The Treasury may by order—

- (a) increase the amount for the time being specified in paragraph (a) of sub-paragraph (2), or
- (b) increase the percentage for the time being specified in that sub-paragraph.

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- 24 (1) For the purposes of [<sup>F496</sup> paragraphs 22 and 23] this paragraph applies to the interest held directly or indirectly by a pension scheme in a vehicle where—
- (a) Condition A is met, and
  - (b) Condition B or C is met.
- (2) Condition A is that the pension scheme does not hold the interest in the vehicle for the purpose of enabling a member of the pension scheme or a person connected with such a member to occupy or use the property.
- (3) Condition B is that—
- (a) the pension scheme is an occupational pension scheme, and
  - (b) the pension scheme does not, either alone or together with one or more associated persons, directly or indirectly hold an interest in the vehicle to which sub-paragraph (5) applies.
- (4) Condition C is that—
- (a) the pension scheme is not an occupational pension scheme, and
  - (b) no arrangement under the pension scheme, either alone or together with one or more associated persons, directly or indirectly holds an interest in the vehicle to which sub-paragraph (5) applies.
- (5) This sub-paragraph applies to the following interests—
- (a) 10% or more of the share capital or issued share capital of the vehicle;
  - (b) 10% or more of the voting rights in the vehicle;
  - (c) a right to receive 10% or more of the income of the vehicle;
  - (d) such interest in the vehicle as gives an entitlement to 10% or more of the amounts distributed on a distribution in relation to the vehicle;
  - (e) such interest in the vehicle as gives an entitlement to 10% or more of the assets of the vehicle on a winding-up or in any other circumstances;
  - (f) such interest in the vehicle as gives rise to income or gains from a specific property.
- (6) [<sup>F497</sup>Section 1122 of the Corporation Tax Act 2010] (connected persons) applies for the purposes of this paragraph.
- (7) For the definition of “associated person” see paragraph 30.

#### Textual Amendments

**F496** Words in Sch. 29A para. 24(1) substituted (retrospective to 1.1.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 14\(4\), 24\(8\)](#)

**F497** Words in [Sch. 29A para. 24\(6\)](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 431\(5\)\(e\)](#) (with [Sch. 2](#))

- 25 (1) This paragraph contains provisions supplementary to paragraph 24.
- (2) Where—
- (a) paragraph [<sup>F498</sup>22 or 23] does not apply in relation to a vehicle in which the pension scheme directly or indirectly holds an interest merely because Condition C in paragraph 24(4) is not met in relation to an arrangement under the pension scheme, and



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- (b) accordingly, the pension scheme holds an interest in property indirectly through the vehicle,  
the interest in the property is to be treated as held through the vehicle for the purposes of another arrangement under the pension scheme only if that arrangement, either alone or together with one or more associated persons, directly or indirectly holds an interest in the vehicle to which paragraph 24(5) applies.
- (3) Sub-paragraph (4) applies for determining the percentage of an interest held by a person in a vehicle at a time when the person holds that interest indirectly.
- (4) That percentage is equal to the percentage of the total taxable amount that would be apportioned to the person under paragraphs 41 to 43—
- (a) where the person is not the pension scheme, if the person were the pension scheme, and
- (b) in any case, if the person were treated as making an unauthorised payment by virtue of the vehicle coming to hold the interest in the property directly at that time.
- (5) For the definition of “associated person” see paragraph 30.

#### Textual Amendments

**F498** Words in Sch. 29A para. 25(2)(a) substituted (retrospective to 1.1.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 14\(5\), 24\(8\)](#)

- 26 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where—
- (a) the vehicle holds the interest in the property directly by virtue of paragraph 14(3) merely because it does not meet Condition C in paragraph 15(4), and
- (b) sub-paragraph (2) applies in relation to the pension scheme.
- (2) This sub-paragraph applies in relation to the pension scheme if—
- (a) where the pension scheme is an occupational pension scheme, the pension scheme is not, either alone or together with one or more associated persons, deemed to be entitled to 10% or more of the market value of or the income from the property, or
- (b) where the pension scheme is not an occupational pension scheme, no arrangement under the pension scheme, either alone or together with one or more associated persons, is deemed to be so entitled.
- (3) For the purposes of this paragraph the percentage of the market value of or the income from the property to which a person is deemed to be entitled at any time is—
- $$IG \times TTA$$
- where—
- IG is the percentage of the market value of or the income from the property to which the vehicle that holds the interest in the property directly is entitled at that time, and
- TTA is the percentage of the total taxable amount that would be apportioned to the person at that time on the assumptions mentioned in sub-paragraph (4).
- (4) Those assumptions are—

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- (a) if the person is not the pension scheme, that the person is the pension scheme, and
- (b) in any case, that the person is treated as making an unauthorised payment by virtue of the vehicle coming to hold the interest in the property directly at that time.

(5) For the definition of “associated person” see paragraph 30.

#### *Deemed acquisition*

- 27       Where—
- (a) an investment-regulated pension scheme holds an interest in property which is not taxable property, and
  - (b) that property becomes taxable property otherwise than by reason of its conversion or adaptation as residential property,
- the pension scheme is treated for the purposes of the taxable property provisions as acquiring an interest in the property.
- 28       (1) Subject to paragraph 29, this paragraph applies where—
- (a) an investment-regulated pension scheme holds an interest in taxable property indirectly, and
  - (b) there is an increase in the extent of the interest held directly in a vehicle by the pension scheme or another vehicle.
- (2) The pension scheme is to be treated for the purposes of this Schedule as—
- (a) having disposed of the interest in the property immediately before the increase in the extent of the interest in the vehicle, and
  - (b) having re-acquired the interest immediately afterwards.
- (3) The extent of the interest held directly in a vehicle by a person is to be determined for the purposes of this paragraph and paragraph 29 in accordance with paragraphs 42 and 43.
- 29       (1) Where there is an increase in the extent of the interest held directly in the vehicle otherwise than by reason of the acquisition of a further interest in the vehicle, paragraph 28 does not apply unless the condition in sub-paragraph (2) is met.
- (2) The condition is that the event by which the extent of the interest held directly in the vehicle increases forms part of a scheme or arrangement the main purpose or one of the main purposes of which is—
- (a) to enable the amount of the unauthorised payment treated as arising on the original acquisition of the interest in the property by the pension scheme to be lower than it otherwise would have been, or
  - (b) to prevent an unauthorised payment from being treated as made on that original acquisition.
- (3) Unless that condition is met, the increase in the extent of the interest is also to be disregarded for the purposes of paragraphs 24 to 26.

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

**C60** Sch. 29A para. 29 modified by S.I. 2006/207, reg. 4D (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), **reg. 9**)

*Associated persons*

- 30 (1) For the purposes of this Part of this Schedule “associated person”, in relation to a pension scheme, means—
- (a) any member of the pension scheme,
  - (b) any person connected with such a member,
  - (c) any arrangement (under that or another pension scheme) relating to a member of the pension scheme,
  - (d) any arrangement (under that or another pension scheme) relating to a person connected with such a member, and
  - (e) any associated pension scheme.
- (2) For the purposes of sub-paragraph (1) a pension scheme is associated with another pension scheme if members representing at least 10% by value of one pension scheme are members of the other pension scheme or connected with such members.
- (3) The percentage by value represented by a member of a pension scheme is—
- $$\frac{AM}{AA} \times 100$$
- where—
- AM is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of an arrangement under the pension scheme relating to the member, and
- AA is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme.
- (4) For the purposes of this Part of this Schedule “associated person”, in relation to an arrangement under a pension scheme, means—
- (a) the member of the pension scheme to which that arrangement relates,
  - (b) any person connected with such a member,
  - (c) any arrangement (under that or another pension scheme) relating to a member of the pension scheme to which that arrangement relates, and
  - (d) any arrangement (under that or another pension scheme) relating to a person connected with such a member.

**PART 4**

AMOUNT AND TIMING OF UNAUTHORISED PAYMENT

*Introduction*

- 31 (1) This Part of this Schedule has effect for determining—

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- (a) the amount of an unauthorised payment treated as made to a member of an investment-regulated pension scheme by virtue of section 174A, and
  - (b) the time when such a payment is treated as made.
- (2) The amount is determined by—
- (a) finding the total taxable amount in relation to the unauthorised payment (see paragraphs 32 to 40),
  - (b) apportioning that amount to the pension scheme (see paragraphs 41 to 43),
  - (c) in a case to which paragraph 28 applies (acquisition etc of further interest in vehicle), making an adjustment under paragraph 44 to the amount mentioned in paragraph (b), and
  - (d) apportioning that amount to the member to whom the payment is treated as made in accordance with paragraph 45.

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

**C61** Sch. 29A para. 31 modified by S.I. 2006/207, reg. 4D (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), **reg. 9**)

*Acquisition: basic rules*

- 32 (1) This paragraph applies to a case within subsection (1) of section 174A (acquisition of an interest in taxable property).
- (2) The unauthorised payment is treated as made when the interest in the property is acquired by the pension scheme.
- (3) If the interest in the property is acquired because the pension scheme or another person comes to hold the interest directly, the total taxable amount in relation to the unauthorised payment is—
- (a) the amount of consideration, in money or money's worth, given directly or indirectly for the interest, plus
  - (b) the amount of any fees and other costs incurred in connection with the acquisition.
- (4) Sub-paragraph (3) is subject to paragraphs 33 to 35.
- (5) If the interest in the property is acquired because the pension scheme or another person comes to hold an interest in a person who already holds the interest in the property directly or indirectly, the total taxable amount in relation to the unauthorised payment is—
- (a) the market value, at the date the interest in the person is acquired, 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 if it were assigned to the person at that time.
- (6) If the interest in the property is treated as acquired by the pension scheme by virtue of paragraph 27 or 28, the total taxable amount in relation to the unauthorised payment is—

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- (a) the market value, at the date the interest is treated as acquired, 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 if it were assigned to the person at that time.

(7) This paragraph is subject to paragraph 36.

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

**C62** Sch. 29A para. 32 applied (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Taxable Property Provisions\) Regulations 2006 \(S.I. 2006/1958\)](#), regs. 1(1), 4

*Acquisition: further provisions*

- 33 (1) This paragraph applies where—
- (a) an investment-regulated pension scheme acquires an interest in taxable property because it acquires a chargeable interest in the property within the meaning of section 48(1) of the Finance Act 2003,
  - (b) the interest is acquired because the pension scheme or another person comes to hold the interest directly, and
  - (c) the whole or part of the consideration for the interest is consideration other than rent.
- (2) The provisions of the Finance Act 2003 listed in sub-paragraph (3) apply for determining the amount of the consideration (or the part that is not rent) as they apply for determining the amount of chargeable consideration for a land transaction for the purposes of Part 4 of that Act.
- (3) Those provisions are—
- (a) paragraphs 2 to 8 and 9 to 16 of Schedule 4 (chargeable consideration);
  - (b) section 51 (contingent, uncertain or unascertained consideration);
  - (c) section 52 (annuities etc: chargeable consideration limited to twelve years' payments).
- (4) The Treasury may by regulations provide—
- (a) for those provisions to apply with modifications to cases to which this paragraph applies, and
  - (b) for any other provisions of Part 4 of the Finance Act 2003 to apply (with or without modifications) to such cases.

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

**C63** Sch. 29A para. 33 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Taxable Property Provisions\) Regulations 2006 \(S.I. 2006/1958\)](#), regs. 1(1), 3

**C64** Sch. 29A para. 33 applied (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Taxable Property Provisions\) Regulations 2006 \(S.I. 2006/1958\)](#), regs. 1(1), 5

- 34 (1) This paragraph applies where—

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- (a) an investment-regulated pension scheme acquires an interest in taxable property because it acquires a chargeable interest in the property within the meaning of section 48(1) of the Finance Act 2003,
  - (b) the interest is acquired because the pension scheme or another person comes to hold the interest directly, and
  - (c) the whole or part of the consideration for the acquisition is rent.
- (2) The amount of the consideration (or the part that is rent) is to be taken to be the relevant rental value of the property; and paragraphs 2(4)(a), 3 and 8 of Schedule 5 (rent) to the Finance Act 2003 apply for determining that value.
- (3) The following provisions of the Finance Act 2003 apply for the purposes of sub-paragraph (2) for determining the amount of rent payable as they apply for determining the amount of rent payable under a lease to which that Act applies—
- (a) paragraphs 2, 5 to 7A, 9 and 16 of Schedule 17A (further provisions relating to leases);
  - (b) (subject to the provisions mentioned in paragraph (a)) the provisions mentioned in paragraph 33(3).
- (4) The Treasury may by regulations provide—
- (a) for the provisions mentioned in sub-paragraph (2) or (3) to apply with modifications to cases to which this paragraph applies, and
  - (b) for any other provisions of Part 4 of the Finance Act 2003 to apply (with or without modifications) to such cases.
- (5) For the purposes of this paragraph where on an assignment of a lease the assignee assumes the obligation to pay rent, the assumption counts as consideration for the assignment.

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

- C65** Sch. 29A para. 34 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Taxable Property Provisions\) Regulations 2006 \(S.I. 2006/1958\)](#), regs. 1(1), 3
- C66** Sch. 29A para. 34 applied (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Taxable Property Provisions\) Regulations 2006 \(S.I. 2006/1958\)](#), regs. 1(1), 6

- 35 (1) This paragraph applies where—
- (a) an investment-regulated pension scheme acquires an interest in taxable property because the pension scheme or another person comes to hold the interest directly,
  - (b) the interest is acquired for less than its market value, and
  - (c) immediately before the acquisition the interest was held by a registered pension scheme which was not an investment-regulated pension scheme.
- (2) This paragraph also applies where—
- (a) an investment-regulated pension scheme acquires an interest in taxable property because the pension scheme or another person comes to hold the interest directly,
  - (b) the interest is acquired for less than its market value, and
  - (c) tax relief is available under section 188 or 196 in respect of the transfer of the interest.

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- (3) The amount of the consideration for the interest is treated as—
- (a) the market value, at the date the interest is acquired, 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 if it were assigned to the person at that time.
- 36 (1) The Treasury may by regulations make provision with respect to—
- (a) what is to count as consideration for the acquisition of an interest in taxable property, and
  - (b) the determination of the amount of such consideration.
- (2) The Treasury may by regulations make provision with respect to the determination of the market value of an interest held in taxable property.
- (3) Regulations under this paragraph may, in particular, make provision for cases where an investment-regulated pension scheme acquires—
- (a) an interest in taxable property outside the United Kingdom,
  - (b) a licence to use or occupy taxable property, or
  - (c) an interest in taxable property which is tangible moveable property.
- (4) Regulations under this paragraph may—
- (a) amend this Part of this Schedule, and
  - (b) include provision having effect in relation to times before they are made.

*Post-acquisition unauthorised payments*

- 37 (1) The Treasury may by regulations make provision for an investment-regulated pension scheme which has acquired an interest in taxable property to be treated as making one or more further unauthorised payments where—
- (a) the amount of consideration for the acquisition was determined on the basis of a reasonable estimate, and the actual amount of the consideration turns out to be higher than the estimated amount,
  - (b) in the case of an interest which is a lease, there is a variation in the rent payable under the lease, or
  - (c) in such a case, the amount of consideration for the acquisition was determined on an assumption about the length of the term of the lease, and the lease continues after the end of the term.
- (2) Regulations under this paragraph may—
- (a) amend section 174A or this Schedule (apart from this paragraph), and
  - (b) include provision having effect in relation to times before they are made.
- (3) References in the taxable property provisions to unauthorised payments treated as made under section 174A include references to payments treated as made under regulations under this paragraph.

*Improvement of taxable property*

- 38 (1) This paragraph applies to a case within subsection (2) of section 174A (improvement of taxable property).

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- (2) An unauthorised payment is treated as made when a payment is made in connection with the improvement works.
- (3) The total taxable amount in relation to the unauthorised payment is the amount of the payment mentioned in sub-paragraph (2).

*Conversion or adaptation as residential property*

- 39 (1) This paragraph applies to a case within subsection (3) of section 174A (conversion or adaptation as residential property).
- (2) The unauthorised payment is treated as made on the occurrence of whichever of the following first occurs after the property has become residential property—
- (a) the substantial completion of the works to convert or adapt the property;
  - (b) the interest in the property ceasing to be held by the pension scheme.
- (3) But if the property becomes residential property after the end of the period of three years beginning with the date on which the first payment was made in connection with the works to convert or adapt the property, the unauthorised payment is treated as made when the property becomes residential property.
- (4) If the works began before the end of the period of twelve months beginning with the acquisition of the interest in the property by the pension scheme, the total taxable amount in relation to the unauthorised payment is—
- (a) the amount of consideration for the interest, determined in accordance with paragraphs 32 to 36, plus
  - (b) the development costs (see sub-paragraph (7)).
- (5) If the works began after the end of that period, the total taxable amount in relation to the unauthorised payment is—
- (a) the relevant market value (see sub-paragraph (6)), plus
  - (b) the development costs (see sub-paragraph (7)).
- (6) In this paragraph “the relevant market value” means—
- (a) the market value, at the date the works began, 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 if it were assigned to the person at that time.
- (7) In this paragraph “the development costs” means the total cost of the works to convert or adapt the property at the time when the unauthorised payment is treated as made.
- (8) Where, at the time the unauthorised payment is treated as made—
- (a) an amount will be payable for the works only if some uncertain future event occurs, or
  - (b) an amount will cease to be payable for the works if some uncertain future event occurs,
- the development costs are to be determined on the assumption that the amount will be payable or, as the case may be, will not cease to be payable.
- (9) Where, at that time, an amount payable for the works—
- (a) depends on uncertain future events, or



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- (b) cannot otherwise be ascertained,  
that amount is to be determined for the purposes of sub-paragraph (7) on the basis of a reasonable estimate.
- 40 (1) This paragraph applies to a case within subsection (3) of section 174A (conversion or adaptation as residential property).
- (2) This paragraph applies if —
- (a) sub-paragraph (8) of paragraph 39 has effect when an unauthorised payment is treated as made under that paragraph,
  - (b) an amount estimated under that sub-paragraph later becomes ascertained, and
  - (c) the ascertained amount is more than the estimated amount.
- (3) An unauthorised payment is treated as made when the amount becomes ascertained.
- (4) The total taxable amount in relation to the unauthorised payment is the difference between the ascertained amount and the estimated amount.
- (5) References in the taxable property provisions to unauthorised payments treated as made under section 174A include references to payments treated as made under this paragraph.

*Apportionment to pension scheme*

- 41 (1) This paragraph applies for determining—
- (a) whether the amount of an unauthorised payment treated as made by an investment-regulated pension scheme under section 174A consists of the whole of the total taxable amount in relation to the payment, and
  - (b) if not, how much of the total taxable amount comprises the amount of the unauthorised payment.
- (2) The pension scheme is treated as making an unauthorised payment equal to the whole of the total taxable amount where Condition A, B or C is met.
- (3) Condition A is that the pension scheme directly holds the interest in the taxable property which gives rise to the unauthorised payment.
- (4) Condition B is that—
- (a) the pension scheme holds the interest in the property indirectly through one vehicle, and
  - (b) that vehicle is wholly owned by the pension scheme.
- (5) Condition C is that—
- (a) the pension scheme holds the interest in the property indirectly through more than one vehicle (a “chain” of vehicles), and
  - (b) each vehicle in the chain is wholly owned by another vehicle in the chain or by the pension scheme.
- (6) Where—
- (a) the pension scheme holds the interest in the property indirectly through one vehicle, and
  - (b) the vehicle is not wholly owned by the pension scheme,

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the amount of the unauthorised payment is a proportion of the total taxable amount determined by reference to the extent of the pension scheme's interest in the vehicle.

- (7) Where—
- (a) the pension scheme holds the interest in the property indirectly through one or more chains of vehicles, and
  - (b) one or more vehicles in such a chain is not wholly owned by another vehicle in the chain or by the pension scheme,

the amount of the unauthorised payment is the amount or the total of all the amounts found under sub-paragraph (8) for each chain through which the pension scheme owns the interest in the property.

- (8) The amount is a proportion of the total taxable amount determined by reference to the extent of the interest held directly by the pension scheme or another vehicle in the chain in each vehicle in the chain—
- (a) starting with the vehicle which holds the interest in the property directly, and
  - (b) ending with the vehicle in which the pension scheme directly holds an interest.

- (9) For the purposes of this paragraph a vehicle is wholly owned by a person if no other person directly holds an interest in the vehicle.

- (10) This paragraph is subject to paragraph 44.

- 42 (1) References in this Schedule to the extent of an interest held directly by a person in a vehicle are references to the proportion of the interests of everyone who directly holds an interest in the vehicle which on a just and reasonable apportionment is represented by that interest.

- (2) Sub-paragraph (1) is subject to paragraph 43, which explains how to determine the extent of a person's interest in a vehicle for the purposes of the taxable property provisions where the vehicle is a company.

- (3) The Treasury may by regulations—
- (a) amend paragraph 43, or
  - (b) amend this Part of this Schedule for the purposes of explaining how to determine the extent of a person's interest in a vehicle in other cases.

- (4) Regulations under sub-paragraph (3) may include provision having effect in relation to times before they are made.

- 43 (1) For the purposes of this Schedule, and except in a case to which sub-paragraph (3) applies, the extent of a person's interest in a company is determined by reference to whichever of the following gives the person the greatest interest in the company—
- (a) the percentage of the share capital or issued share capital of the company owned by the person;
  - (b) the percentage of the voting rights in the company owned by the person;
  - (c) the percentage of all the income of the company to which the person has a right;
  - (d) the percentage of the amounts distributed on a distribution in relation to the company to which the person has a right;
  - (e) the percentage of the assets of the company to which the person has a right on a winding-up or in any other circumstances;

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- (f) where the person has a right to a percentage of a particular asset or description of assets of the company, or of the income or gains from such an asset or description (either generally or in particular circumstances), that percentage or the highest of all the percentages found under this paragraph.
- (2) For the purposes of sub-paragraph (1) a person is treated as owning or having a right to anything which the person will only acquire—
- (a) at some future date,
  - (b) if the person exercises a right to acquire it, or
  - (c) if some other uncertain future event occurs or does not occur.
- (3) Where—
- (a) a person has an interest in a company as a result of lending the company money to fund the acquisition of an interest in taxable property, and
  - (b) this sub-paragraph gives the person a greater interest in the company than any interest given by sub-paragraph (1),
- for the purposes of this Schedule the extent of the person's interest in the company is determined by the proportion that the value of the loan bears to the total value of the assets held directly by the company.
- (4) For the purposes of sub-paragraph (3)—
- (a) assets must be valued in accordance with generally accepted accounting practice,
  - (b) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically), and
  - (c) where generally accepted accounting practice offers a choice of valuation between cost basis and fair value, fair value must be used.

*Deemed acquisition: adjustment*

- 44 (1) This paragraph applies where an investment-regulated pension scheme is treated as acquiring an interest in taxable property by virtue of paragraph 28 (increase in extent of interest in vehicle).
- (2) The amount of the unauthorised payment treated as made by the pension scheme is—

UPUPB

Where—

UP is the amount that would have been the amount of the unauthorised payment apart from this paragraph; and

UPB is the amount that would have been the amount of any unauthorised payment treated as made by the pension scheme if it had acquired the interest in the property immediately before the increase in the extent of the interest in the vehicle (assuming the total taxable amount in relation to the unauthorised payment to be that given under paragraph 32(5)).

*Apportionment to member*

- 45 (1) This paragraph has effect for determining—
- (a) whether the whole of an unauthorised payment treated as made by a pension scheme is to be treated as made to a member of the scheme, and

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- (b) if not, how much of the unauthorised payment is to be treated as made to the member.
- (2) If the interest in the taxable property which gives rise to the unauthorised payment is held by the pension scheme for the purposes of—
  - (a) the arrangement under the pension scheme relating to the member, and
  - (b) at least one other arrangement under the pension scheme,
 the unauthorised payment is to be apportioned on a just and reasonable basis between all of the arrangements for the purposes of which the interest in the property is held.
- (3) Otherwise, the whole of the unauthorised payment is to be treated as made to the member.]

## SCHEDULE 30

Section 179

### REGISTERED PENSION SCHEMES: EMPLOYER LOANS

#### *Definitions*

##### *Charge of adequate value*

- 1 (1) A charge is of adequate value if it meets conditions A, B and C.
- (2) Condition A is that, at the time the charge is given, the market value of the assets subject to the charge—
  - (a) in the case of the first charge to secure the loan, is at least equal to the amount owing (including interest), and
  - (b) in any other case, is at least equal to the lower of that amount and the market value of the assets subject to the previous charge.
- (3) Condition B is that if, at any time after the charge is given, the market value of the assets charged is less than would be required under condition A if the charge were given at that time, the reduction in value is not attributable to any step taken by the pension scheme, the sponsoring employer or a person connected with the sponsoring employer.
- (4) Condition C is that the charge takes priority over any other charge over the assets.

#### **Commencement Information**

**I14** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

##### *Loan repayment date*

- 2 (1) “Loan repayment date” means the date by which the total amount owing (including interest) must be paid.
- (2) A standard loan repayment date is a loan repayment date before the end of the period of five years beginning with the date on which the loan is made.

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**Commencement Information**

**I15** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Loan year*

- 3 (1) “Loan year” means—
- (a) the period of 12 months beginning with the date on which the loan is made, and
  - (b) each succeeding period of 12 months.
- (2) But in the period of 12 months in which the loan repayment date falls, the loan year ends on the loan repayment date (and that loan year is the last loan year).

**Commencement Information**

**I16** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Required amount*

- 4 “The required amount”, in relation to a period beginning with the date on which the loan is made and ending with the last day of a loan year, is—

**Commencement Information**

**I17** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Amount of unauthorised payment*

*Loan does not comply with section 179(1) when made*

- 5 (1) If a loan does not comply with section 179 (1) (authorised employer loan) when it is made, there is an unauthorised payment of an amount equal to the largest of such of amounts 1, 2, A, B, and C as arise in relation to the loan.
- (2) Paragraphs 12 to 16 explain amounts 1, 2, A, B and C.

**Commencement Information**

**I18** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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*Loan ceases to be secured by charge of adequate value*

- 6 If at any time after a loan is made the loan ceases to be secured by a charge of adequate value, there is an unauthorised payment equal to amount 2 (see paragraph 13).

**Commencement Information**

**I19** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Further reduction in value of charge which is not of adequate value*

- 7 (1) If at any time after a loan is made—
- (a) the loan is secured by a charge which is not of adequate value, and
  - (b) an event mentioned in sub-paragraph (2) occurs,
- there is an unauthorised payment.
- (2) The events are—
- (a) the loan ceasing to be secured by a charge,
  - (b) a charge being given which does not comply with conditions A or C,
  - (c) a reduction in the value of the assets charged which does not comply with condition B, and
  - (d) the charge ceasing to comply with condition C.
- (3) The amount of the unauthorised payment is—

$$AAE - ABE$$

where—

AAE is amount 2 (see paragraph 13) calculated after the event, and

ABE is amount 2 (see paragraph 13) calculated before the event.

- (4) Paragraph 1 defines conditions A, B and C.

**Commencement Information**

**I20** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Loan ceases to comply with repayment terms*

- 8 (1) If at any time after a loan is made—
- (a) there is an alteration in the repayment terms, and
  - (b) as a result the repayment terms cease to comply with one or more paragraphs of section 179(2) (authorised repayment terms),

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there is an unauthorised payment of an amount equal to the larger of such of amounts A, B, and C (see paragraphs 14 to 16) as arise when that paragraph or those paragraphs are not complied with.

**Commencement Information**

**I21** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Increase in extent to which loan does not comply with repayment terms*

- 9 (1) If at any time after a loan is made—
- (a) there is an alteration in the repayment terms, and
  - (b) as a result the deterioration condition is met in relation to one or more paragraphs of section 179(2) (authorised repayment terms) which were not complied with before the alteration,
- there is an unauthorised payment of an amount calculated in accordance with sub-paragraphs (3) and (4).
- (2) The deterioration condition is met in relation to a paragraph if—

$$AAA > ABA$$

- (3) For each paragraph in relation to which the deterioration condition is met, calculate—

$$AAA - ABA$$

- (4) There is an unauthorised payment of an amount equal to the largest of the amounts calculated under sub-paragraph (3).
- (5) In this paragraph—
- AAA, in relation to a paragraph of section 179(2) which was not complied with before the alteration in the repayment terms, is the amount arising when that paragraph is not complied with, calculated after the alteration in the repayment terms, and
- ABA, in relation to such a paragraph, is the amount arising when that paragraph is not complied with, calculated before the alteration in the repayment terms.

**Commencement Information**

**I22** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Prevention of double charging*

- 10 (1) This paragraph applies if on any date there is an unauthorised payment under more than one of paragraphs 6 to 9.
- (2) There is a single unauthorised payment.

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- (3) The amount of the unauthorised payment is an amount equal to the amount of the greater or greatest of the unauthorised payments under those paragraphs.

**Commencement Information**

**I23** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Total unauthorised payments not to exceed amount of loan*

- 11 If the aggregate amount of the unauthorised payments in relation to a loan under paragraphs 5 to 10 exceeds the amount of the loan when it was made, the excess is to be treated as not being an unauthorised payment.

**Commencement Information**

**I24** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Amount 1*

- 12 (1) Amount 1 arises if paragraph (a) of section 179 (1) (amount of loan must not exceed 50% of pension scheme assets) is not complied with.
- (2) Amount 1 is—
- where—
- AL is the amount of the loan, and
- VA is an amount equal to 50% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme before the loan is made.

**Commencement Information**

**I25** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Amount 2*

- 13 (1) Amount 2 arises if paragraph (b) of section 179 (1) (loan must be secured by charge of adequate value) is not complied with.
- (2) Amount 2 is—

$$AO - VA$$

where—

AO is the amount owing (including interest) at the relevant time, and



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VA is the market value at that time of the assets charged but if the loan is not secured by a charge, or is secured by a charge which does not meet condition C (as defined in paragraph 1), is nil.

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**Commencement Information**

**I26** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Amount A*

14 (1) Amount A arises if paragraph (a) of section 179(2) (interest rate to be not less than prescribed amount) is not complied with.

(2) Amount A is—

where—

IR is the rate of interest payable at the relevant time,

PIR is the rate of interest prescribed by regulations under that paragraph, and

AO is the amount owing (not including interest) at the relevant time.

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**Commencement Information**

**I27** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Amount B*

15 (1) Amount B arises if paragraph (b) of section 179(2) (loan repayment date to be within five years unless postponed) is not complied with.

(2) Amount B is—

where—

DLRP is the number of days in the period which begins with the date on which the loan is made and ends with the loan repayment date,

DFY is the number of days in the period which begins with the date on which the loan is made and ends five years after that date, and

AO is the amount owing (including interest) at the relevant time.

(3) But if the amount produced by the fraction in sub-paragraph (2) is greater than 1, amount B is the amount owing (including interest) at the relevant time.

(4) If the loan repayment date has been postponed under section 179(3), sub-paragraph (2) applies as if references to the date on which the loan is made were to the standard loan repayment date on which the loan repayment date was postponed.

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**Commencement Information**

**I28** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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*Amount C*

- 16 (1) Amount C arises if paragraph (c) of section 179(2) (amount payable for a period to be not less than required amount) is not complied with and is calculated as follows.
- (2) In relation to each period beginning with the date on which the loan is made and ending with the last day of a loan year, calculate—

$$RA - AP$$

where—

RA is the required amount in relation to that period, and

AP is the amount payable during that period.

- (3) If an amount calculated under sub-paragraph (2) is negative, treat that amount as nil.
- (4) Amount C is the largest of the amounts calculated under sub-paragraph (2).

**Commencement Information**

**I29** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

SCHEDULE 31

Section 204

TAXATION OF BENEFITS UNDER REGISTERED PENSION SCHEMES

- 1 Part 9 of ITEPA 2003 (pension income) is amended as follows.

**Commencement Information**

**I30** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 2 In section 565 (structure of Part 9), for “Chapters 16 to 18 deal with” substitute—
- “Chapter 15A makes provision about exemptions and charges in relation to lump sums under registered pension schemes; Chapters 17 and 18 deal with other”.

**Commencement Information**

**I31** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 3 (1) Section 566(4) (nature of charge to tax on pension income) is amended as follows.
- (2) For the entries relating to sections 580, 583, 590, 595, 598, 601 and 605 substitute—

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“Section 579A	Pensions under registered pension schemes	Chapter 5A”
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(3) Omit the entry relating to section 623.

(4) Insert at the end—

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“Section 636B	Pensions treated as arising from payment of trivial commutation lump sums and winding-up lump sums under registered pension schemes	Chapter 15A
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Section 636C	Pensions treated as arising from payment of trivial commutation lump sum death benefits and winding-up lump sum death benefits under registered pension schemes	Chapter 15A”
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**Commencement Information**

**I32** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

4 In section 567(4)(a) (amount charged to tax), for “15” substitute “ 15A ”.

**Commencement Information**

**I33** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

5 In section 568 (person liable to tax), for “15” substitute “ 15A ”.

**Commencement Information**

**I34** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

6 After Chapter 5 insert—

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## “CHAPTER 5A

### PENSIONS UNDER REGISTERED PENSION SCHEMES

#### Pensions

579A(1) This section applies to any pension under a registered pension scheme (but subject to subsection (2)).

(2) This section does not apply to a pension under a registered pension scheme if and to the extent that, when it is paid, a liability to the unauthorised payments charge arises in respect of the amount of the payment (see section 208 of FA 2004).

#### Taxable pension income

579B If section 579A applies, the taxable pension income for a tax year is the full amount of the pension under the registered pension scheme that accrues in that year irrespective of when any amount is actually paid.

#### Person liable for tax

579C If section 579A applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension under the registered pension scheme.

#### Interpretation

579D In this Chapter “pension under a registered pension scheme” includes—

- (a) an annuity under, or purchased with sums or assets held for the purposes of, or representing acquired rights under, a registered pension scheme, and
- (b) income withdrawal or dependants' income withdrawal under a registered pension scheme.

In paragraph (b) “income withdrawal” and “dependants' income withdrawal” have the meaning given by paragraphs 7 and 21 of Schedule 28 to FA 2004.”

#### Commencement Information

**I35** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

7

Omit Chapters 6, 7, 8 and 9 (pensions under approved schemes).

#### Commencement Information

**I36** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- 8 (1) Section 610 (annuities under sponsored superannuation schemes) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “a sponsored superannuation scheme” substitute “ an occupational pension scheme that is not a registered pension scheme ”, and
  - (b) in paragraph (b), for “a sponsored superannuation scheme” substitute “ such an occupational pension scheme ”.
- (3) In subsection (3), for “any provision of Chapter 6, 7, 8 or 9” substitute “ Chapter 5A ”.
- (4) For subsection (4) substitute—
- “(4) In this section “occupational pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150(5) of that Act).”
- (5) In the heading, for “sponsored superannuation” substitute “ non-registered occupational pension ”.

**Commencement Information**

**I37** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 9 In section 611(3) (annuities in recognition of another’s service), for “any provision of Chapter 6, 7, 8 or 9” substitute “ Chapter 5A ”.

**Commencement Information**

**I38** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 10 Omit Chapter 13 (return of surplus additional voluntary contributions under exempt approved schemes and relevant statutory schemes).

**Commencement Information**

**I39** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 11 After Chapter 15 insert—

**“CHAPTER 15A**

**LUMP SUMS UNDER REGISTERED PENSION SCHEMES**

**Exemption for certain lump sums under registered pension schemes**

636A) No liability to income tax arises on a lump sum paid under a registered pension scheme if the lump sum is—

- (a) a pension commencement lump sum,
- (b) a serious ill-health lump sum,

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- (c) a refund of excess contributions lump sum,
  - (d) a defined benefits lump sum death benefit,
  - (e) an uncrystallised funds lump sum death benefit, or
  - (f) a transfer lump sum death benefit.
- (2) But subsection (1) does not limit the operation of sections 214 to 226 of FA 2004 (lifetime allowance charge).
- (3) A short service refund lump sum under a registered pension scheme is subject to income tax in accordance with section 205 of FA 2004 (charge to tax on scheme administrator in respect of such a lump sum) but not otherwise.
- (4) A lump sum under a registered pension scheme which is—
- (a) a pension protection lump sum death benefit,
  - (b) an annuity protection lump sum death benefit, or
  - (c) an unsecured pension fund lump sum death benefit,
- is subject to income tax in accordance with section 206 of FA 2004 (charge to tax on scheme administrator in respect of such lump sum death benefits) but not otherwise.
- [<sup>F499</sup>(4A) In the case of a registered pension scheme which is a split scheme for the purposes of the Registered Pensions Schemes (Splitting of Schemes) Regulations 2006, subsections (3) and (4) shall have effect as if the references to the scheme administrator were to the sub-scheme administrator (within the meaning of those Regulations).]
- (5) A lifetime allowance excess lump sum is chargeable to income tax in accordance with sections 214 to 226 of FA 2004 (lifetime allowance charge) but not otherwise.
- (6) In this section—
- “lifetime allowance excess lump sum”,
  - “pension commencement lump sum”,
  - “refund of excess contributions lump sum”,
  - “serious ill-health lump sum”, and
  - “short service refund lump sum”,
- have the same meaning as in section 166 of FA 2004 (see Part 1 of Schedule 29 to that Act).
- (7) In this section—
- “annuity protection lump sum death benefit”,
  - “defined benefits lump sum death benefit”,
  - “pension protection lump sum death benefit”,
  - “transfer lump sum death benefit”,
  - “uncrystallised funds lump sum death benefit”, and
  - “unsecured pension fund lump sum death benefit”,
- have the same meaning as in section 168 of FA 2004 (see Part 2 of Schedule 29 to that Act).

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### Trivial commutation and winding-up lump sums

636B) This section applies if—

- (a) a trivial commutation lump sum, or
- (b) a winding-up lump sum,

is paid to a member of a registered pension scheme under the pension scheme.

- (2) The member is to be treated as having taxable pension income for the tax year in which the payment is made equal to the amount of the lump sum.
- (3) But if, immediately before the lump sum is paid, the member has not become entitled to any benefits under the pension scheme, the amount of the taxable pension income is 75% of the amount of the lump sum.
- (4) In this section—
  - “trivial commutation lump sum”, and
  - “winding-up lump sum”,have the same meaning as in section 166 of FA 2004 (see Part 1 of Schedule 29 to that Act).

### Trivial commutation and winding-up lump sum death benefits

636C) This section applies if—

- (a) a trivial commutation lump sum death benefit, or
- (b) a winding-up lump sum death benefit,

is paid to a person under a registered pension scheme.

- (2) The person is to be treated as having taxable pension income for the tax year in which the payment is made equal to the amount of the lump sum.
- (3) In this section—
  - “trivial commutation lump sum death benefit”, and
  - “winding-up lump sum death benefit”,have the same meaning as in section 168 of FA 2004 (see Part 2 of Schedule 29 to that Act).”

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#### Textual Amendments

**F499** Words in Sch. 31 para. 11 inserted (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), **5(1)(2)**

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#### Commencement Information

**I40** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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**Commencement Information**

**I41** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 13 In section 644(2) (pensions to which section 580 or 590 applies not a disablement pension), for “580 or 590” substitute “ 579A ”.

**Commencement Information**

**I42** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 14 (1) Section 683 of ITEPA 2003 (PAYE income) is amended as follows.
- (2) In subsection (3), for the entries relating to sections 581, 584, 591, 596, 599 and 602 substitute— “ section 579B (pension under registered pension scheme), ”.
- (3) In that subsection, insert at the end— “ section 636B (pension treated as arising from payment of trivial commutation lump sum or winding-up lump sum), section 636C (pension treated as arising from payment of trivial commutation or winding-up lump sum death benefit). ”
- (4) Omit subsection (4).

**Commencement Information**

**I43** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 15 In Part 2 of Schedule 1 to ITEPA 2003 (index of defined expressions) insert at the appropriate place—

“pension under a registered pension scheme (in Chapter 5A of Part 9) section 579D”.

**Commencement Information**

**I44** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284



**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 32

[<sup>F501</sup>Sections 232 and 236]

### REGISTERED PENSION SCHEMES: BENEFIT CRYSTALLISATION EVENTS <sup>F500</sup> ...

#### Textual Amendments

**F500** Word in Sch. 32 heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 13(3), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**F501** Words in Sch. 32 shoulder note substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 13(2), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

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

**C67** Sch. 32 modified (6.4.2006) by The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (S.I. 2006/207), regs. 1(1), 16

**C68** Sch. 32 applied (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, 23(5)

### <sup>F502</sup>Introduction

#### Textual Amendments

**F502** Sch. 32 paras. A1, A2 and cross-headings inserted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 13(4), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

- A1 (1) This Schedule applies for the purposes of sections 232 and 236.
- (2) In this Schedule—
- paragraph A2 sets out the events that are benefit crystallisation events in relation to an individual;
  - subsequent paragraphs give the meaning of expressions used in paragraph A2.

#### *The benefit crystallisation events*

- A2 (1) Benefit crystallisation event 1 occurs in relation to an individual if sums or assets held for the purposes of a money purchase arrangement under any of the relevant pension schemes are designated as available for the payment of drawdown pension to the individual.
- (2) Benefit crystallisation event 2 occurs in relation to an individual if the individual becomes entitled to a scheme pension under any of the relevant pension schemes.
- (3) Benefit crystallisation event 3 occurs in relation to an individual if the individual, having become so entitled, becomes entitled to payment of the scheme pension, otherwise than in excepted circumstances, at an increased annual rate which—
- exceeds the threshold annual rate, and
  - exceeds by more than the permitted margin the rate at which it was payable on the day on which the individual became entitled to it.

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- (4) Benefit crystallisation event 4 occurs in relation to an individual if the individual becomes entitled to a lifetime annuity purchased under a money purchase arrangement under any of the relevant pension schemes.
- (5) Benefit crystallisation event 6 occurs in relation to an individual if the individual becomes entitled to a relevant lump sum under any of the relevant pension schemes.]

*General: meaning of “the relevant pension schemes”*

- 1 <sup>F503</sup>[In this Schedule] “the relevant pension schemes” means the registered pension schemes of which the individual is a member <sup>F504</sup>....

**Textual Amendments**

- F503** Words in Sch. 32 para. 1 substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), **Sch. 9 paras. 13(5)(a)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F504** Words in Sch. 32 para. 1 omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 13(5)(b)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**Commencement Information**

- I45** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Post-75 events not generally benefit crystallisation events*

- 2 The only sort of event that constitutes a benefit crystallisation event in relation to the individual after the individual has reached the age of 75 is an event that constitutes benefit crystallisation event 3.

**Commencement Information**

- I46** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

<sup>F505</sup> ...

**Textual Amendments**

- F505** Sch. 32 para. 2A and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 13(6)(a)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

<sup>F505</sup>2A .....

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F506 ...

**Textual Amendments**

**F506** Sch. 32 paras. 2B, 3 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 13(6)(b), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F506<sup>2</sup>B .....

F506<sup>3</sup> .....

F507 ...

**Textual Amendments**

**F507** Sch. 32 para. 4 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 13(6)(b), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F507<sup>4</sup> .....

F508 ...

**Textual Amendments**

**F508** Sch. 32 para. 5 and cross-heading omitted (1.8.2022) by virtue of Finance Act 2021 (c. 26), Sch. 5 paras. 22(3), 25(1); S.I. 2022/874, reg. 2 and Sch. 32 para. 5 and cross-heading expressed to be omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 13(6)(c), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F508<sup>5</sup> .....

F509 ...

**Textual Amendments**

**F509** Sch. 32 para. 6 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 13(6)(d), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F509<sup>6</sup> .....

*Benefit crystallisation events 2 and 4: early lifetime annuities*

- 7 (1) This paragraph has effect if—
- (a) the individual becomes entitled before reaching normal minimum pension age to the payment of a lifetime annuity purchased under a money purchase arrangement under any of the relevant pension schemes, and

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- (b) the ill-health condition is not satisfied immediately before the individual becomes so entitled.
- (2) Benefit crystallisation event 2 applies as if—
- (a) the lifetime annuity were a scheme pension under the pension scheme, and
- (b) the individual becomes entitled to it only on reaching normal minimum pension age.
- (3) Benefit crystallisation event 4 does not apply in relation to the lifetime annuity.
- <sup>F510</sup>(4) .....
- <sup>F511</sup>(5) .....

#### Textual Amendments

- F510** Sch. 32 para. 7(4) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 13\(7\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F511** Sch. 32 para. 7(5) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 13\(7\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

#### Commencement Information

- I47** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

#### *Benefit crystallisation event 2: early pensions*

- 8 For the purposes of benefit crystallisation event 2 if—
- (a) the individual becomes entitled to the pension before reaching normal minimum pension age, and
- (b) the ill-health condition is not satisfied immediately before the individual becomes entitled to the pension,
- the individual is to be treated as becoming entitled to it only on reaching normal minimum pension age.

#### Commencement Information

- I48** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

<sup>F512</sup> ...

#### Textual Amendments

- F512** Sch. 32 para. 9 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 13\(8\)\(a\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

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F512<sup>9</sup> .....

*[<sup>F513</sup>Benefit crystallisation event 3: disregarding abatement*

**Textual Amendments**

**F513** Sch. 32 para. 9A and cross-heading inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 8\(3\), 64\(1\)](#)

- 9A For the purposes of benefit crystallisation event 3, any abatement of the scheme pension is to be left out of account in determining for the purposes of column 1—
- (a) the increased annual rate of the pension, and
  - (b) the rate at which it was payable on the day on which the individual became entitled to it.]

*Benefit crystallisation event 3: excepted circumstances*

<sup>F514</sup>(A1) For the purposes of benefit crystallisation event 3 “excepted circumstances” exist if condition A or B is met.]

[<sup>F515</sup>(1)] [<sup>F516</sup>Condition A is that—

- [<sup>F517</sup>(za) the entitlement to payment of a scheme pension at an increased annual rate is under an arrangement that is not a collective money purchase arrangement,]
- (a) <sup>F518</sup>... at the time when the annual rate of the individual’s pension is increased there are at least 50 pensioner members of the pension scheme, and
- [<sup>F519</sup>(b) <sup>F520</sup>... the individual is one of a class of at least 20 pensioner members of the pension scheme, and all the scheme pensions being paid under the pension scheme to pensioner members of that class are at that time increased at the same rate.]

[<sup>F521</sup>(2) A class may consist of all the pensioner members of the pension scheme.

(3) Sub-paragraph (4) applies where—

- (a) the annual rate of the individual's pension is increased in excepted circumstances (“the excepted increase”),
- (b) before the end of the period of 12 months beginning with the date of the excepted increase, the annual rate of the individual's pension is increased in circumstances which would (apart from that sub-paragraph) be excepted circumstances (“the subsequent increase”), and
- (c) the class by virtue of which sub-paragraph (1)(b) is satisfied on the subsequent increase (“the new class”) is not the class by virtue of which it was satisfied on the excepted increase.

(4) If the purpose, or one of the main purposes, of the individual's being included in the new class is to increase the annual rate of the individual's pension without benefit crystallisation event 3 occurring, the subsequent increase is not in excepted circumstances.]

[<sup>F522</sup>(5) Condition B is that—

- (a) the entitlement to payment of a scheme pension at an increased annual rate is under an arrangement that is a collective money purchase arrangement, and

*Changes to legislation: Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (b) at the time when the annual rate of the individual's pension is increased, all the scheme pensions being paid under collective money purchase arrangements are increased at the same rate.]

#### Textual Amendments

- F514** Sch. 32 para. 10(A1) inserted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 22(5), 25(1); S.I. 2022/874, reg. 2
- F515** Sch. 32 para. 10 renumbered as Sch. 32 para. 10(1) (retrospective to 6.4.2006) by Finance Act 2008 (c. 9), Sch. 29 paras. 7(2), 12(3)
- F516** Words in Sch. 32 para. 10(1) substituted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 22(6)(a), 25(1); S.I. 2022/874, reg. 2
- F517** Sch. 32 para. 10(1)(za) inserted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 22(6)(b), 25(1); S.I. 2022/874, reg. 2
- F518** Word in Sch. 32 para. 10(1)(a) omitted (1.8.2022) by virtue of Finance Act 2021 (c. 26), Sch. 5 paras. 22(6)(c), 25(1); S.I. 2022/874, reg. 2
- F519** Sch. 32 para. 10(1)(b) substituted (retrospective to 6.4.2006) by Finance Act 2008 (c. 9), Sch. 29 paras. 7(3), 12(3)
- F520** Word in Sch. 32 para. 10(1)(b) omitted (1.8.2022) by virtue of Finance Act 2021 (c. 26), Sch. 5 paras. 22(6)(d), 25(1); S.I. 2022/874, reg. 2
- F521** Sch. 32 para. 10(2)-(4) inserted (retrospective to 6.4.2006) by Finance Act 2008 (c. 9), Sch. 29 paras. 7(4), 12(3)
- F522** Sch. 32 para. 10(5) inserted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 22(7), 25(1); S.I. 2022/874, reg. 2

#### Commencement Information

- I49** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

### *f<sup>F523</sup>Benefit crystallisation event 3: threshold annual rate*

#### Textual Amendments

- F523** Sch. 32 para. 10A and cross-heading inserted (retrospective to 6.4.2006) by Finance Act 2008 (c. 9), Sch. 29 paras. 8, 12(3)

- 10A (1) This paragraph applies for the purposes of benefit crystallisation event 3.
- (2) The threshold annual rate is the annual rate of the pension on the date of which the increase date is the first anniversary, increased by the greatest of—
- (a) the relevant percentage rate,
  - (b) the relevant indexation percentage, and
  - (c) £250,
- and rounded up in accordance with sub-paragraph (8).
- (3) But if the person became entitled to the pension after the date of which the increase date is the first anniversary, the threshold annual rate is the annual rate of the pension on the date on which the person became entitled to the pension, increased and rounded up as mentioned in sub-paragraph (2).

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- (4) The increase date is the date on which the individual becomes entitled to payment of the pension at the increased annual rate.
- (5) The relevant percentage rate is—
  - (a) in a case where the pension is paid under a pension scheme, or an arrangement under a pension scheme, in relation to which the relevant valuation factor is a number greater than 20, the rate agreed by the Commissioners for Her Majesty's Revenue and Customs and the scheme administrator, and
  - (b) otherwise, 5%.
- (6) The relevant indexation percentage means—
  - (a) if the retail prices index for the reference month is higher than the retail prices index for the same calendar month in the previous year, the percentage increase in the retail prices index, and
  - (b) if it is not, 0%.
- (7) The scheme administrator may select as the reference month any month in the period of 12 months ending with the month in which the increase date falls.
- (8) An amount is rounded up in accordance with this sub-paragraph if it is rounded up to the next greatest amount which—
  - (a) where the pension is payable monthly, gives an amount of whole pounds when divided by 12, or
  - (b) where the pension is payable weekly, gives an amount of whole pounds when divided by 52.
- (9) If the pension is under a public service pension scheme, any abatement of the pension is to be left out of account in determining for the purposes of this paragraph the annual rate of the pension on the date of which the increase date is the first anniversary (or, where sub-paragraph (3) applies, the date on which the person became entitled to the pension).
- (10) An individual who becomes entitled to payment of a scheme pension at an increased annual rate on 29 February in any year is to be treated for the purposes of this paragraph as having become so entitled on 28 February in that year.
- (11) The Treasury may by order substitute for the amount for the time being specified in sub-paragraph (2)(c) a different amount (including an amount to be calculated as a percentage of the standard lifetime allowance).]

*Benefit crystallisation event 3: permitted margin*

- 11 (1) This paragraph applies for the purposes of benefit crystallisation event 3 if the individual became entitled to the pension on or after 6th April 2006.
- (2) The permitted margin is the amount by which the annual amount of the pension at the rate at which it was payable on the day on which the individual became entitled to it would be greater if it had been increased by whichever of calculation A and calculation B gives the greater amount.
- (3) Calculation A involves increasing that annual amount at the relevant annual percentage rate for the whole of the period—

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- (a) beginning with the month in which the individual became entitled to the pension, and
  - (b) ending with the month in which the individual becomes entitled to payment of the pension at the increased rate.
- (4) The relevant annual percentage rate is—
- (a) in a case where the pension is paid under a pension scheme, or an arrangement under a pension scheme, in relation to which the relevant valuation factor is a number greater than 20, the annual rate agreed by the Inland Revenue and the scheme administrator, and
  - (b) otherwise, 5% per annum.
- (5) Calculation B involves increasing that annual amount by the relevant indexation percentage.
- (6) If the retail prices index for the [<sup>F524</sup>reference month] is higher than it was for the [<sup>F525</sup>base month], the relevant indexation percentage is the percentage increase in the retail prices index.
- (7) If it is not, the relevant indexation percentage is 0%.
- [<sup>F526</sup>(7A) The scheme administrator may select as the reference month any month in the period of 12 months ending with the month in which the individual becomes entitled to payment of the pension at the increased rate.
- (7B) The base month is the month which is the same number of months before the month in which the individual became entitled to the pension, as the reference month is before the month in which the individual becomes entitled to payment of the pension at the increased rate.]
- [<sup>F527</sup>(8) If the pension is under a public service pension scheme, any abatement of the pension is to be left out of account in determining for the purposes of this paragraph the annual amount of the pension at the rate at which it was payable on the day on which the individual became entitled to it.]

#### Textual Amendments

- F524** Words in Sch. 32 para. 11(6) substituted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 29 paras. 9\(2\)\(a\)](#), 12(1)
- F525** Words in Sch. 32 para. 11(6) substituted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 29 paras. 9\(2\)\(b\)](#), 12(1)
- F526** Sch. 32 para. 11(7A)(7B) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 29 paras. 9\(3\)](#), 12(1)
- F527** Sch. 32 para. 11(8) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 8\(4\)](#), 64(1)

#### Commencement Information

- I50** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

#### *Benefit crystallisation event 3: permitted margin*

- 12 (1) This paragraph applies for the purposes of benefit crystallisation event 3 if the individual became entitled to the pension before 6th April 2006.



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- (2) The permitted margin is the greater of—
- (a) what would be the permitted margin at that time if the individual had become entitled to the pension on or after that date (see paragraph 11), and
  - (b) the amount by which the annual amount of the pension at the rate at which it was payable on the day on which the individual became entitled to it would be greater if it had been increased for the whole of the period specified in sub-paragraph (3) of that paragraph at the rate of P% per annum.
- (3) “P%” is the percentage by which, in accordance with the rules of the pension scheme immediately before 6th April 2006, the annual rate of the pension is to be increased each year.
- [<sup>F528</sup>(4) If the pension is under a public service pension scheme, any abatement of the pension is to be left out of account in determining for the purposes of this paragraph the annual amount of the pension at the rate at which it was payable on the day on which the individual became entitled to it.]

**Textual Amendments**

**F528** Sch. 32 para. 12(4) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 8\(5\)](#), 64(1)

**Commencement Information**

**I51** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

F529 ...

**Textual Amendments**

**F529** Sch. 32 para. 13 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 13\(8\)\(b\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

<sup>F529</sup>13 .....

F530 ...

**Textual Amendments**

**F530** Sch. 32 para. 14 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 13\(8\)\(c\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

<sup>F530</sup>14 .....

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F531 ...

**Textual Amendments**

**F531** Sch. 32 para. 14ZA and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 13(8)(d)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F531 14ZA .....

F532 ...

**Textual Amendments**

**F532** Sch. 32 para. 14ZB and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 13(8)(e)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F532 14ZB .....

F533 ...

**Textual Amendments**

**F533** Sch. 32 para. 14A and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 13(8)(f)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F533 14A .....

F534 ...

**Textual Amendments**

**F534** Sch. 32 para. 14B and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 13(8)(g)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F534 14B .....

F535 ...

**Textual Amendments**

**F535** Sch. 32 para. 14C and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 13(8)(h)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

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F535 14C .....

*Benefit crystallisation event 6: meaning of “relevant lump sum”*

- 15 For the purposes of benefit crystallisation event 6 a lump sum is a relevant lump sum if it is—
- (a) a pension commencement lump sum,
  - (b) a serious ill-health lump sum,
  - [<sup>F536</sup>(ba) an uncrystallised funds pension lump sum,] or
  - (c) a [<sup>F537</sup>pension commencement excess lump sum].

**Textual Amendments**

**F536** Sch. 32 para. 15(ba) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 61](#)

**F537** Words in Sch. 32 para. 15(c) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 13\(9\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

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

**C69** Sch. 32 para. 15 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [25\(1\)\(2\)\(5\)](#)

**Commencement Information**

**I52** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

F538 ...

**Textual Amendments**

**F538** Sch. 32 para. 15A and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 13\(10\)\(a\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

F538 15A .....

F539 ...

**Textual Amendments**

**F539** Sch. 32 para. 16 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 13\(10\)\(b\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

F539 16 .....

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F540 ...

#### Textual Amendments

**F540** Sch. 32 para. 17 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 13(10)(c), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F540 17 .....

## SCHEDULE 33

Section 243

### OVERSEAS PENSION SCHEMES: MIGRANT MEMBER RELIEF

#### *Relief for members' etc. contributions*

- 1 (1) An individual who is a relevant migrant member of a qualifying overseas pension scheme is entitled to relief under section 188 (relief for contributions by or on behalf of members of registered pension schemes) in respect of relievable pension contributions paid during a tax year if the individual—
- (a) has relevant UK earnings chargeable to income tax for that year,
  - (b) is resident in the United Kingdom when the contributions are paid, and
  - (c) has notified the scheme manager of an intention to claim relief under that section.
- (2) Section 190 (annual limit for relief under section 188) applies in relation to the aggregate of the amount of relief to which an individual is entitled under section 188 by virtue of sub-paragraph (1) and any to which the individual is so entitled apart from that sub-paragraph.
- (3) Relief to which an individual is entitled under section 188 by virtue of sub-paragraph (1) is to be given in accordance with section 194 (relief on making of claim) (so that nothing in sections 191 to 193 applies in relation to such relief).
- (4) Section 195 (transfer of certain shares to be treated as payment of contribution) has effect as if the references to sections 188 to 194 included sections 188 to 190 and 194 as they apply by virtue of this paragraph.
- (5) No deduction may be allowed under Chapter 2 of Part 5 of ITEPA 2003 in accordance with section 355 of that Act (deductions for corresponding payments by non-domiciled employees with foreign employers) in respect of contributions under a pension scheme (but subject to Part 4 of Schedule 36).

#### Commencement Information

**I53** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

### *Relief for employers' contributions*

- 2 (1) Subsections (2) to (5) of section 196 (relief for contributions by employer) apply in relation to relevant migrant member contributions paid by an employer as in relation to contributions paid by an employer under a registered pension scheme in respect of an individual.
- (2) Section 200 (no other relief for employers in connection with contributions) applies as if the reference to contributions under a registered pension scheme included relevant migrant member contributions.
- (3) “Relevant migrant member contributions” means contributions paid under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions.

#### **Commencement Information**

**I54** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

- 3 In ITEPA 2003, after section 308 insert—

#### **“308A Exemption of contributions to overseas pension scheme**

- (1) No liability to income tax arises in respect of earnings where an employer makes contributions under a qualifying overseas pension scheme in respect of an employee who is a relevant migrant member of the pension scheme.
- (2) In subsection (1)—
  - “qualifying overseas pension scheme”, and
  - “relevant migrant member”,have the same meaning as in Schedule 33 to FA 2004 (overseas pension schemes: migrant member relief).”

#### **Commencement Information**

**I55** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

### *Meaning of “relevant migrant member”*

- 4 <sup>[F541]</sup>(1) For the purposes of this Schedule an individual who is a member of an overseas pension scheme is a relevant migrant member of the pension scheme, in relation to any contributions, if the individual—
  - (a) was not resident in the United Kingdom when first a member of the pension scheme,
  - (b) was a member of the pension scheme at the beginning of the period of residence in the United Kingdom which includes the time when the contributions are paid,
  - (c) <sup>[F542]</sup>either] was, immediately before the beginning of that period of residence, entitled to tax relief in respect of contributions paid under the pension scheme under the law of the country or territory in which the

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- individual was then resident [<sup>F543</sup>or meets such other condition as may be prescribed by regulations made by the Board of Inland Revenue], and
- (d) has been notified by the scheme manager that information concerning events that are [<sup>F544</sup>relevant] benefit crystallisation events in relation to the individual and the pension scheme will be given to the Inland Revenue.
- [<sup>F545</sup>(2) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that, in circumstances prescribed by the regulations, paragraphs (a), (b) and (c) of sub-paragraph (1) have effect as if the references in those paragraphs to the pension scheme were to either the pension scheme or such other pension scheme as is prescribed by the regulations.
- (3) Regulations under sub-paragraph (2) may include provision having effect in relation to times before they are made.]
- [<sup>F546</sup>(4) In this paragraph “relevant benefit crystallisation event” has the same meaning as in section 637S of ITEPA 2003 (availability of individual’s lump sum and death benefit allowance).]

#### Textual Amendments

- F541** Sch. 33 para. 4 renumbered as Sch. 33 para. 4(1) (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 32\(2\)](#)
- F542** Word in Sch. 33 para. 4(1)(c) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 46\(a\)](#), 64(1)
- F543** Words in Sch. 33 para. 4(1)(c) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 46\(b\)](#), 64(1)
- F544** Word in Sch. 33 para. 4(1)(d) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 59\(2\)\(a\)](#), [124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by S.I. 2024/356, regs. 1, 4)
- F545** Sch. 33 para. 4(2)(3) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 32\(3\)](#)
- F546** Sch. 33 para. 4(4) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 59\(2\)\(b\)](#), [124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by S.I. 2024/356, regs. 1, 4)

#### Commencement Information

- I56** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

#### *Meaning of “qualifying” overseas pension scheme*

- 5 (1) For the purposes of this Schedule an overseas pension scheme is a qualifying overseas pension scheme if—
- (a) the scheme manager has given to the Inland Revenue notification that it is an overseas pension scheme and has provided any such evidence that it is an overseas pension scheme as the Inland Revenue may require,
- (b) the scheme manager has undertaken to the Inland Revenue to inform the Inland Revenue if it ceases to be an overseas pension scheme,
- (c) the scheme manager has undertaken to the Inland Revenue to comply with any prescribed benefit crystallisation information requirements imposed on the scheme manager, and
- (d) the overseas pension scheme is not excluded from being a qualifying overseas pension scheme by sub-paragraph (3).

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(2) In sub-paragraph (1)(c) “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 [<sup>F547</sup>relevant] events in relation to members of the pension scheme who have at any time been relevant migrant members of the pension scheme.

[<sup>F548</sup>(2A) In sub-paragraph (2) “relevant events” means—

- (a) relevant benefit crystallisation events, or
- (b) occasions that are, or could (depending on their timing) be, occasions on which an individual first flexibly accesses pension rights for the purposes of sections 227B to 227F.]

(3) An overseas pension scheme is excluded from being a qualifying overseas pension scheme if the Inland Revenue has decided that—

- (a) there has been a failure to comply with any prescribed benefit crystallisation information requirements imposed on the scheme manager and the failure is significant, and
- (b) by reason of the failure it is not appropriate that relief from tax should be given in respect of contributions under the pension scheme,

and has notified the person or persons appearing to be the scheme manager of that decision (but subject to sub-paragraph (5) and paragraph 6).

(4) A failure to comply with prescribed benefit crystallisation information requirements is significant if—

- (a) the amount of information which has not been provided is substantial, or
- (b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.

(5) The Inland Revenue —

- (a) may at any time after an overseas pension scheme becomes excluded from being a qualifying overseas pension scheme decide that the pension scheme is to cease to be so excluded, and
- (b) must notify the scheme manager of the decision.

[<sup>F549</sup>(6) In this paragraph “relevant benefit crystallisation event” has the same meaning as in section 637S of ITEPA 2003 (availability of individual’s lump sum and death benefit allowance).]

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#### Textual Amendments

**F547** Word in Sch. 33 para. 5(2) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 59\(3\)\(a\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F548** Sch. 33 para. 5(2A) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 59\(3\)\(b\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F549** Sch. 33 para. 5(6) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 59\(3\)\(c\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

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#### Commencement Information

**I57** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)



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- 6 (1) This paragraph applies where an overseas pension scheme is excluded from being a qualifying overseas pension scheme by a decision of the Inland Revenue under paragraph 5(3).
- (2) The scheme manager may appeal against the decision.
- <sup>F550</sup>(3) .....
- <sup>F550</sup>(4) .....
- (5) An appeal under this paragraph against a decision must be brought within the period of 30 days beginning with the day on which the notification of the decision was given.
- (6) [<sup>F551</sup>If an appeal under this paragraph is notified to the tribunal, the tribunal] must consider whether the overseas pension scheme ought to have been excluded from being a qualifying overseas pension scheme.
- (7) If [<sup>F552</sup>the tribunal decides] that the overseas pension scheme ought to have been excluded from being a qualifying overseas pension scheme, [<sup>F552</sup>the tribunal must] dismiss the appeal.
- (8) If [<sup>F553</sup>the tribunal decides] that the overseas pension scheme ought not to have been excluded from being a qualifying overseas pension scheme, the pension scheme is to be treated as having remained a qualifying overseas pension scheme (but subject to any further appeal <sup>F554</sup>...).

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#### Textual Amendments

- F550** Sch. 33 para. 6(3)(4) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 435(2)**
- F551** Words in Sch. 33 para. 6(6) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 435(3)**
- F552** Words in Sch. 33 para. 6(7) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 435(4)**
- F553** Words in Sch. 33 para. 6(8) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 435(5)(a)**
- F554** Words in Sch. 33 para. 6(8) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 435(5)(b)**
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#### Commencement Information

- I58** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284



**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULE 34

Section 244

NON-UK SCHEMES: APPLICATION OF CERTAIN CHARGES [F555 AND PROTECTIONS ETC]

**Textual Amendments**

**F555** Words in Sch. 34 heading inserted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 64(2), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

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

**C70** Sch. 34 modified (6.4.2006) by The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (S.I. 2006/207), regs. 1(1), 17 (as amended (6.4.2024 for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 62(7), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4))

*Member payment charges*

- 1 (1) For the purposes of the member payment charges the member payment provisions apply in relation to payments made (or treated by this Part as made) to or in respect of—
- (a) a relieved member of a relevant non-UK scheme, or
  - (b) a transfer member of such a scheme,
- as in relation to payments made (or treated by this Part as made) to or in respect of a member of a registered pension scheme.
- (2) Sub-paragraph (1) has effect subject to the provision made by and under paragraphs 2 to 7.
- (3) “The member payment charges” are—
- (a) the unauthorised payments charge [F556 (except as imposed by virtue of section 174A (taxable property held by investment-regulated pension schemes))],
  - (b) the unauthorised payments surcharge,
  - (c) the short service refund lump sum charge,
  - <sup>F557</sup>(ca) .....
  - (d) the special lump sum death benefits charge, [F558 and]
  - <sup>F559</sup>(e) the charge to tax under Part 9 of ITEPA 2003 (pension income) on pension income to which—
    - (i) any provision of Chapter 15A of that Part of that Act (lump sums under registered pension schemes) applies, or
    - (ii) section 579A of that Act (pension income under registered pension schemes) applies by virtue of any provision of that Chapter.]
- (4) “The member payment provisions” are [F560—
- (a)] the provisions of this Part [F561 (apart from the taxable property provisions)] relating to payments made (or treated by this Part as made) to or in respect of a member of a registered pension scheme [F562, and
  - <sup>F563</sup>(b)] Chapter 15A of Part 9 of ITEPA 2003 (lump sums under registered pension schemes).]]

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- (5) A scheme is a relevant non-UK scheme if—
- (a) relief from tax has been given in respect of contributions paid under the scheme by virtue of Schedule 33 (overseas pension schemes: migrant member relief),
  - (b) relief from tax has been so given at any time after 5th April 2006 under double tax arrangements,
  - (c) a member of the scheme has been, or members of the scheme have been, exempt from liability to tax by virtue of section 307 of ITEPA 2003 (exemption for provision made by employer for retirement or death benefit) in respect of provision made under the scheme at any time after 5th April 2006 when the scheme was an overseas pension scheme, or
  - (d) there has been a relevant transfer at any time after 5th April 2006 when the scheme was a qualifying recognised overseas pension scheme.
- (6) “A relevant transfer” means a (direct or indirect) transfer of sums or assets held for the purposes of, or representing accrued rights under, an arrangement made under—
- (a) a registered pension scheme, or
  - (b) another scheme which is a relevant non-UK scheme,
- in relation to a member so as to become held for the purposes of, or to represent rights under, an arrangement under the scheme relating to the member;<sup>F564</sup>....
- <sup>F565</sup>(6A) There are three types of relevant transfer—
- (a) an original relevant transfer,
  - (b) a subsequent relevant transfer, and
  - (c) any other (including, in particular, all relevant transfers before 9 March 2017).
- (6B) “An original relevant transfer” is—
- (a) a relevant transfer within sub-paragraph (6)(a) made on or after 9 March 2017,
  - (b) a relevant transfer within sub-paragraph (6)(b), made on or after 9 March 2017, of the whole or part of the UK tax-relieved fund of a relieved member of a qualifying recognised overseas pension scheme, or
  - (c) a relevant transfer within sub-paragraph (6)(b), made on or after 6 April 2017, of the whole or part of the UK tax-relieved fund of a relieved member of a relevant non-UK scheme that is not a qualifying recognised overseas pension scheme.
- (6C) The sums or assets transferred as a result of an original relevant transfer constitute a ring-fenced transfer fund, and the key date for that fund is the date of the transfer.
- (6D) Where in the case of a ring-fenced transfer fund (“the source fund”) there is a relevant transfer of the whole or part of the fund—
- (a) the sums or assets transferred as a result of the transfer constitute a ring-fenced transfer fund,
  - (b) that fund has the same key date as the source fund, and
  - (c) the transfer is “a subsequent relevant transfer”, and is not an original relevant transfer.
- (6E) Sub-paragraph (6D) applies whether the source fund is a ring-fenced transfer fund as a result of sub-paragraph (6C) or as a result of sub-paragraph (6D).

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- (6F) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that sums or assets identified in accordance with the regulations are not included in a ring-fenced transfer fund as a result of sub-paragraph (6C) or (6D)(a).]
- (7) A member of a relevant non-UK scheme is a relieved member of the scheme if—
- (a) any of the contributions in respect of which relief has been given as mentioned in sub-paragraph (5)(a) or (b) were contributions paid by or on behalf of, or in respect of, the member, or
  - (b) the member is the member, or one of the members, who has been exempt from liability to tax as mentioned in sub-paragraph (5)(c).
- (8) A member of a relevant non-UK scheme is a transfer member of the scheme if a relevant transfer related to the member.

#### Textual Amendments

- F556** Words in Sch. 34 para. 1(3)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 158(2), [Sch. 21 para. 14\(2\)\(a\)](#)
- F557** Sch. 34 para. 1(3)(ca) omitted (with effect in accordance with Sch. 5 para. 4 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 5 para. 3\(1\)\(d\)\(i\)](#)
- F558** Word in Sch. 34 para. 1(3)(d) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 60\(2\)\(a\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F559** Sch. 34 para. 1(3)(e) substituted for Sch. 34 para. 1(3)(da)(db)(e) (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 60\(2\)\(b\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F560** Words in Sch. 34 para. 1(4) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 95\(3\)\(a\)](#)
- F561** Words in Sch. 34 para. 1(4) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 158(2), [Sch. 21 para. 14\(2\)\(b\)](#)
- F562** Sch. 34 para. 1(4)(b) and preceding word inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 95\(3\)\(b\)](#)
- F563** Sch. 34 para. 1(4)(b) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 60\(2\)\(c\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F564** Words in Sch. 34 para. 1(6) repealed (19.7.2007) (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 18\(2\)](#), [Sch. 27 Pt. 3](#)
- F565** Sch. 34 para. 1(6A)-(6F) inserted (retrospective to 9.3.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 2\(2\)](#), 8

#### Commencement Information

- I59** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

- 2 <sup>F566</sup>(1) The member payment provisions do not apply in relation to a payment made (or treated by this Part as made) to or in respect of a relieved member or transfer member of a relevant non-UK scheme <sup>F567</sup>so far as it is referable to 5-year rule funds] unless the member—
- (a) is resident in the United Kingdom when the payment is made (or treated as made), or
  - (b) although not resident in the United Kingdom at that time, has been resident in the United Kingdom earlier in the tax year in which the payment is made

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(or treated as made) or in any of the five tax years immediately preceding that tax year.

[<sup>F568</sup>(2) The member payment provisions do not apply in relation to a payment made (or treated by this Part as made) to or in respect of a relieved member of a relevant non-UK scheme so far as it is referable to 10-year rule funds unless the member—

- (a) is resident in the United Kingdom when the payment is made (or treated as made), or
- (b) although not resident in the United Kingdom at that time, has been resident in the United Kingdom earlier in the tax year in which the payment is made (or treated as made) or in any of the 10 tax years immediately preceding that year.

(3) The member payment provisions do not apply in relation to a payment made (or treated by this Part as made) to or in respect of a transfer member of a relevant non-UK scheme, so far as it is referable to any particular ring-fenced transfer fund of the member's under the scheme which has a key date of 6 April 2017 or later, unless—

- (a) the member is resident in the United Kingdom when the payment is made (or treated as made), or
- (b) although the member is not resident in the United Kingdom at that time—
  - (i) the member has been resident in the United Kingdom earlier in the tax year containing that time, or
  - (ii) the member has been resident in the United Kingdom in any of the 10 tax years immediately preceding the tax year containing that time, or
  - (iii) that time is no later than the end of 5 years beginning with the key date for the particular fund.

(4) In this paragraph—

“5-year rule funds”, in relation to a payment to or in respect of a relieved member of a relevant non-UK scheme, means so much of the member's UK tax-relieved fund under the scheme as represents tax-relieved contributions, or tax-exempt provision, made under the scheme before 6 April 2017;

“5-year rule funds”, in relation to a payment to or in respect of a transfer member of a relevant non-UK scheme, means—

- (a) the member's relevant transfer fund under the scheme, and
- (b) any of the member's ring-fenced transfer funds under the scheme that has a key date earlier than 6 April 2017;

“10-year rule funds”, in relation to a payment to or in respect of a relieved member of a relevant non-UK scheme, means so much of the member's UK tax-relieved fund under the scheme as represents tax-relieved contributions, or tax-exempt provision, made under the scheme on or after 6 April 2017.

(5) See also—

paragraph 1(6C), (6D) and (6F) (meaning of “ring-fenced transfer fund”), paragraph 3 (meaning of “UK tax-relieved fund”, “tax-relieved contributions” and “tax-exempt provision” etc), and paragraph 4 (meaning of “relevant transfer fund” etc).]

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### Textual Amendments

- F566** Sch. 34 para. 2 renumbered as Sch. 34 para. 2(1) (with application in accordance with Sch. 4 para. 8 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 3\(2\)](#)
- F567** Words in Sch. 34 para. 2(1) inserted (with application in accordance with Sch. 4 para. 8 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 3\(3\)](#)
- F568** Sch. 34 para. 2(2)-(5) inserted (with application in accordance with Sch. 4 para. 8 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 3\(4\)](#)

### Commencement Information

- I60** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

- 3 (1) The member payment provisions do not apply in relation to a payment made (or treated by this Part as made) to or in respect of a relieved member of a relevant non-UK scheme unless the payment is referable to the member's UK tax-relieved fund under the scheme.
- (2) A member's UK tax-relieved fund under a relevant non-UK scheme is so much of—
- the sums or assets held for the purposes of, or representing accrued rights under, the scheme as, in accordance with regulations made by the Board of Inland Revenue, represents
  - any tax-relieved contributions made under the scheme by or on behalf of, or in respect of, the member and any tax-exempt provision made under the scheme in relation to the member.
- (3) "Tax-relieved contributions" means contributions in respect of which relief from tax—
- has been given by virtue of Schedule 33 (overseas pension schemes: migrant member relief), or
  - has been given at any time after 5th April 2006 under double tax arrangements.
- (4) "Tax-exempt provision" means provision in respect of which exemption from tax has been given by virtue of section 307 of ITEPA 2003 (exemption for provision made by employer for retirement or death benefit) at any time after 5th April 2006 when the scheme was an overseas pension scheme.
- (5) Regulations under sub-paragraph (2) may (in particular) provide that the sums or assets which represent any tax-relieved contributions or tax-exempt provision are to be determined otherwise than by reference to the actual amount of the contributions or the amount or value of the provision (for instance by reference to the increase in the value of the member's rights under the scheme during a period for which relief or exemption in respect of such contributions or provision was given).
- [<sup>F569</sup>(5A) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that, in circumstances specified in the regulations, something specified in the regulations is to be treated as done by, to, in respect of or in the case of a relieved member of a relevant non-UK scheme.]
- (6) Regulations made by the Board of Inland Revenue may make provision for determining whether or not payments made (or treated as made) by [<sup>F570</sup>, or other things done by or to or under or in respect of or in the case of,] a relevant non-UK

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scheme are to be treated as referable to a member's UK tax-relieved fund under the scheme (and so whether or not they reduce the fund).

[<sup>F571</sup>(7) The provision which may be made under sub-paragraph (6) includes (in particular) provision in consequence of Part 7A of ITEPA 2003.]

[<sup>F572</sup>(8) Where regulations under sub-paragraph (6) make provision for a payment or something else to be treated as referable to a member's UK tax-relieved fund under a scheme, regulations under that sub-paragraph may make provision for the payment or thing, or any part or aspect of the payment or thing, also to be treated as referable to a particular part of that fund.]

#### Textual Amendments

**F569** Sch. 34 para. 3(5A) inserted (retrospective to 9.3.2017) by Finance Act 2017 (c. 10), Sch. 4 paras. 4(2), 8

**F570** Words in Sch. 34 para. 3(6) inserted (retrospective to 9.3.2017) by Finance Act 2017 (c. 10), Sch. 4 paras. 4(3), 8

**F571** Sch. 34 para. 3(7) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by Finance Act 2011 (c. 11), Sch. 2 para. 51

**F572** Sch. 34 para. 3(8) inserted (retrospective to 9.3.2017) by Finance Act 2017 (c. 10), Sch. 4 paras. 4(4), 8

#### Commencement Information

**I61** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 4 (1) The member payment provisions do not apply in relation to a payment made (or treated by this Part as made) to or in respect of a transfer member of a relevant non-UK scheme unless it is referable to the member's relevant transfer fund [<sup>F573</sup>, or ring-fenced transfer funds,] under the scheme.
- (2) A member's relevant transfer fund under a relevant non-UK scheme is [<sup>F574</sup>, subject to sub-paragraph (3A),] so much of—
- (a) the sums or assets held for the purposes of, or representing accrued rights under, the scheme as, in accordance with regulations made by the Board of Inland Revenue, represents
  - (b) relevant transferred sums or assets.
- (3) "Relevant transferred sums or assets" means sums or assets held for the purposes of, or representing accrued rights under, an arrangement under—
- (a) a registered pension scheme, or
  - (b) another scheme which is a relevant non-UK scheme,
- which at any time after 5th April 2006 when the scheme was an overseas pension scheme have been transferred (directly or indirectly) so as to become held for the purposes of, or to represent rights under, an arrangement under the scheme relating to the member; <sup>F575</sup> ...
- [<sup>F576</sup>(3A) The member's relevant transfer fund under the scheme does not include sums or assets that are in any of the member's ring-fenced transfer funds under the scheme.]
- (4) Regulations made by the Board of Inland Revenue may make provision for determining whether payments or transfers made (or treated as made) by [<sup>F577</sup>, or other things done by or to or under or in respect of or in the case of,] a relevant non-

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UK scheme are to be treated as referable to a member's relevant transfer fund under the scheme (and so whether or not they reduce the fund).

- [<sup>F578</sup>(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that, in circumstances specified in the regulations, something specified in the regulations is to be treated as done by, to, in respect of or in the case of a transfer member of a relevant non-UK scheme.
- (6) Regulations made by the Commissioners for Her Majesty's Revenue and Customs may make provision for determining whether payments or transfers made (or treated as made) by, or other things done by or to or under or in respect of or in the case of, a relevant non-UK scheme are to be treated as referable to a member's ring-fenced transfer funds under the scheme (and so whether or not they reduce the funds or any of them).
- (7) Where regulations under sub-paragraph (6) make provision for a payment or transfer or something else to be treated as referable to a member's ring-fenced transfer funds under a scheme, regulations under that sub-paragraph may make provision for the payment or transfer or other thing, or any part or aspect of the payment or transfer or thing, also to be treated as referable to a particular one of those funds.]

#### Textual Amendments

- F573** Words in Sch. 34 para. 4(1) inserted (retrospective to 9.3.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 5\(2\), 8](#)
- F574** Words in Sch. 34 para. 4(2) inserted (retrospective to 9.3.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 5\(3\), 8](#)
- F575** Words in Sch. 34 para. 4(3) repealed (19.7.2007) (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 18\(3\)](#), [Sch. 27 Pt. 3\(1\)](#)
- F576** Sch. 34 para. 4(3A) inserted (retrospective to 9.3.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 5\(4\), 8](#)
- F577** Words in Sch. 34 para. 4(4) inserted (retrospective to 9.3.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 5\(5\), 8](#)
- F578** Sch. 34 para. 4(5)-(7) inserted (retrospective to 9.3.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 5\(6\), 8](#)

#### Commencement Information

- I62** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

<sup>F579</sup>4A . . . . .

#### Textual Amendments

- F579** Sch. 34 para. 4A omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 32\(1\)\(f\)\(4\)](#)

- 5 [ <sup>F580</sup>Sections 205 to 206] (short service refund lump sum charge<sup>F581</sup> ... and special lump sum death benefits charge) apply with respect to a lump sum or lump sum death benefit paid to or in respect of—
- (a) a relieved member of a relevant non-UK scheme, or
  - (b) a transfer member of such a scheme,



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so as to make the person to whom the lump sum or lump sum death benefit is paid (rather than the scheme administrator) liable to any charge imposed by either of those sections.

#### Textual Amendments

- F580** Words in Sch. 34 para. 5 substituted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 81\(4\)\(a\)](#)
- F581** Words in [Sch. 34 para. 5](#) omitted (with effect in accordance with Sch. 5 para. 4 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 5 para. 3\(1\)\(d\)\(ii\)](#)

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

- C71** Sch. 34 para. 5 modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), [Sch. 3 Pt. 1](#)

#### Commencement Information

- I63** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

[<sup>F582</sup>5Z(A) The provisions of Chapter 15A of Part 9 of ITEPA 2003 (lump sums under registered pension schemes) do not apply in relation to—

- (a) a serious ill-health lump sum paid to a transfer member of a relevant non-UK scheme, or
- (b) an authorised lump sum death benefit paid in respect of a transfer member of a relevant non-UK scheme who (at the time of the payment) is under 75.

(2) In this paragraph “authorised lump sum death benefit” means a lump sum death benefit permitted by the lump sum death benefit rule in section 168 of this Act to be paid in respect of a member of a registered pension scheme.]

#### Textual Amendments

- F582** Sch. 34 para. 5ZA inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 60\(3\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

[<sup>F583</sup>5A(1) Sub-paragraph (2) applies if—

- (a) a payment is made (or treated by this Part as made) to or in respect of a relieved member or transfer member of a relevant non-UK scheme, and
- (b) there is an amount of tax under a member payment charge that would be payable in respect of the payment, or part of the payment, but for the operation of double taxation arrangements.

(2) The payment or (as the case may be) that part of it—

- (a) is “pension” for the purposes of Chapter 4 of Part 9 of ITEPA 2003 (foreign pensions), and
- (b) is to be treated as included in the list, in section 576A of ITEPA 2003, of payments that are “relevant withdrawals” for the purposes of that section.]

#### Textual Amendments

- F583** Sch. 34 para. 5A inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 95\(4\)](#)



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- 6 (1) The amount of any liability to tax imposed on any individual in relation to a payment by virtue of the operation of the member payment charges in consequence of paragraph 1<sup>[F584]</sup>, or by virtue of the operation of Chapter 4 of Part 9 of ITEPA 2003 in consequence of paragraph 5A,] is to be reduced by the amount of any tax paid in respect of the payment under the law of any country or territory outside the United Kingdom.
- (2) Where, after any tax which an individual is liable to pay in respect of a payment in consequence of paragraph 1<sup>[F585]</sup> or 5A] has been paid, tax is paid in respect of the payment under the law of any country or territory outside the United Kingdom, an appropriate adjustment is to be made in the individual's liability to tax (by way of discharge or repayment of tax).

#### Textual Amendments

**F584** Words in Sch. 34 para. 6(1) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 95\(5\)\(a\)](#)

**F585** Words in Sch. 34 para. 6(2) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 95\(5\)\(b\)](#)

#### Commencement Information

**I64** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

- 7 (1) The member payment provisions apply with respect to a payment made (or treated by this Part as made) to or in respect of—
- a relieved member of a relevant non-UK scheme, or
  - a transfer member of such a scheme,
- subject to any omissions, additions and other modifications contained in regulations made by the Board of Inland Revenue.
- (2) Regulations under sub-paragraph (1) may—
- include provision having effect in relation to times before they are made,
  - confer discretion on the Board of Inland Revenue or the Inland Revenue (subject to a right of appeal against any decision taken in exercise of the discretion),
  - <sup>[F586]</sup>(ba) contain transitional provisions and savings,]
  - make different provision in relation to payments treated (in accordance with regulations under paragraph 3(6) or 4(4)) as being referable to a member's UK tax-relieved fund, or to a member's relevant transfer fund <sup>[F587]</sup> or ring-fenced transfer funds], under a relevant non-UK scheme, and
  - otherwise make different provision for different cases.

#### Textual Amendments

**F586** Sch. 34 para. 7(2)(ba) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 95\(6\)](#)

**F587** Words in Sch. 34 para. 7(2)(c) inserted (retrospective to 9.3.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 6, 8](#)

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#### Commencement Information

**I65** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

*[<sup>F588</sup>Unauthorised payment charge: alternatively secured pension etc]*

#### Textual Amendments

**F588** Sch. 34 para. 7ZA and cross-heading inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 18\(4\)](#)

<sup>F589</sup>7ZA .....

#### Textual Amendments

**F589** Sch. 34 para. 7ZA omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 81\(5\)](#)

*[<sup>F590</sup>Unauthorised payment charge: taxable property*

#### Textual Amendments

**F590** Sch. 34 para. 7A and cross-heading inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [s. 158\(2\)](#), [Sch. 21 para. 14\(3\)](#)

- 7A (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision for a transfer member of a relevant non-UK scheme to be liable to the unauthorised payment charge in the same or similar circumstances to those in which—
- (a) a member of a registered pension scheme is liable to that charge by virtue of section 174A and Schedule 29A (taxable property held by investment-regulated pension scheme),
  - (b) the scheme administrator of such a scheme is liable to the scheme sanction charge by virtue of section 185A (income from taxable property) or 185F (gains from taxable property), or
  - (c) a member of such a scheme is liable to the scheme sanction charge by virtue of those provisions in consequence of provision made by regulations under section 273ZA.
- (2) The regulations may—
- (a) make provision for the application of any or all of the taxable property provisions in relation to a transfer member of a relevant non-UK scheme subject to any omissions, additions and other modifications contained in the regulations,
  - (b) include provision having effect in relation to times before they are made,
  - (c) contain transitional provisions and savings, and
  - (d) make different provision for different cases.]

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F591 ...

**Textual Amendments**

**F591** Sch. 34 para. 7B and cross-heading inserted (with effect for tax year 2011-12 and subsequent tax years in accordance with Sch. 2 para. 5 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 2 para. 4](#); which insertion fell without ever having effect as a result of the repeal (10.12.2010) of the affecting provision by [The Finance Act 2010, Section 23 and Schedule 2 \(High Income Excess Relief Charge\) \(Repeal\) Order 2010 \(S.I. 2010/2938\)](#), arts. 1, 2

**F591**7B .....

*Annual allowance charge*

- 8 (1) The provisions of this Part relating to the annual allowance charge (“the annual allowance provisions”) apply in relation to an individual who is a currently-relieved member of a currently-relieved non-UK pension scheme [<sup>F592</sup>and its scheme manager] as if the currently-relieved non-UK pension scheme were a registered pension scheme.
- (2) Sub-paragraph (1) has effect subject to the provision made by and under paragraphs 9 to 12.
- (3) A pension scheme is a currently-relieved non-UK pension scheme in relation to a tax year if—
- (a) relief from tax is given in respect of contributions paid during the tax year under the pension scheme by virtue of Schedule 33 (overseas pension schemes: migrant member relief) or double tax arrangements, or
  - (b) a member of the pension scheme is, or members of the pension scheme are, exempt from liability to tax by virtue of section 307 of ITEPA 2003 (exemption for provision made by employer for retirement or death benefit) in respect of provision made under the pension scheme at any time during the tax year when the pension scheme is an overseas pension scheme.
- (4) An individual is a currently-relieved member of a currently-relieved non-UK pension scheme in relation to a tax year if—
- (a) any of the contributions in respect of which relief is given as mentioned in sub-paragraph (3)(a) are contributions paid by or on behalf of, or in respect of, the individual, or
  - (b) the individual is the member, or one of the members, who is exempt from liability to tax as mentioned in sub-paragraph (3)(b).

**Textual Amendments**

**F592** Words in Sch. 34 para. 8(1) inserted (with effect in accordance with Sch. 17 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 17 para. 24\(2\)](#)

**Commencement Information**

**I66** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- 9 The annual allowance provisions apply by virtue of paragraph 8 in relation to an individual who is a currently-relieved member of a currently-relieved non-UK pension scheme as if references to the pension input period of an arrangement under the pension scheme that ends in a tax year were to the tax year.

#### Commencement Information

**I67** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

- [<sup>F593</sup>9Z(A)] For the purposes of determining the annual allowance charge in the case of an individual for a relevant tax year, a pension scheme is to be treated for the purposes of section 227G as a registered pension scheme if—
- (a) in relation to that tax year, or
  - (b) in relation to any earlier tax year (whether or not a relevant tax year),
- the scheme is a currently-relieved non-UK pension scheme and the individual is a currently-relieved member of the scheme.
- (2) For the purposes of this paragraph, a tax year is a “relevant tax year” in relation to an individual if—
- (a) it is—
    - (i) the first tax year in relation to which the individual is a currently-relieved member of any currently-relieved non-UK pension scheme, or
    - (ii) if later, the tax year 2015-16, or
  - (b) it is a tax year subsequent to the tax year identified under paragraph (a).

#### Textual Amendments

**F593** Sch. 34 paras. 9ZA, 9ZB inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 95\(7\)](#)

- 9ZB (1) Sub-paragraph (2) has effect if at any particular time—
- (a) an individual is a transfer member of a relevant non-UK scheme,
  - (b) the scheme is, or at any previous time has been, a qualifying recognised overseas pension scheme, and
  - (c) the particular time is not in a tax year in relation to which the scheme is a currently-relieved non-UK pension scheme of which the individual is a currently-relieved member.
- (2) Section 227G applies in the individual's case as if the scheme, so far as relating to the individual's relevant transfer fund [<sup>F594</sup>or ring-fenced transfer funds] under the scheme, were a registered pension scheme at the particular time.
- (3) The reference in sub-paragraph (2) to the individual's relevant transfer fund under the relevant non-UK scheme is to be read in accordance with paragraph 4.

[ The reference in sub-paragraph (2) to the individual's ring-fenced transfer funds  
<sup>F595</sup>(4) under the relevant non-UK scheme is to be read in accordance with paragraph 1. ]]

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#### Textual Amendments

- F593** Sch. 34 paras. 9ZA, 9ZB inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 95\(7\)](#)
- F594** Words in [Sch. 34 para. 9ZB\(2\)](#) inserted (retrospective to 9.3.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 7\(2\), 8](#)
- F595** Sch. 34 para. 9ZB(4) inserted (retrospective to 9.3.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 7\(3\), 8](#)

- [<sup>F596</sup>9A(1)** This paragraph applies where an individual—
- (a) is a currently-relieved member of a currently-relieved non-UK pension scheme in relation to a tax year, but
  - (b) was a member, but not a currently-relieved member, of the currently-relieved non-UK pension scheme in relation to any one or more of the 3 immediately preceding tax years (a “relevant tax year”).
- (2) Section 228A has effect in relation to the individual for the tax year as it would if the individual had been a currently-relieved member of the pension scheme for the relevant tax year (or each of the relevant tax years) and paragraphs 10 and 11 of this Schedule were omitted.

#### Textual Amendments

- F596** Sch. 34 paras. 9A, 9B inserted (with effect in accordance with Sch. 17 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 17 para. 24\(3\)](#)

- 9B** (1) This paragraph applies where an individual—
- (a) is a member of a registered pension scheme in relation to a tax year, and
  - (b) was a currently-relieved member of a currently-relieved non-UK pension scheme in relation to any one or more of the 3 immediately preceding tax years (a “relevant tax year”).
- (2) Section 228A has effect in relation to the individual for the tax year as it would if the currently-relieved non-UK pension scheme had been a registered pension scheme for the relevant tax year (or each of the relevant tax years).]

#### Textual Amendments

- F596** Sch. 34 paras. 9A, 9B inserted (with effect in accordance with Sch. 17 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 17 para. 24\(3\)](#)

- 10** (1) Sections 230 (1) and 234 (1) (cash balance and defined benefits arrangements) apply by virtue of paragraph 8 in relation to an individual who is a currently-relieved member of a currently-relieved non-UK pension scheme in relation to a tax year as if the increase in the value of the individual’s rights under an arrangement under the pension scheme relating to the individual during the tax year were the greater of—
- (a) the appropriate fraction of what it otherwise would be, and
  - (b) the amount of any contributions paid under the arrangement during the tax year by or on behalf of the individual (otherwise than by an employer) in respect of which relief from tax is given by virtue of Schedule 33 (overseas pension schemes: migrant member relief) or double tax arrangements;

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and section 237 (hybrid arrangements) applies accordingly.

[<sup>F597</sup>(2) The appropriate fraction is—

TE + TSI EI

where—

EI is the total amount of employment income of the individual from any relevant employment or employments for the tax year, excluding any such income which is exempt income (within the meaning of section 8 of ITEPA 2003),

TE is so much of EI as constitutes taxable earnings from any such employment (within the meaning of section 10(2) of that Act), and

TSI is so much of EI as constitutes taxable specific income from any such employment (within the meaning of section 10(3) to (5) of that Act).]

- (3) An employment is a relevant employment if it is an employment with an employer who is a sponsoring employer in relation to the currently-relieved non-UK pension scheme.

#### Textual Amendments

**F597** Sch. 34 para. 10(2) substituted (with effect in accordance with s. 45(4) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 45\(2\)](#)

#### Commencement Information

**I68** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

- 11 (1) Section 233 (1) (other money purchase arrangements) applies by virtue of paragraph 8 in relation to an individual who is a currently-relieved member of a currently-relieved non-UK pension scheme in relation to a tax year as if—
- (a) the reference in paragraph (a) to relievable pension contributions paid by or on behalf of the individual under an arrangement under the pension scheme relating to the individual were to those in respect of which relief from tax is given by virtue of Schedule 33 (overseas pension schemes: migrant member relief) or double tax arrangements, and
  - (b) the reference in paragraph (b) to contributions paid in respect of the individual under such an arrangement by an employer of the individual were to the appropriate fraction of contributions so paid;
- and section 237 applies accordingly.

[<sup>F598</sup>(2) The appropriate fraction is—

TE + TSI EI

where—

EI is the total amount of employment income of the individual from any employment or employments with the employer for the tax year, excluding any such income which is exempt income (within the meaning of section 8 of ITEPA 2003),

TE is so much of EI as constitutes taxable earnings from any such employment (within the meaning of section 10(2) of that Act), and

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TSI is so much of EI as constitutes taxable specific income from any such employment (within the meaning of section 10(3) to (5) of that Act).]

- [<sup>F599</sup>(3) Where a calculation under section 233(1) as applied by paragraph 8 is being carried out for the purposes of section 227F(3) in respect of a period that ends at the end of a tax year (see paragraph 9 and section 227F(1)), the appropriate fraction for the purposes of sub-paragraph (1)(b) is the appropriate fraction given by sub-paragraph (2) for that tax year (even where the period in respect of which the calculation is being carried out is part only of that tax year).]

#### Textual Amendments

- F598** Sch. 34 para. 11(2) substituted (with effect in accordance with s. 45(4) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 45\(3\)](#)  
**F599** Sch. 34 para. 11(3) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\), Sch. 1 para. 95\(8\)](#)

#### Commencement Information

- I69** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

- 12 (1) The annual allowance provisions apply by virtue of paragraph 8 in relation to an individual who is a currently-relieved member of a currently-relieved non-UK pension scheme [<sup>F600</sup>and its scheme manager] subject to any omissions, additions and other modifications contained in regulations made by the Board of Inland Revenue.
- (2) Regulations under sub-paragraph (1) may—
- (a) include provision having effect in relation to times before they are made,
  - (b) confer discretion on the Board of Inland Revenue or the Inland Revenue (subject to a right of appeal against any decision taken in exercise of the discretion),
- [<sup>F601</sup>(ba) contain transitional provisions and savings,] and
- (c) make different provision for different cases.

#### Textual Amendments

- F600** Words in Sch. 34 para. 12(1) inserted (with effect in accordance with Sch. 17 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 17 para. 24\(4\)](#)  
**F601** Sch. 34 para. 12(2)(ba) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\), Sch. 1 para. 95\(9\)](#)

#### Commencement Information

- I70** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)



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### <sup>F602</sup>Enhancement of allowances

#### Textual Amendments

**F602** Sch. 34 para. 12A and cross-heading inserted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), **Sch. 9 paras. 64(3), 124** (with **Sch. 9 paras. 125-132A**) (as amended by **S.I. 2024/356, regs. 1, 4**)

- 12A (1) The provisions of Schedule 36 relating to the enhancement of an individual's lump sum allowance and lump sum and death benefit allowance ("the enhancement of allowances provisions") apply in relation to an individual who is a relieved member of a relieved non-UK pension scheme as if the relieved non-UK pension scheme were a registered pension scheme.
- (2) A pension scheme is a relieved non-UK pension scheme if—
- (a) relief from tax has been given in respect of contributions paid under the pension scheme by virtue of Schedule 33 (overseas pension schemes: migrant member relief),
  - (b) relief from tax has been so given at any time after 5th April 2006 under double tax arrangements, or
  - (c) a member of the pension scheme has been, or members of the pension scheme have been, exempt from liability to tax by virtue of section 307 of ITEPA 2003 (exemption for provision made by employer for retirement or death benefit) in respect of provision made under the pension scheme at any time after 5th April 2006 when the pension scheme was an overseas pension scheme.
- (3) An individual is a relieved member of a relieved non-UK pension scheme if—
- (a) any of the contributions in respect of which relief has been given as mentioned in sub-paragraph (2)(a) or (b) were contributions paid by or on behalf of, or in respect of, the individual, or
  - (b) the individual is the member, or one of the members, who has been exempt from liability to tax as mentioned in sub-paragraph (2)(c).]

<sup>F603</sup> ...

#### Textual Amendments

**F603** Sch. 34 paras. 13-19 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 14, 124** (with **Sch. 9 paras. 125-132A**) (as amended by **S.I. 2024/356, regs. 1, 4**)

<sup>F604</sup>13 .....

#### Textual Amendments

**F604** Sch. 34 paras. 13-19 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 14, 124** (with **Sch. 9 paras. 125-132A**) (as amended by **S.I. 2024/356, regs. 1, 4**) and Sch. 34 paras. 13-19 omitted (6.4.2024 for the tax year 2024-25 and



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subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 60(4), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F604 14 .....

**Textual Amendments**

**F604** Sch. 34 paras. 13-19 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 14, 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4) and Sch. 34 paras. 13-19 omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 60(4), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F604 15 .....

**Textual Amendments**

**F604** Sch. 34 paras. 13-19 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 14, 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4) and Sch. 34 paras. 13-19 omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 60(4), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F604 16 .....

**Textual Amendments**

**F604** Sch. 34 paras. 13-19 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 14, 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4) and Sch. 34 paras. 13-19 omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 60(4), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F604 17 .....

**Textual Amendments**

**F604** Sch. 34 paras. 13-19 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 14, 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4) and Sch. 34 paras. 13-19 omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 60(4), 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F604 18 .....

**Textual Amendments**

**F604** Sch. 34 paras. 13-19 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 14, 124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4) and Sch. 34 paras. 13-19 omitted (6.4.2024 for the tax year 2024-25 and

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subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 60(4)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**F604** 19 .....

#### Textual Amendments

**F604** Sch. 34 paras. 13-19 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 14**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4) and Sch. 34 paras. 13-19 omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), **Sch. 9 paras. 60(4)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

#### *Meaning of “double tax arrangements”*

20 In this Schedule “double tax arrangements” means arrangements having effect [F605 under section 2(1) of the Taxation (International and Other Provisions) Act 2010] (relief by agreement with other territories).

#### Textual Amendments

**F605** Words in Sch. 34 para. 20 substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 64** (with Sch. 9 paras. 1-9, 22)

#### Commencement Information

**I71** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

## SCHEDULE 35

Section 281

### PENSION SCHEMES ETC: MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Taxes Management Act 1970 (c. 9)*

1 In section 9(1A) of the Taxes Management Act 1970 (tax not to be assessed by a self-assessment), for the words after “any tax” substitute “which—

- (a) is chargeable on the scheme administrator of a registered pension scheme under Part 4 of the Finance Act 2004, <sup>F606</sup> ...
- [F607](ab) is chargeable on the sub-scheme administrator of a sub-scheme under Part 4 of the Finance Act 2004 as modified by the Registered Pensions (Splitting of Schemes) Regulations 2006, or]
- (b) is chargeable on the person who is (or persons who are) the responsible person in relation to an employer-financed retirement benefits scheme under section 394(2) of ITEPA 2003.”

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**Textual Amendments**

- F606** Word in Sch. 35 para. 1 deleted (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), **5(3)(a)**
- F607** Words in Sch. 35 para. 1 added (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), **5(3)(b)**

**Commencement Information**

- I72** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Income and Corporation Taxes Act 1988 (c. 1)*

2 The Income and Corporation Taxes Act 1988 (c. 1) is amended as follows.

**Commencement Information**

- I73** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

3 In section 21A(2) (Schedule A: computation of amount chargeable), insert at the end—

“sections 196 to 200 of the Finance Act 2004 (registered pension schemes);  
section 246 of that Act (employer-financed retirement benefits schemes).”

**Commencement Information**

- I74** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

4 In section 56(3)(b) (transfers in deposits and debts: exemption for pensions), for “592(2), 613, 614 (1) to (3) or 620(6)” substitute “ 613(4) or 614(2) or (3) or section 186 of the Finance Act 2004 ”.

**Commencement Information**

- I75** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

F608<sup>5</sup> .....

**Textual Amendments**

- F608** Sch. 35 para. 5 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

6 In section 129B(2) (stock lending fees), for “sections 592(2), 608(2)(a), 613(4), 614(3), 620(6) and 643(2)” substitute “ sections 613(4) and 614(3) and section 186 of the Finance Act 2004 ”.

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### Commencement Information

**I76** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

F6097 .....

### Textual Amendments

**F609** Sch. 35 para. 7 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F6108 .....

### Textual Amendments

**F610** Sch. 35 para. 8 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

9 In section 266 (1) (life assurance premiums), for “sections 274 and 619(6) and Schedules 14 and 15,” substitute “section 274 and Schedules 14 and 15 and sections 192 to 194 of the Finance Act 2004,”.

### Commencement Information

**I77** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

10 (1) Section 266A (life assurance premiums paid by employer) is amended as follows.  
 (2) In subsection (1), for “a non-approved” substitute “an employer-financed”.  
 (3) For subsections (3) to (6) substitute—

“(3) For the purposes of subsection (1)(a) benefits are provided in respect of an employee if they are provided for the employee’s spouse [<sup>F611</sup>or civil partner], widow or widower [<sup>F612</sup>or surviving civil partner], children, dependants or personal representatives.

(4) If a sum within subsection (1) is paid with a view to the provision of benefits for or in respect of more than one employee of the employer, part of it is to be treated as paid for or in respect of each of them.

(5) The amount treated as paid for or in respect of each employee is—

$$A \times \frac{B}{C}$$

where—

A is the sum paid,

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B is the amount which would have had to be paid to secure the benefits to be provided for or in respect of the employee in question, and

C is the total amount which would have had to be paid to secure the benefits to be provided for or in respect of all the employees if separate payments had been made in the case of each of them.

- (6) This section does not apply if—
- (a) in the year of assessment in which the sum is paid the earnings from the employee’s employment are (or, if there are none, would be if there were any) earnings charged on remittance, or
  - (b) the employee is not domiciled in the United Kingdom in the tax year in which the sum is paid and the conditions in subsection (7) are met.
- (7) Those conditions are—
- (a) that the employment is with a foreign employer, and
  - (b) that, on a claim made by the employee, the Board are satisfied that the pension scheme corresponds to a registered pension scheme.
- (8) In subsection (6)(a) “earnings charged on remittance” means earnings which are taxable earnings under—
- (a) section 22 of ITEPA 2003 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK), or
  - (b) section 26 of that Act (foreign earnings for year when employee resident, but not ordinarily resident, in UK).
- (9) In this section—
- “employer-financed retirement benefits scheme”, and
- >“relevant benefits”,
- have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).”

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**Textual Amendments**

**F611** Words in Sch. 35 para. 10(3) inserted (with effect in accordance with reg. 1(7) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **181(a)**

**F612** Words in Sch. 35 para. 10(3) inserted (with effect in accordance with reg. 1(7) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **181(b)**

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**Commencement Information**

**I78** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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**Textual Amendments**

**F613** Sch. 35 para. 11 omitted (with effect in accordance with Sch. 39 para. 31(3) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 31\(2\)\(b\)](#)

F614 12 .....

**Textual Amendments**

**F614** Sch. 35 para. 12 omitted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(m\)](#)

F615 13 .....

**Textual Amendments**

**F615** Sch. 35 paras. 13-17 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

F615 14 .....

**Textual Amendments**

**F615** Sch. 35 paras. 13-17 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

F615 15 .....

**Textual Amendments**

**F615** Sch. 35 paras. 13-17 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

F615 16 .....

**Textual Amendments**

**F615** Sch. 35 paras. 13-17 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

F615 17 .....

**Textual Amendments**

**F615** Sch. 35 paras. 13-17 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

F616 18 .....

**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

**Textual Amendments**

**F616** Sch. 35 para. 18 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F617** 19 .....

**Textual Amendments**

**F617** Sch. 35 para. 19 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F618** 20 .....

**Textual Amendments**

**F618** Sch. 35 para. 20 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 247\(l\)\(v\)](#)

21 In section 464(5) (policies and contracts to be disregarded in applying limits on benefits payable to member of friendly society), for paragraph (b) substitute—  
“(b) any policy of insurance or annuity contract by means of which the benefits to be provided under an occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004) are secured or any annuity contract which constitutes a registered pension scheme or is issued or held in connection with a registered pension scheme other than such an occupational pension scheme;”.

**Commencement Information**

**I79** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

22 (1) Section 466 (interpretation of Chapter 2 of Part 12) is amended as follows.

(2) In subsection (2), omit the definition of “pension business”.

**F619** (3) .....

**Textual Amendments**

**F619** Sch. 35 para. 22(3) repealed (with effect in accordance with s. 38 of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(7\)](#)

**Commencement Information**

**I80** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

**F620** 23 .....

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**Textual Amendments**  
**F620** Sch. 35 para. 23 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

F621 24 . . . . .

**Textual Amendments**  
**F621** Sch. 35 para. 24 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

F622 25 . . . . .

**Textual Amendments**  
**F622** Sch. 35 para. 25 omitted (21.7.2008) (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 17\(m\)](#)

26 In section 613(4) (parliamentary pension funds)—  
 (a) omit “respective” and paragraphs (b) to (d), and  
 (b) for “those funds” (in both places) substitute “ that Fund ”.

**Commencement Information**  
**I81** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

F623 27 . . . . .

**Textual Amendments**  
**F623** Sch. 35 para. 27 omitted (21.7.2008) (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 17\(m\)](#)

F624 28 . . . . .

**Textual Amendments**  
**F624** Sch. 35 para. 28 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

F625 29 . . . . .

**Textual Amendments**  
**F625** Sch. 35 para. 29 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))



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F626<sup>30</sup> .....

**Textual Amendments**

**F626** Sch. 35 para. 30 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

F627<sup>31</sup> .....

**Textual Amendments**

**F627** Sch. 35 para. 31 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

F628<sup>32</sup> .....

**Textual Amendments**

**F628** Sch. 35 para. 32 repealed (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

33 In section 824(9) (repayment supplements), after “settlement” insert “, scheme administrators of registered pension schemes [<sup>F629</sup>sub-scheme administrators of sub-schemes which form part of a split scheme pursuant to the Registered Pensions (Splitting of Schemes) Regulations 2006]”.

**Textual Amendments**

**F629** Words in Sch. 35 para. 33 added (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), **5(6)(7)**

**Commencement Information**

**I82** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

F630<sup>34</sup> .....

**Textual Amendments**

**F630** Sch. 35 paras. 34-36 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F630<sup>35</sup> .....

**Textual Amendments**

**F630** Sch. 35 paras. 34-36 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F630<sup>36</sup> .....

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**Textual Amendments**

**F630** Sch. 35 paras. 34-36 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Finance Act 1990 (c. 29)*

**F631** 37 .....

**Textual Amendments**

**F631** Sch. 35 para. 37 repealed (with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Taxation of Chargeable Gains Act 1992 (c. 12)*

38 The Taxation of Chargeable Gains Act 1992 is amended as follows.

**Commencement Information**

**I83** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

39 In section 13(10B)(b) (attribution of gains to members of non-resident companies), for “section 271(1)(b), (c), (d), (g) or (h) or (2)” substitute “ section 271(1)(c) or (1A) ”.

**Commencement Information**

**I84** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

40 For sections 239A and 239B (cessation of approval of retirement benefits schemes and withdrawal of approval of personal pension arrangements) substitute—

*“Registered pension schemes*

*De-registration of registered pension schemes*

**239A De-registration of registered pension schemes**

- (1) This section applies where tax is charged in accordance with section 242 of the Finance Act 2004 (de-registration charge) where the registration of a registered pension scheme is withdrawn.
- (2) For the purposes of this Act the assets which at the relevant time are held for the purposes of the pension scheme—
  - (a) are treated as having been acquired at the relevant time for a consideration equal to the amount on which tax is charged by virtue

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of section 242 of the Finance Act 2004 by the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets at the relevant time, and

(b) are not to be treated as having been disposed of by any person at the relevant time.

(3) In subsection (2) “the relevant time” means the time immediately before the date of withdrawal of registration of the pension scheme.”

**Commencement Information**

**I85** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

41 In section 288 (1) (interpretation), after the definition of “recognised stock exchange” insert—

““registered pension scheme” has the meaning given by section 150(2) of the Finance Act 2004;”.

**Commencement Information**

**I86** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

42 (1) Paragraph 2 of Schedule 1 (application of exempt amount and reporting limits in cases involving settled property) is amended as follows.

(2) In sub-paragraph (7)(b)(ii), for “any such scheme or fund as is mentioned in sub-paragraph (8) below” substitute “a registered pension scheme, a superannuation fund to which section 615(3) of the Taxes Act applies or an occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004) that is not a registered pension scheme”.

(3) Omit sub-paragraph (8).

**Commencement Information**

**I87** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

*Finance Act 1996 (c. 8)*

43 The Finance Act 1996 is amended as follows.

**Commencement Information**

**I88** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

44 In section 148 (mis-sold personal pensions), after subsection (6) insert—

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“(6A) References in subsections (3)(d) and (6) to provisions of Part 14 of the Taxes Act 1988 are to those provisions as they had effect at the time in question.”

**Commencement Information**

**I89** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

F632 45 . . . . .

**Textual Amendments**

**F632** Sch. 35 para. 45 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

F633 46 . . . . .

**Textual Amendments**

**F633** Sch. 35 para. 46 and cross-heading omitted (with effect in accordance with s. 114(4) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), **s. 114(3)(c)**

*Capital Allowances Act 2001 (c. 2)*

47 The Capital Allowances Act 2001 is amended as follows.

**Commencement Information**

**I90** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

48 In section 4(2A) (expenditure and sums that are not capital expenditure or capital sums), in the definition of “relevant provision”, for paragraph (d) substitute—  
 “(d) sections 188 to 194 of FA 2004 (contributions under registered pension schemes), and”.

**Commencement Information**

**I91** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

F634 49 . . . . .

**Textual Amendments**

**F634** Sch. 35 para. 49 omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), **s. 126(6)(a)**

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*Finance Act 2002 (c. 23)*

F635 50 .....

**Textual Amendments**

**F635** Sch. 35 para. 50 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

F636 51 .....

**Textual Amendments**

**F636** Sch. 35 para. 51 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 3** (with [Sch. 2](#))

F637 52 .....

**Textual Amendments**

**F637** Sch. 35 para. 52 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

F638 53 .....

**Textual Amendments**

**F638** Sch. 35 para. 53 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

54 The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.

**Commencement Information**

**I92** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

55 In section 23(3) (calculation of “chargeable overseas earnings”), in Step 2, for paragraphs (b) and (c) substitute—

“(b) sections 188 to 194 of FA 2004 (contributions to registered pension schemes), or”.

**Commencement Information**

**I93** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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- 56 In section 54 (1) (calculation of deemed employment payment), in Step 5, for “scheme approved under Chapter 1 or 4 of Part 14 of ICTA” substitute “registered pension scheme”.

**Commencement Information**

**I94** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 57 In section 56(8) (application of Income Tax Acts in relation to deemed employment), for “relevant earnings of the worker for the purposes of section 644 of ICTA (relevant earnings for purposes of permissible pension contributions).” substitute “relevant UK earnings of the worker for the purposes of Part 4 of FA 2004.”

**Commencement Information**

**I95** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 58 In section 218(4) (“lower-paid employment”: deductions to be subtracted), for the references to sections 592(7) and 594 of ICTA substitute— “sections 188 to 194 of FA 2004 (contributions to registered pension schemes), or”.

**Commencement Information**

**I96** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 59 In section 315(5) (limited exemption for expenses connected with certain living accommodation), in Step 3, for paragraph (b) substitute—  
 “(b) sections 188 to 194 of FA 2004 (contributions to registered pension schemes), or”.

**Commencement Information**

**I97** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 60 (1) Section 327 (deductions from earnings: general) is amended as follows.  
 (2) In subsection (4), omit the entry relating to section 619 of ICTA.  
 (3) In subsection (5), for the entries relating to sections 592(7) and 594 (1) of ICTA substitute “and sections 188 to 194 of FA 2004 (contributions to registered pension schemes).”

**Commencement Information**

**I98** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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- 61 In section 381 (deductions from seafarers' earnings: taking account of other deductions), for paragraphs (c) to (e) substitute—
- “(c) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings), and
  - (d) sections 188 to 194 of FA 2004 (contributions to registered pension schemes).”

**Commencement Information**

**I99** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 62 (1) Section 407 (payments and benefits on termination of employment: exception for payments and benefits under tax-exempt pension schemes) is amended as follows.
- (2) In subsection (2), for paragraph (a) substitute—
- “(a) a registered pension scheme,
  - (aa) a scheme set up by a government outside the United Kingdom for the benefit of employees or primarily for their benefit, or”.
- (3) Omit subsection (3).

**Commencement Information**

**I100** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 63 (1) Section 408 (payments and benefits on termination of employment: exception for contributions to tax-exempt pension schemes) is amended as follows.
- (2) In subsection (1), for “tax-exempt pension scheme or approved personal pension arrangements” substitute “ registered pension scheme ”.
- (3) Omit subsection (2).
- (4) In the heading, for “tax-exempt pension schemes” substitute “ registered pension schemes ”.

**Commencement Information**

**I101** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

- 64 In section 563 (former employees: deductions for liabilities), in the definition of “relevant retirement benefit”, for paragraphs (a) and (b) substitute—
- “(a) which is received by the former employee under an employer-financed retirement benefits scheme, and
  - (b) which, under Chapter 2 of Part 6, counts as employment income of the former employee.”

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**Commencement Information**

**I102** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

65 (1) Schedule 1 (abbreviations and defined expressions) is amended as follows.

<sup>F639</sup>(2) . . . . .

(3) In Part 2, insert at the appropriate place—

“registered pension scheme section 832 (1) of ICTA”.

**Textual Amendments**

**F639** Sch. 35 para. 65(2) omitted (21.7.2009) by virtue of Finance Act 2009 (c. 10), s. 126(6)(a)

**Commencement Information**

**I103** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

SCHEDULE 36

Section 283

PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

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

**C72** 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)

**C73** Sch. 36 applied (1.6.2018) by The Local Government Pension Scheme (Scotland) Regulations 2018 (S.S.I. 2018/141), regs. 1(1), 48(2)

**PART 1**

PRE-COMMENCEMENT PENSION SCHEMES

*Deemed registration of existing schemes*

- 1 (1) Any pension scheme which, immediately before 6th April 2006, is—
- (a) a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
  - (b) a former approved superannuation fund (see sub-paragraph (3)),
  - (c) a relevant statutory scheme, as defined in section 611A of ICTA, or a pension scheme treated by the Inland Revenue on that date as if it were such a relevant statutory scheme,



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- (d) an annuity contract by means of which benefits provided under a pension scheme within paragraph (a), (b) or (c) have been secured but which does not provide for the immediate payment of benefits,
  - (e) a scheme or fund mentioned in section 613(4)(b) to (d) of ICTA (Parliamentary pension schemes or funds),
  - (f) 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, or
  - (g) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA, is to be treated as becoming a registered pension scheme on that date.
- (2) Where immediately before 6th April 2006 a retirement benefits scheme is, in accordance with section 611 of ICTA, treated as two or more separate schemes, the reference in sub-paragraph (1)(a) to an approved retirement benefits scheme is to such of the separate schemes as are approved (and not to the whole retirement benefits scheme).
- (3) For the purposes of sub-paragraph (1)(b) any fund which immediately before 6th April 1980 was an approved superannuation fund for the purposes of section 208 of ICTA 1970 is a former approved superannuation fund unless since 5th April 1980—
- (a) the fund has been approved for the purposes of Chapter 1 of Part 14 of ICTA (retirement benefits schemes), or
  - (b) any sum has been paid under the fund by way of contribution.
- (4) Sub-paragraph (1)(a) or (g) applies in relation to a pension scheme approved (for the purposes of Chapter 1, or under Chapter 4, of Part 14 of ICTA) on or after 6th April 2006 if the approval has effect for a period ending with 5th April 2006.
- [<sup>F640</sup>(4A) This Part of this Act applies in relation to a pension scheme that—
- (a) is a registered pension scheme by virtue of sub-paragraph (1)(a), and
  - (b) is neither a public service pension scheme nor an occupational pension scheme,
- as it applies in relation to an occupational pension scheme.]
- (5) This paragraph is subject to paragraph 2 (opt-out).

#### Textual Amendments

**F640** Sch. 36 para. 1(4A) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), Sch. 3 paras. 1(8), 2(4)

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

**C74** Sch. 36 para. 1(1) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), 27(1)-(3)

#### *Opting out of deemed registration*

- 2 (1) Paragraph 1 (1) does not apply to a pension scheme if the relevant administrator has, at any time before 6th April 2006, notified the Inland Revenue that the pension scheme is not to become a registered pension scheme on that date.
- (2) If, by virtue of sub-paragraph (1) of this paragraph, sub-paragraph (1) of paragraph 1 does not apply to a pension scheme within any of paragraphs (a) to (d), (f) and (g)

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of that sub-paragraph, income tax is to be charged at the rate of 40% on the relevant amount.

- (3) The relevant amount is an amount equal to the aggregate of—
  - (a) the amount of the sums held for the purposes of the pension scheme immediately before 6th April 2006, and
  - (b) the market value (at that time) of the assets held for the purposes of the pension scheme at that time.
- (4) The liability to income tax is a liability of the person who is the relevant administrator on 5th April 2006 or, if more than one person is the relevant administrator on that date, is a joint and several liability of those persons.
- (5) Where tax is charged in accordance with sub-paragraph (2), for the purposes of TCGA 1992 the assets which immediately before 6th April 2006 are held for the purposes of the pension scheme—
  - (a) are to be treated as having been acquired at that time for a consideration equal to the amount on which tax is charged by virtue of sub-paragraph (2) by the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets on that date, and
  - (b) are not to be treated as having been disposed of by any person at that time.
- (6) “Relevant administrator” means—
  - (a) in the case of a pension scheme within paragraph 1(1)(a), (b) or (c), the person who is, or the persons who are, the administrator of the pension scheme under section 611AA of ICTA,
  - (b) in the case of a pension scheme within paragraph 1(1)(d) or (f), the trustee or trustees of the pension scheme, or the insurance company which is a party to the contract in which the pension scheme is comprised,
  - (c) in the case of a pension scheme within paragraph 1(1)(e), the trustees of the scheme or fund, and
  - (d) in the case of a pension scheme within paragraph 1(1)(g), the person who is referred to in section 638 (1) of ICTA.
- (7) If paragraph 1 (1) does not apply to a pension scheme by virtue of sub-paragraph (1), sections 431B(2) and 466(2B) of ICTA (meaning of pension business: pension scheme ceasing to be a registered pension scheme) apply as if the pension scheme had ceased to be a registered pension scheme at the beginning of 6th April 2006.

*Power to modify rules of existing schemes*

- 3 (1) The Board of Inland Revenue may by regulations make any modifications of the rules of pension schemes to which paragraph 1 (1) applies if the modifications appear appropriate in consequence of, or in connection with, the provision made by this Part (or the repeals made by this Act in consequence of the provision made by this Part).
- (2) Any modifications of the rules of a pension scheme made by the regulations have effect until the earlier of—
  - (a) the first date after 5th April 2006 on which amendments of the rules of the pension scheme <sup>[F641]</sup>which state that the modifications no longer apply in relation to it take effect, or
  - (b) the end of the tax year 2010-11 or such later time as the Board of Inland Revenue may by regulations prescribe.]

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- (3) The modifications that may be made by the regulations include, in particular—
- (a) modifications for relieving pension schemes of obligations to make payments which, on and after 6th April 2006, would be unauthorised payments, and
  - (b) modifications of provisions (however expressed) referring to any limit contained in, or relevant in relation to approval under or for the purposes of, any provision of Part 14 of ICTA (pension schemes etc.) as it has effect at any time before 6th April 2006.

#### Textual Amendments

**F641** Words in Sch. 36 para. 3(2) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 51, 64\(1\)](#)

#### *Scheme administrator*

- 4 (1) Where under paragraph 1 (1) a pension scheme is treated as becoming a registered pension scheme on 6th April 2006, (despite anything in section 270) the following person is, or the following persons are, to be treated as becoming the scheme administrator of the pension scheme on that date.
- (2) If the pension scheme is within paragraph 1(1)(a), (b) or (c) immediately before that date, the person who is, or the persons who are, the administrator of the pension scheme under section 611AA of ICTA immediately before that date is or are to be treated as becoming the scheme administrator.
- (3) If the pension scheme is within paragraph 1(1)(d) or (f) immediately before that date, the trustee or trustees of the pension scheme, or the insurance company which is a party to the contract in which the pension scheme is comprised, is or are to be treated as becoming the scheme administrator.
- (4) If the pension scheme is within paragraph 1(1)(e) immediately before that date, the trustees of the scheme or fund are to be treated as becoming the scheme administrator.
- (5) If the pension scheme is within paragraph 1(1)(g) immediately before that date, the person who is referred to in section 638 (1) of ICTA in relation to the pension scheme immediately before that date is to be treated as becoming the scheme administrator.

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

- C75** Sch. 36 para. 4 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [27\(1\)\(2\)\(4\)](#)
- C76** Sch. 36 para. 4(1) modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), [Sch. 3 Pt. 1](#)
- C77** Sch. 36 para. 4(2) modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), [Sch. 3 Pt. 1](#)
- C78** Sch. 36 para. 4(3) modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), [Sch. 3 Pt. 1](#)

#### *Post-commencement withdrawal of approval*

- 5 (1) The repeal by this Act of—

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- (a) section 591B (1) of ICTA (withdrawal of approval of retirement benefits scheme),
- (b) section 620(7) of ICTA (withdrawal of approval of retirement annuity contract), and
- (c) section 650 (1) of ICTA (withdrawal of approval of approved personal pension arrangements),

does not prevent the withdrawal of an approval under any of those provisions at any time after 5th April 2006 (from any earlier date until 6th April 2006).

- (2) A withdrawal of approval made under any of those provisions by virtue of subparagraph (1) has the same consequences as a withdrawal of approval made under the provision concerned before 6th April 2006, so that (in particular)—
  - (a) sections 591C and 591D of ICTA (tax on cessation of approval of retirement benefits scheme), or
  - (b) sections 650A and 651 of ICTA (charge on cessation of approval of personal pension arrangements and appeal against such withdrawal of such approval),
 apply where they would have applied had the approval been withdrawn before that date.

*Pre-commencement liabilities of scheme administrator*

- 6 Any liabilities or obligations of—
  - (a) the administrator of a retirement benefits scheme (within the meaning of Chapter 1 of Part 14 of ICTA), or
  - (b) the scheme administrator of a personal pension scheme (within the meaning of Chapter 4 of Part 14 of ICTA),
 incurred in relation to the scheme before 6th April 2006 or by virtue of paragraph 4 are (on and after that date) to be treated as liabilities or obligations of the scheme administrator of the scheme.

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

**C79** Sch. 36 para. 6 modified (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), 3(1)(2), **Sch. 3 Pt. 1**

**PART 2**

PRE-COMMENCEMENT RIGHTS: <sup>F642</sup>ENHANCEMENT OF ALLOWANCES ETC]

**Textual Amendments**

**F642** Words in [Sch. 36 Pt. 2](#) heading substituted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), **Sch. 9 paras. 66, 124** (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

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

**C80** Sch. 36 Pt. 2 applied (with modifications) (1.5.2010) by [The Financial Assistance Scheme \(Tax\) Regulations 2010 \(S.I. 2010/1187\)](#), regs. 1(1), **5-11**

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*f<sup>F643</sup> Enhancement of lump sum allowance and lump sum and death benefit allowance*

**Textual Amendments**

**F643** Sch. 36 para. 6A and cross-heading inserted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 67, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

- 6A (1) Sub-paragraph (2) applies, in relation to a relevant benefit crystallisation event occurring in relation to an individual, other than the individual becoming entitled to a pension commencement lump sum or an uncrystallised funds pension lump sum, where one or more lump sum and death benefit allowance enhancement factors operate in relation to the relevant benefit crystallisation event.
- (2) Chapter 15A of Part 9 of ITEPA 2003 (pension income: lump sums under registered pension schemes) has effect in relation to the individual as if the amount specified in section 637R of that Act (individual's lump sum and death benefit allowance) were an amount equal to—
- $$A+A\times B$$
- where—
- A is—
- (a) in the case of an individual in relation to whom a relevant protection provision applies (see sub-paragraph (3)), the individual's protected lump sum and death benefit allowance (see sub-paragraph (4));
- (b) in any other case, £1,073,100;
- B is the aggregate of the lump sum and death benefit allowance enhancement factors that operate in relation to the relevant benefit crystallisation event.
- (3) The following provisions are “relevant protection provisions”—
- (a) paragraph 7 of this Schedule (primary protection);
- (b) paragraph 14 of Schedule 18 to FA 2011 (fixed protection);
- (c) paragraph 1 of Schedule 22 to FA 2013 (“fixed protection 2014”);
- (d) paragraph 1 of Schedule 6 to FA 2014 (“individual protection 2014”);
- (e) paragraph 1 of Schedule 4 to FA 2016 (“fixed protection 2016”);
- (f) paragraph 9 of that Schedule (“individual protection 2016”).
- (4) In the case of an individual in relation to whom a relevant protection provision applies, the individual's “protected lump sum and death benefit allowance” is the amount treated as specified in section 637R of ITEPA 2003 in relation to the individual by virtue of the relevant protection provision.
- (5) The following paragraphs make provision for the operation of lump sum and death benefit enhancement factors—
- paragraphs 7 to 11A (primary protection);
- paragraph 18 (pre-commencement pension credits);
- paragraph 20A (pension credits from previously crystallised rights);
- paragraphs 20B to 20D (individuals who are not always relevant UK individuals);
- paragraphs 20E to 20G (transfers from recognised overseas pension schemes).

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- (6) Paragraphs 7 and 18 also make provision enhancing the amount of an individual's lump sum allowance.
- (7) In this paragraph “relevant benefit crystallisation event” has the same meaning as in section 637S of ITEPA 2003 (availability of individual's lump sum and death benefit allowance).]

*“Primary protection”*

- [<sup>F6447</sup> (1) This paragraph applies in the case of an individual where—
- (a) the amount of the relevant pre-commencement pension rights of the individual exceeds £1,500,000, and
  - (b) notice of intention to rely on this paragraph is given to His Majesty's Revenue and Customs in accordance with regulations made by the Commissioners for His Majesty's Revenue and Customs.
- (2) Chapter 15A of Part 9 of ITEPA 2003 (pension income: lump sums under registered pension schemes) has effect—
- (a) in relation to a relevant benefit crystallisation event within the meaning of section 637Q of ITEPA 2003 (availability of individual's lump sum allowance) occurring in relation to the individual, as if the amount specified in section 637P of ITEPA 2003 (individual's lump sum allowance) were £375,000;
  - (b) in relation to a relevant benefit crystallisation event within the meaning of section 637S of ITEPA 2003 (availability of individual's lump sum and death benefit allowance) occurring in relation to the individual, as if the amount specified in section 637R of ITEPA 2003 (individual's lump sum and death benefit allowance) were £1,800,000.
- (3) A lump sum and death benefit allowance enhancement factor operates in relation to the relevant benefit crystallisation event mentioned in paragraph 6A(1).
- (4) The lump sum and death benefit allowance enhancement factor is the primary protection factor.
- (5) The primary protection factor is—
- $$RR\frac{\text{relevant pre-commencement pension rights}}{\text{£1,500,000}}$$
- where RR is the amount of the relevant pre-commencement pension rights of the individual (see sub-paragraph (6)).
- (6) The amount of the relevant pre-commencement 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).
- (7) Sub-paragraph (5) is subject to paragraph 11 (pension debit on or after 6th April 2006) and paragraph 11A (pension debit on or after 6th April 2006: lump sum death benefits).

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- (8) Where this paragraph applies in the case of an individual, for the purposes of this Part a lump sum is not an uncrystallised funds pension lump sum (see paragraph 4A of Schedule 29) if—
- the lump sum condition (see paragraphs 24(2) and (3), 25 and 26 of this Schedule) is met in relation to the individual, or
  - immediately before the lump sum is paid, the amount given by the formula in sub-paragraph (9) is less than 25% of the lump sum.

- (9) The formula is—

$$£1,800,000A4$$

where A is the amount that would be the previously-used amount within the meaning of section 637S of ITEPA 2003 (availability of individual's lump sum and death benefit allowance) if a relevant benefit crystallisation event within the meaning of that section had occurred immediately before the lump sum is paid.]

#### Textual Amendments

**F644** Sch. 36 para. 7 substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), Sch. 9 paras. 68, **124** (with Sch. 9 paras. 125-132A) (as amended by [S.I. 2024/356](#), regs. 1, 4)

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

**C81** Sch. 36 para. 7 applied (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **29(1)**

**C82** 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—



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- (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)**

**C83** 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 <sup>F645</sup>...—
- (a) the value, or the aggregate of the values, calculated under paragraph 8, [<sup>F646</sup>or (if lower)]
  - (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 [<sup>F647</sup>as increased, in a case where sub-paragraph (5A) applies, in accordance with sub-paragraph (5B)].

- (4) “The maximum permitted pension” means
- [<sup>F648</sup>(a) in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section [<sup>F649</sup>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) [<sup>F650</sup>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 [<sup>F651</sup>2006] the individual left the employment on that date, and
  - [<sup>F652</sup>(aa) in the case of an arrangement within sub-paragraph (4)(a), that the valuation assumptions apply (see section 277),]
  - (b) [<sup>F653</sup>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



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the Board of Inland Revenue grounds for withdrawing the approval of the pension [<sup>F654</sup>scheme] that fact would not give the Board such grounds.

[<sup>F655</sup>(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.

#### Textual Amendments

- F645** 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
- F646** 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)
- F647** 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)
- F648** Words in Sch. 36 para. 9(4) inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(4), 64(1)
- F649** 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
- F650** 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)
- F651** 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)
- F652** Sch. 36 para. 9(5)(aa) inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(5)(b), 64(1)
- F653** 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)
- F654** 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)
- F655** 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

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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,
  - (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 [<sup>F656</sup>applies] 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 [<sup>F657</sup>paragraph 7(5)]) is to be recalculated.
- (3) The recalculation involves reducing RR (see [<sup>F658</sup>paragraph 7(5)]) 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 [<sup>F659</sup>relevant 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.

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[<sup>F660</sup>(5) In this paragraph “relevant benefit crystallisation event” has the same meaning as in section 637S of ITEPA 2003 (availability of individual’s lump sum and death benefit allowance).]

#### Textual Amendments

- F656** Word in Sch. 36 para. 11(1)(a) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 69(2), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F657** Words in Sch. 36 para. 11(2) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 69(3), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F658** Words in Sch. 36 para. 11(3) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 69(3), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F659** Words in Sch. 36 para. 11(4) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 69(4), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F660** Sch. 36 para. 11(5) inserted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 69(5), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

[<sup>F661</sup>11(A)] This paragraph applies where—

- (a) paragraph 7 [<sup>F662</sup>applies] 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—

- (a) the [<sup>F663</sup>relevant benefit crystallisation event] consisting of the payment of the lump sum death benefit, and
- (b) any other [<sup>F664</sup>relevant benefit crystallisation event] consisting of the payment of a lump sum death benefit in respect of the individual.

[ In this paragraph “relevant benefit crystallisation event” has the same meaning as in <sup>F665</sup>(5) section 637S of ITEPA 2003 (availability of individual’s lump sum and death benefit allowance).]

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#### Textual Amendments

- F661** Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 38](#)
- F662** Word in Sch. 36 para. 11A(1)(a) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 70\(2\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F663** Words in Sch. 36 para. 11A(4)(a) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 70\(3\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F664** Words in Sch. 36 para. 11A(4)(b) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 70\(3\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F665** Sch. 36 para. 11A(5) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 70\(4\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

- 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

- F661** 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

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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.
- (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

**F661** 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—
- was not an occupational pension scheme, or
  - 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 sum was paid under the policy when the individual actually died, and
  - 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
- <sup>F666</sup>(2A) [<sup>F667</sup>Part 5 of the Equality Act 2010, so far as relating to age, or the] Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing [<sup>F668</sup>those Regulations.]) 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—
- as part of a retirement-benefit activities compliance exercise, or

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- (b) to comply with the [<sup>F669</sup>Part 5 of the Equality Act 2010, so far as relating to age, or the] Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing [<sup>F670</sup>those Regulations.]), 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—
- (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.
- [<sup>F671</sup>(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

- F661** Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 38](#)
- F666** Sch. 36 paras. 11D(2A)-(2C) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 15, 24\(3\)](#)
- F667** Words in Sch. 36 para. 11D(2A) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 59(a) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))
- F668** Words in Sch. 36 para. 11D(2A) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 59(b) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))
- F669** Words in Sch. 36 para. 11D(2B)(b) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 59(a) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))
- F670** Words in Sch. 36 para. 11D(2B)(b) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 59(b) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))



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**F671** 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)

*“Enhanced protection”*

- 12 (1) This paragraph applies on and after 6th April 2006 in the case of an individual who has one or more relevant existing arrangements if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
- (2) But this paragraph ceases to apply if [<sup>F672</sup>the notice under sub-paragraph (1) is given on or after 15 March 2023 and]—
- (a) relevant benefit accrual occurs under the arrangement, or any of the arrangements (see paragraph 13),
  - [<sup>F673</sup>(aa) there is an impermissible transfer into the arrangement or any of the arrangements (see paragraph 17A),]
  - (b) a transfer of sums or assets held for the purposes of, or representing accrued rights under, the arrangement or any of the arrangements is made that is not a permitted transfer, or
  - (c) an arrangement relating to the individual is made under a registered pension scheme otherwise than [<sup>F674</sup>in permitted circumstances].
- [<sup>F675</sup>(2A) An arrangement is made in permitted circumstances if it is made—
- (a) for the purposes of a permitted transfer,
  - (b) as part of a retirement-benefit activities compliance exercise, or
  - (c) as part of an age-equality compliance exercise.
- (2B) For the purposes of sub-paragraph (2A)(b) an arrangement (“the new arrangement”) relating to an individual is made as part of a retirement-benefit activities compliance exercise if—
- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),
  - (b) the old arrangement and the new arrangement relate to the same employment,
  - (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement,
  - (d) the making of the new arrangement and the cancellation of the old arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the arrangement is made 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
  - (e) the rights cancelled under the old arrangement and the rights conferred under the new arrangement are not significantly different.
- (2C) For the purposes of sub-paragraph (2A)(c) an arrangement (“the new arrangement”) is made as part of an age-equality compliance exercise if—
- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),

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- (b) the old arrangement and the new arrangement relate to the same employment,
- (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
- (d) the new arrangement is made, and the old arrangement cancelled, in order to comply with the [<sup>F676</sup>Part 5 of the Equality Act 2010, so far as relating to age, or the] or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing [<sup>F677</sup>those Regulations]).]

[<sup>F678</sup>(3A) Where this paragraph applies in the case of an individual, Chapter 15A of Part 9 of ITEPA 2003 (pension income: lump sums under registered pension schemes) and Part 4 of FA 2004 (pensions etc) have effect in relation to the individual with the modifications in sub-paragraphs (3B) to (3F).

(3B) For the purposes of determining the income tax treatment of a lump sum or a lump sum death benefit—

- (a) section 637C of that Act (serious ill-health lump sums) has effect as if, in subsection (3) of that section (which defines the permitted maximum), for the words from “so much of” to the end there were substituted “the maximum amount of a serious ill-health lump sum that could have been paid to the individual on 5 April 2024 under the arrangement pursuant to which the individual becomes entitled to the serious ill-health lump sum”;
- (b) section 637D of that Act (uncrystallised funds pension lump sums) has effect as if—

(i) in subsection (3) of that section (which defines the permitted maximum), for paragraph (b) there were substituted—

“(b) the maximum amount of an uncrystallised funds pension lump sum that could have been paid to the individual with no liability to income tax on 5 April 2024 under the arrangement pursuant to which the entitlement to the uncrystallised funds pension lump sum arises in respect of the individual.”;

(ii) after that subsection there were inserted—

“(4) But in a case where the individual has previously become entitled to a serious ill-health lump sum—

- (a) subsection (3) does not apply, and
- (b) in subsection (2) “the permitted maximum”, in relation to an uncrystallised funds pension lump sum paid to the member, is nil.”;

(c) section 637H of that Act (defined benefits lump sum death benefits) has effect as if, in subsection (7) of that section, in the definition of “the permitted maximum”, for the words from “so much of” to the end there were substituted

- (a) the maximum amount of a defined benefits lump sum death benefit that could have been paid in respect of the individual on 5 April 2024 under the arrangement pursuant to which the entitlement to the defined benefits lump sum death benefit arises in respect of the individual, less



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- (b) the aggregate of the non-taxable amounts within the meaning given by section 637S(6) of each authorised lump sum death benefit (if any) previously paid in respect of the individual under that arrangement after that date;

or, if that produces a negative result, nil.”;

- (d) section 637I of that Act (pension protection lump sum death benefits) has effect as if, in subsection (5) of that section, in the definition of “the permitted maximum”, for the words from “so much of” to the end there were substituted

- (a) the maximum amount of a pension protection lump sum death benefit that could have been paid in respect of the individual on 5 April 2024 under the arrangement pursuant to which the entitlement to the pension protection lump sum death benefit arises in respect of the individual, less

- (b) the aggregate of the non-taxable amounts within the meaning given by section 637S(6) of each authorised lump sum death benefit (if any) previously paid in respect of the individual under that arrangement after that date;

or, if that produces a negative result, nil.”;

- (e) section 637J of that Act (uncrystallised funds lump sum death benefits) has effect as if, in subsection (7), in the definition of “the permitted maximum”, for the words from “so much of” to the end there were substituted

- (a) the maximum amount of an uncrystallised funds lump sum death benefit that could have been paid in respect of the individual on 5 April 2024 under the arrangement pursuant to which the entitlement to the uncrystallised funds lump sum death benefit arises in respect of the individual, less

- (b) the aggregate of the non-taxable amounts within the meaning given by section 637S(6) of each authorised lump sum death benefit (if any) previously paid in respect of the individual under that arrangement after that date;

or, if that produces a negative result, nil.”;

- (f) section 637K of that Act (annuity protection lump sum death benefits) has effect as if, in subsection (5), in the definition of “the permitted maximum”, for the words from “so much of” to the end there were substituted

- (a) the maximum amount of an annuity protection lump sum death benefit that could have been paid in respect of the individual on 5 April 2024 under the arrangement pursuant to which the entitlement to the annuity protection lump sum death benefit arises in respect of the individual, less

- (b) the aggregate of the non-taxable amounts within the meaning given by section 637S(6) of each authorised lump sum death benefit (if any) previously paid in respect of the individual under that arrangement after that date;

or, if that produces a negative result, nil.”;

- (g) section 637L of that Act (drawdown pension fund lump sum death benefits) has effect as if, in subsection (8), in the definition of “the permitted

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maximum”, for the words from “so much of” to the end there were substituted

- (a) the maximum amount of a drawdown pension fund lump sum death benefit that could have been paid in respect of the individual on 5 April 2024 under the arrangement pursuant to which the entitlement to the drawdown pension fund lump sum death benefit arises in respect of the individual, less
- (b) the aggregate of the non-taxable amounts within the meaning given by section 637S(6) of each authorised lump sum death benefit (if any) previously paid in respect of the individual under that arrangement after that date;

or, if that produces a negative result, nil.”;

- (h) section 637M of that Act (flexi-access drawdown lump sum death benefits) has effect as if, in subsection (8), in the definition of “the permitted maximum”, for the words from “so much of” to the end there were substituted

- (a) the maximum amount of a flexi-access drawdown lump sum death benefit that could have been paid in respect of the individual on 5 April 2024 under the arrangement pursuant to which the entitlement to the flexi-access drawdown lump sum death benefit arises in respect of the individual, less
- (b) the aggregate of the non-taxable amounts within the meaning given by section 637S(6) of each authorised lump sum death benefit (if any) previously paid in respect of the individual under that arrangement after that date;

or, if that produces a negative result, nil.”;

- (i) Schedule 29 to FA 2004 (pension commencement lump sum: definition of “permitted maximum”) has effect as if—
  - (i) in paragraph 2, sub-paragraph (c) were omitted;
  - (ii) after paragraph 2 there were inserted—

“2ZA In the case of an individual who has previously become entitled to a serious ill-health lump sum—

- (a) paragraph 2 does not apply, and
- (b) in paragraph 1 “the permitted maximum”, in relation to a lump sum, is nil.”

(3C) For the purposes of the modifications made by sub-paragraph (3B), the maximum amount of a serious ill-health lump sum or a lump sum death benefit that could have been paid in respect of an individual on 5 April 2024 under an arrangement that is a defined benefits arrangement is an amount equal to the appropriate limit, determined under paragraph 15(4), in relation to payment of the serious ill-health lump sum or the lump sum death benefit.

(3D) For the purposes of the modifications made by sub-paragraph (3B) “authorised lump sum death benefit” means a lump sum death benefit authorised to be paid by the lump sum death benefit rule.

(3E) Section 637P of ITEPA 2003 (individual’s lump sum allowance) applies as if the amount specified in that section were £375,000.

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**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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- (3F) Section 637R of ITEPA 2003 (individual’s lump sum and death benefit allowance) applies as if the amount specified in that section were an amount equal to the value of the individual’s uncrystallised pension rights on 5 April 2024.
- (3G) The Commissioners for His Majesty’s Revenue and Customs may by regulations make provision about how the value of the individual’s uncrystallised pension rights on 5 April 2024 is to be determined for the purposes of sub-paragraph (3F).
- (3H) Where this paragraph applies in the case of an individual, for the purposes of this Part a lump sum is not an uncrystallised funds pension lump sum (see paragraph 4A of Schedule 29) if the lump sum condition (see paragraphs 24(2) and (3), 25 and 26 of this Schedule) is met in relation to the individual.]
- (4) An individual has a relevant existing arrangement if—
- (a) before 6th April 2006 an arrangement relating to the individual has been made under a pension scheme within paragraph 1(1), and
  - (b) the pension scheme becomes a registered pension scheme on that date.
- (5) Notice of intention to rely on this paragraph in relation to the individual may not be given in a case where—
- (a) the value of the uncrystallised rights of the individual on 5th April 2006 under an arrangement, or
  - (b) the aggregate of the values of the uncrystallised rights of the individual on 5th April 2006 under arrangements,
- is arrived at in accordance with paragraph [F679(3)] unless such rights as, in accordance with regulations made by the Board of Inland Revenue, are to be treated as representing the relevant excess have been surrendered.
- (6) In sub-paragraph (5) “the relevant excess” means the amount by which the value of—
- (a) the individual’s uncrystallised rights, or
  - (b) the aggregate of the values of the individual’s uncrystallised rights,
- as arrived at in accordance with paragraph 8 exceeds what it would be if arrived at under paragraph [F680(3)].
- (7) For the purposes of this paragraph and paragraphs 13 and 15, a transfer of sums or assets held for the purposes of, or representing accrued rights under, an arrangement is a permitted transfer if—
- (a) <sup>F681</sup> . . . . .
  - (b) the sums or assets <sup>F682</sup> . . . are transferred so that sub-paragraph (8) applies in relation to them, and
  - (c) the aggregate of the amount of [<sup>F683</sup>the] sums and the market value of [<sup>F683</sup>the] assets is, applying normal actuarial practice, equivalent before and after the transfer.
- (8) This sub-paragraph applies in relation to sums or assets held for the purposes of, or representing accrued rights under, the arrangement if—
- (a) they are transferred so as to become held for the purposes of a money purchase arrangement that is not a cash balance arrangement <sup>F684</sup> . . . <sup>F684</sup> . . .
  - (b) where the transfer occurs in connection with the winding up of the pension scheme under which the arrangement is made and the arrangement is a cash balance arrangement or a defined benefits arrangement, they are transferred

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so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement relating to the same employment as the arrangement and made under a registered pension scheme or recognised overseas pension scheme.

<sup>F685</sup>(c) where the arrangement is a cash balance arrangement or a defined benefits arrangement relating to a present or former employment, they are transferred in connection with a relevant business transfer so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement made under a registered pension scheme or recognised overseas pension scheme, or

(d) where the arrangement (“the old arrangement”) is a cash balance arrangement or a defined benefits arrangement, they are transferred as part of a retirement-benefit activities compliance exercise so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement (“the new arrangement”) relating to the same employment as the old arrangement and made under a registered pension scheme or recognised overseas pension scheme.]

<sup>F686</sup>(8A) For the purposes of sub-paragraph (8)(c) “relevant business transfer” means a transfer of an undertaking or a business (or part of an undertaking or a business) from one person to another—

- (a) which involves the transfer of at least 20 employees, and
- (b) in the case of which, if the transferor and the transferee are bodies corporate, they would not be treated as members of the same group for the purposes of <sup>F687</sup>Part 5 of the Corporation Tax Act 2010].

(8B) For the purposes of sub-paragraph (8)(d) sums or assets held for the purposes of, or representing accrued rights under, the old arrangement are transferred as part of a retirement-benefit activities compliance exercise if—

- (a) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
- (b) the transfer constitutes or forms part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the old arrangement was made 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.]

(9) Where there is a permitted transfer—

- (a) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(a), this paragraph (and paragraphs 13 <sup>F688</sup>, 14 and 17A(1) and (2)) apply in relation to the arrangement <sup>F689</sup>. . . to which the transfer is made, and
- (b) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(b) <sup>F690</sup> or (d)], this paragraph (and paragraphs 13 <sup>F691</sup>, 15 and 17A(3)) <sup>F692</sup> to 17]) apply as if the arrangement to which the transfer is made were the same as that from which it is made, <sup>F693</sup> and
- (c) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(c), this paragraph (and paragraphs 13, 15 to 17 and 17A(3)) apply as if the arrangement to which the transfer is made were the same as that from which it is made and (if the employment is transferred) as if the employment with the transferee were the employment with the transferor.]

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[<sup>F694</sup>(10) The Treasury may by order amend sub-paragraph (8) (and make other amendments consequential on any amendment of that sub-paragraph).]

#### Textual Amendments

- F672** Words in Sch. 36 para. 12(2) inserted (for the tax year 2023-24 and subsequent tax years) by [Finance \(No. 2\) Act 2023 \(c. 30\), s. 23\(2\)\(8\)](#)
- F673** Sch. 36 para. 12(2)(aa) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(3\), 64\(1\)](#)
- F674** Words in Sch. 36 para. 12(2)(c) substituted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(2\), 24\(3\)](#)
- F675** Sch. 36 para. 12(2A)-(2C) inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(3\), 24\(3\)](#)
- F676** Words in Sch. 36 para. 12(2C)(d) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 59(a) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\), art. 1\(2\), Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))
- F677** Words in Sch. 36 para. 12(2C)(d) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 59(b) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\), art. 1\(2\), Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))
- F678** [Sch. 36 para. 12\(3A\)-\(3H\)](#) substituted for Sch. 36 para. 12(3) (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\), Sch. 9 paras. 71\(2\), 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356, regs. 1, 4](#))
- F679** Word in Sch. 36 para. 12(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(5\), 64\(1\)](#)
- F680** Word in Sch. 36 para. 12(6) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(5\), 64\(1\)](#)
- F681** Sch. 36 para. 12(7)(a) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(4\)\(a\), 24\(3\)](#)
- F682** Words in Sch. 36 para. 12(7)(b) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(4\)\(b\), 24\(3\)](#)
- F683** Words in Sch. 36 para. 12(7)(c) substituted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(4\)\(c\), 24\(3\)](#)
- F684** Words in Sch. 36 para. 12(8)(a) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(5\), 24\(3\)](#)
- F685** Sch. 36 para. 12(8)(c)(d) inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(6\), 24\(3\)](#)
- F686** Sch. 36 para. 12(8A)(8B) inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(7\), 24\(3\)](#)
- F687** Words in Sch. 36 para. 12(8A)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 432\(2\)](#) (with Sch. 2)
- F688** Words in Sch. 36 para. 12(9)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(6\)\(a\), 64\(1\)](#)
- F689** Words in Sch. 36 para. 12(9)(a) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(8\)\(a\), 24\(3\)](#)
- F690** Words in Sch. 36 para. 12(9)(b) inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(8\)\(b\), 24\(3\)](#)
- F691** Words in Sch. 36 para. 12(9)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(6\)\(b\), 64\(1\)](#)
- F692** Words in Sch. 36 para. 12(9)(b) inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(8\)\(b\), 24\(3\)](#)
- F693** Sch. 36 para. 12(9)(c) and preceding word inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(8\)\(c\), 24\(3\)](#)
- F694** Sch. 36 para. 12(10) inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(9\), 24\(3\)](#)

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

- C84** Sch. 36 para. 12 construed as one with reg. 30 (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **30(3)**
- C85** Sch. 36 para. 12 modified (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **30(2)**
- C86** Sch. 36 para. 12(2A)-(2C) applied (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), **Sch. 18 para. 14(10)**
- C87** Sch. 36 para. 12(2A)-(2C) applied (with application in accordance with Sch. 22 para. 1 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 22 para. 1(9)**
- C88** Sch. 36 para. 12(2A)-(2C) applied (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), **Sch. 4 para. 7**
- C89** Sch. 36 para. 12(7)-(8B) applied (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), **Sch. 18 para. 14(9)**
- C90** Sch. 36 para. 12(7)-(8B) applied (with application in accordance with Sch. 22 para. 1 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 22 para. 1(8)**
- C91** Sch. 36 para. 12(7)-(8B) applied (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), **Sch. 4 para. 6**
- C92** Sch. 36 para. 12(8) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **35**

- 13 Relevant benefit accrual occurs in relation to an individual under an arrangement—
- (a) in the case of a money purchase arrangement that is not a cash balance arrangement, if a relevant contribution is paid under the arrangement [<sup>F695</sup>or, where the arrangement has been a hybrid arrangement, if a relevant contribution was so paid at any time after 5th April 2006,] (see paragraph 14), and
  - (b) in the case of a cash balance arrangement or defined benefits arrangement, if, when [<sup>F696</sup>the individual becomes entitled to any pension or lump sum or a] transfer that is a permitted transfer by virtue of paragraph 12(8)(a) (a “relevant event”) occurs in relation to the individual and the arrangement, the relevant crystallised amount exceeds the appropriate limit (see paragraph 15).

**Textual Amendments**

- F695** Words in Sch. 36 para. 13(a) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 53(7), 64(1)**
- F696** Words in [Sch. 36 para. 13\(b\)](#) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), **Sch. 9 paras. 72, 124** (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, **4**)

- 14 (1) For the purposes of paragraph 13(a) a relevant contribution is paid under the arrangement if—
- (a) a relievable pension contribution is paid by or on behalf of the individual under the arrangement,
  - (b) a contribution is paid in respect of the individual under the arrangement by an employer of the individual, or
  - (c) a contribution paid [<sup>F697</sup>otherwise than by or on behalf of the individual or by an employer of the individual] in respect of the individual subsequently becomes held for the purposes of the provision under the arrangement of benefits to or in respect of the individual.

<sup>F698</sup>(2) .....

[<sup>F699</sup>(3) A contribution is not a relevant contribution for the purposes of paragraph 13(a) if—

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- (a) it may only be applied for or towards the payment of premiums under a policy of insurance on the life of the individual,
- (b) the policy is issued, or issued in respect of insurances made, before 6th April 2006,
- (c) there is no right to surrender any rights under the policy,
- (d) the terms of the policy are not varied significantly during the period beginning with 6th April 2006 and ending with the individual's actual death so as to increase the benefits payable under the policy or extend the period during which benefits are so payable, and
- (e) no benefits are paid, or other payments made, under (or on the surrender of rights under) the policy except by reason of the individual's 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 made in order to comply with the [<sup>F701</sup>Part 5 of <sup>F700</sup>(3A) the Equality Act 2010, so far as relating to age, or the] Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing [<sup>F702</sup>those Regulations]) is to be ignored for the purposes of sub-paragraph (3).

- (3B) Where a policy of insurance on the life of the individual issued, or issued in respect of insurances made, before 6th April 2006 is surrendered and a new one is taken out—
- (a) as part of a retirement-benefit activities compliance exercise, or
  - (b) as part of an age-equality compliance exercise.

the new policy is to be treated for the purposes of sub-paragraph (3) as if it were the same as the old.

- (3C) For the purposes of sub-paragraph (3B)(a) a policy is surrendered, and a new policy of life insurance is taken out, as part of a retirement-benefit activities compliance exercise if—
- (a) the surrender of the old policy and the 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 under which the arrangement is made 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.

- (3D) For the purposes of sub-paragraph (3B)(b) a policy is surrendered, and a new policy of life insurance is taken out, as part of an age-equality compliance exercise if—
- (a) the old policy is surrendered, and the new policy is taken out, in order to comply with [<sup>F703</sup>Part 5 of the Equality Act 2010, so far as relating to age, or the] or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing [<sup>F704</sup>those Regulations]), and
  - (b) any significant difference between the rights under the old policy and the rights under the new policy is attributable to the need to comply with those Regulations (or any regulations amending or replacing them).]

- (4) A contribution is not a relevant contribution for the purposes of paragraph 13(a) if it is paid—
- (a) by a sponsoring employer,

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- (b) under a relevant hybrid arrangement, and
  - (c) solely in respect of the provision in respect of the individual of lump sum death benefits which are defined benefits or cash balance benefits.
- (5) A “relevant hybrid arrangement” is a hybrid arrangement under an occupational pension scheme—
- (a) which subsequently becomes a money purchase arrangement that is not a cash balance arrangement, and
  - (b) under which lump sum death benefits would have been payable in respect of the individual if the individual had died on 5th April 2006.]

#### Textual Amendments

- F697** Words in Sch. 36 para. 14(1)(c) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(9\), 64\(1\)](#)
- F698** Sch. 36 para. 14(2) omitted (retrospective to 6.4.2013) by virtue of [Finance Act 2013 \(c. 29\), s. 52\(9\)\(10\)](#)
- F699** Sch. 36 para. 14(3)-(5) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 39](#)
- F700** Sch. 36 para. 14(3A)-(3D) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 18, 24\(3\)](#)
- F701** Words in Sch. 36 para. 14(3A) substituted by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 59(a) (as inserted (E.W.S.) (1.10.2010) by [S.I. 2010/2279, art. 1\(2\), Sch. 1 para. 5](#) (see [S.I. 2010/2317, art. 2](#)))
- F702** Words in Sch. 36 para. 14(3A) substituted by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 59(b) (as inserted (E.W.S.) (1.10.2010) by [S.I. 2010/2279, art. 1\(2\), Sch. 1 para. 5](#) (see [S.I. 2010/2317, art. 2](#)))
- F703** Words in Sch. 36 para. 14(3D)(a) substituted by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 59(a) (as inserted (E.W.S.) (1.10.2010) by [S.I. 2010/2279, art. 1\(2\), Sch. 1 para. 5](#) (see [S.I. 2010/2317, art. 2](#)))
- F704** Words in Sch. 36 para. 14(3D)(a) substituted by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 59(b) (as inserted (E.W.S.) (1.10.2010) by [S.I. 2010/2279, art. 1\(2\), Sch. 1 para. 5](#) (see [S.I. 2010/2317, art. 2](#)))

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

- C93** Sch. 36 para. 14 applied (19.7.2011) by [Finance Act 2011 \(c. 11\), Sch. 18 para. 14\(11\)](#)
- C94** Sch. 36 para. 14 applied (with application in accordance with Sch. 22 para. 1 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 22 para. 1\(10\)](#)
- C95** Sch. 36 para. 14 applied (15.9.2016) by [Finance Act 2016 \(c. 24\), Sch. 4 para. 4\(4\)](#)

- 15 (1) For the purposes of paragraph 13(b) “the relevant crystallised amount” is—
- (a) if the relevant event is the first relevant event occurring in relation to the individual and to the arrangement or any other cash balance arrangement or defined benefits arrangement related to the arrangement (“the first relevant event”), the amount crystallised by that event, and
  - (b) otherwise, the aggregate of the amount crystallised by the relevant event and the amount crystallised by the relevant event, or by each of the relevant events, which has or have previously occurred in relation to the individual and to the arrangement or any other cash balance arrangement or defined benefits arrangement related to the arrangement.
- (2) If the relevant event is a [<sup>F705</sup>relevant] permitted transfer <sup>F706</sup>..., sub-paragraph (1) applies as if the amount crystallised by the event were the aggregate of—
- (a) the amount of any sums held for the purposes of, or representing accrued rights under, the arrangement [<sup>F707</sup>which are transferred], and



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(b) the market value of any assets held for the purposes of, or representing accrued rights under, the arrangement [<sup>F707</sup>which are transferred].

[<sup>F708</sup>(2A) In sub-paragraph (2) “relevant permitted transfer” means a permitted transfer that is not a transfer of sums or assets held for the purposes of, or representing accrued rights under, any of the relevant pension schemes so as to become held for the purposes of, or to represent rights under, a qualifying recognised overseas pension scheme in connection with the individual’s membership of that pension scheme.]

(3) For the purposes of this paragraph (and [<sup>F709</sup>paragraphs 15A and 16]) another arrangement is related to the arrangement if—

- (a) the other arrangement relates to the individual, and
- (b) both the arrangement and the other arrangement relate to the same employment;

and whether an arrangement relates to an employment is to be determined in accordance with paragraph 9(6).

(4) For the purposes of paragraph 13(b) “the appropriate limit”, in relation to a relevant event, [<sup>F710</sup>is (subject to paragraph 15A) the greater] of—

- (a) the value of the individual’s rights on 5th April 2006 under the arrangement, or (where there is or are one or more other cash balance arrangements or defined benefits arrangements related to the arrangement) the aggregate of the value of the individual’s rights under the arrangement and the other arrangement or arrangements, arrived at in accordance with paragraphs 8 and 9, as increased by the relevant indexation percentage (see sub-paragraph (5)), and
- (b) what would be the value of those rights, so arrived at, on the assumptions specified in sub-paragraph (6).

(5) For the purposes of sub-paragraph (4)(a) [<sup>F711</sup>and paragraph 15A(2)(a)] “the relevant indexation percentage”, in relation to a relevant event, means whichever is the greatest of—

- (a) the percentage by which an amount would be increased if it were increased for the period beginning with 6th April 2006 and ending with the date on which the relevant event occurs at an annual rate of 5%,
- (b) the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, and
- (c) the percentage by which the retail prices index for the month in which the relevant event occurs is higher than that for April 2006.

(6) The assumptions referred to in sub-paragraph (4)(b) [<sup>F712</sup>and paragraph 15A(2)(b)] are—

- (a) that the individual’s age on 5th April 2006 were what it is at the time of the first relevant event (so that neither paragraph 8(6) nor section 277(a) applies in arriving at what would be the value of the rights under paragraph 8), and
- (b) that the amount of the earnings which would have fallen to be taken into account under the arrangement for calculating the amount of benefits payable to or in respect of the individual (if the individual became entitled to the present payment of benefits in respect of the rights under the arrangement on that date) were the lesser of the two amounts specified in sub-paragraph (7).

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- (7) The amounts referred to in sub-paragraph (6)(b) are—
- (a) the current amount of the relevant pensionable earnings immediately before the first relevant event, and
  - (b) the post-commencement earnings limit (see paragraphs 16 and 17).
- (8) But sub-paragraph (6)(b) applies in relation to an arrangement under a pension scheme within paragraph 1(1)(c) or (e) as if for “the lesser of the two amounts specified in sub-paragraph (7)” there were substituted “the amount specified in sub-paragraph (7)(a)”.
- (9) In this paragraph “the relevant pensionable earnings” means the description of earnings (or the portion of the description of earnings) of the individual by reference to which the amount of benefits payable to or in respect of the individual would have fallen to be calculated if the individual became entitled to the present payment of benefits in respect of the rights under the arrangement on 5th April 2006.
- (10) For the purposes of sub-paragraph (7)(a) “the current amount” of the relevant pensionable earnings immediately before the first relevant event is the amount of the relevant pensionable earnings which, at that time, would fall to be taken into account in calculating the amount of benefits payable to or in respect of the individual under the arrangement if the individual became entitled to the present payment of benefits at that time (but subject to sub-paragraph (11)).
- (11) If at that time the individual is absent from work in connection with pregnancy, maternity, paternity or adoption, the current amount of the relevant pensionable earnings at that time includes what would be likely to be included in that amount if the individual were not so absent.

#### Textual Amendments

- F705** Word in Sch. 36 para. 15(2) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 73\(2\)\(a\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by S.I. 2024/356, regs. 1, 4)
- F706** Words in Sch. 36 para. 15(2) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 73\(2\)\(b\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by S.I. 2024/356, regs. 1, 4)
- F707** Words in Sch. 36 para. 15(2) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 19\(2\)](#), 24(3)
- F708** Sch. 36 para. 15(2A) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 73\(3\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by S.I. 2024/356, regs. 1, 4)
- F709** Words in Sch. 36 para. 15(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 40\(2\)](#)
- F710** Words in Sch. 36 para. 15(4) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 40\(3\)](#)
- F711** Words in Sch. 36 para. 15(5) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 40\(4\)](#)
- F712** Words in Sch. 36 para. 15(6) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 40\(5\)](#)

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

- C96** Sch. 36 para. 15 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [36](#)

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[<sup>F713</sup>15(A)] This paragraph applies where—

- (a) a person is paid a defined benefits lump sum death benefit or an uncrystallised funds lump sum death benefit in respect of the individual under the arrangement, and
  - (b) 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) For the purposes of paragraph 13(b), if the amount yielded by sub-paragraph (3) is greater than what would otherwise be the appropriate limit in relation to a relevant event which consists of—
- (a) the payment of the lump sum death benefit, or
  - (b) the payment of any other lump sum death benefit in respect of the individual under the arrangement or another cash balance arrangement or defined benefits arrangement related to the arrangement,
- that greater amount is the appropriate limit in relation to such a relevant event.
- (3) The amount yielded by this sub-paragraph is the greater of—
- (a) the value of the individual's pre-commencement rights to death benefits, as increased by the relevant indexation percentage (see sub-paragraph (5) of paragraph 15), or
  - (b) what would be the value of the individual's pre-commencement rights to death benefits on the assumptions specified in sub-paragraph (6) of that paragraph (but subject to the modifications in sub-paragraph (7) of this paragraph).
- (4) The value of the individual's pre-commencement rights to death benefits is the aggregate of the maximum amounts that could have been paid in respect of the individual as uncrystallised rights lump sum death benefits under—
- (a) the arrangement, or
  - (b) any other cash balance arrangement or defined benefits arrangement related to the arrangement,
- if the individual had died on 5th April 2006.
- (5) 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.
- (6) Paragraphs 11C and 11D apply in arriving at the aggregate mentioned in sub-paragraph (4) as in arriving at that mentioned in paragraph 11B(2) but as if—
- (a) each of the references to paragraph 11B(2) were to sub-paragraph (4) of this paragraph, and
  - (b) in paragraph 11D(1), for “of a pension scheme” there were substituted “ of any arrangement within paragraph 15A(4) under a pension scheme ”.
- (7) In their operation for the purposes of this paragraph sub-paragraphs (6) to (11) of paragraph 15 have effect as if—
- (a) for the references in sub-paragraphs (6)(a) and (7)(a) and (10) to the time of the first relevant event there were substituted a reference to the time immediately before the individual's death, and
  - (b) the words in parentheses in sub-paragraph (6)(a) were omitted.]

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### Textual Amendments

**F713** Sch. 36 para. 15A inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 41](#)

- 16 (1) This paragraph specifies the post-commencement earnings limit if the individual was on 5th April 2006 a person in relation to <sup>[F714]</sup>whom—
- (a) section 590C of ICTA or paragraph 20 of Schedule 6 to FA 1989 (earnings cap) had effect, or
  - (b) provision similar to section 590C of ICTA had effect by virtue of conditions imposed under section 591 of that Act (discretionary approval),
- in] relation to any pension scheme under which the arrangement or any other arrangement related to the arrangement was made.
- (2) The post-commencement earnings limit is the lesser of amount A and amount B.
- (3) Amount A is <sup>[F715]</sup>£135,000.]
- (4) Amount B is the amount of the individual's employment income from the employment to which the arrangement relates for the best period of 12 months during the appropriate three year period.
- (5) The appropriate three year period is the period of three years ending with <sup>[F716]</sup>the earliest of—
- (a) the first relevant event,
  - (b) the individual leaving the employment to which the arrangement relates, and
  - (c) the individual's death].
- <sup>[F717]</sup>(5A) Where the appropriate three year period ends otherwise than with the first relevant event, Amount B is what it would be apart from this sub-paragraph increased by whichever is the greatest of—
- (a) the percentage by which an amount would be increased if it were increased for the period beginning with the date on which it ends and ending with the date on which the relevant event occurs at an annual rate of 5%,
  - (b) the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, or
  - (c) the percentage by which the retail prices index for the month in which the first relevant event occurs is higher than that for the month in which the appropriate period ends.]
- (6) A period of 12 months during the appropriate three year period is the best period of 12 months during the appropriate three year period if the amount of the individual's employment income from the employment to which the arrangement relates is greater for that period of 12 months than for any other period of 12 months during the appropriate three year period.
- (7) For the purposes of this paragraph and paragraph 17 the amount of the individual's employment income includes, in relation to any time when the individual is absent from work in connection with pregnancy, maternity, paternity or adoption, what would be likely to be included in that amount if the individual were not so absent.

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#### Textual Amendments

- F714** Words in Sch. 36 para. 16(1) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(12\), 64\(1\)](#)
- F715** Sum in Sch. 36 para. 16(3) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 74, 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)
- F716** Words in Sch. 36 para. 16(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(13\), 64\(1\)](#)
- F717** Sch. 36 para. 16(5A) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(14\), 64\(1\)](#)

- 17 (1) This paragraph specifies the post-commencement earnings limit in any other case.
- (2) The post-commencement earnings limit is—
- (a) if amount B is not greater than amount A, amount B, and
  - (b) otherwise, amount C.
- (3) Amount A and amount B have the same meanings as in paragraph 16.
- (4) Amount C is the greater of—
- (a) amount A, and
  - (b) amount D.
- (5) Amount D is—

$$\frac{\text{ETY}}{3}$$

where ETY is the amount of the individual's employment income from the employment to which the arrangement relates for the appropriate three year period (within the meaning of paragraph 16).

- [<sup>F718</sup>(6) Where the appropriate three year period ends otherwise than with the first relevant event, Amount D is what it would be apart from this sub-paragraph increased by whichever is the greatest of—
- (a) the percentage by which an amount would be increased if it were increased for the period beginning with the date on which it ends and ending with the date on which the relevant event occurs at an annual rate of 5%,
  - (b) the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, or
  - (c) the percentage by which the retail prices index for the month in which the first relevant event occurs is higher than that for the month in which the appropriate period ends.]

#### Textual Amendments

- F718** Sch. 36 para. 17(6) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(15\), 64\(1\)](#)

- [<sup>F719</sup>17(1)] There is an impermissible transfer into a relevant existing arrangement relating to an individual under a pension scheme in a case where the relevant existing arrangement is a money purchase arrangement that is not a cash balance arrangement if—

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- (a) sums or assets held for the purposes of, or representing rights under, an arrangement relating otherwise than to the individual are transferred so as to become held for the purposes of the relevant existing arrangement, otherwise than pursuant to a pension sharing order or provision, [<sup>F720</sup>or]
  - (b) sums or assets which are neither held for the purposes of, nor represent rights under, a pension scheme are so transferred, <sup>F721</sup>...
  - <sup>F721</sup>(c) .....
- (2) Sub-paragraph (1) applies where the relevant existing arrangement has been a hybrid arrangement as if the references to sums or assets being transferred <sup>F722</sup>... were to transfer or payment at any time after 5th April 2006.
- (3) There is an impermissible transfer into a relevant existing arrangement relating to an individual under a pension scheme in a case where the relevant existing arrangement is a cash balance arrangement or a defined benefits arrangement if it becomes a money purchase arrangement that is not a cash balance arrangement.]

#### Textual Amendments

- F719** Sch. 36 para. 17A inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(16\), 64\(1\)](#)
- F720** Word in Sch. 36 para. 17A(1) inserted (19.7.2007) (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 10\(a\)](#)
- F721** Sch. 36 para. 17A(1)(c) and preceding word repealed (19.7.2007) (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 10\(a\)](#), [Sch. 27 Pt. 3\(1\)](#)
- F722** Words in Sch. 36 para. 17A(2) repealed (19.7.2007) (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 10\(b\)](#), [Sch. 27 Pt. 3\(1\)](#)

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

- C97** [Sch. 36 para. 17A](#) applied (with modifications) (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 18 para. 14\(8\)](#)
- C98** [Sch. 36 para. 17A](#) applied (with modifications) (with application in accordance with Sch. 22 para. 1 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 22 para. 1\(7\)](#)
- C99** [Sch. 36 para. 17A](#) applied (with modifications) (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 4 para. 5](#)

#### *Pre-commencement pension credits*

- [<sup>F723</sup>18(1) This paragraph applies in the case of an individual where—
- (a) before 6th April 2006, the individual has acquired rights under a pension scheme within paragraph 1(1) by virtue of having become entitled to a pension credit,
  - (b) notice of intention to rely on this paragraph is given to His Majesty's Revenue and Customs in accordance with regulations made by the Commissioners for His Majesty's Revenue and Customs, and
  - (c) paragraph 7 (primary protection) does not apply in relation to the individual.
- (2) Chapter 15A of Part 9 of ITEPA 2003 (pension income: lump sums under registered pension schemes) has effect, in relation to a relevant benefit crystallisation event within the meaning of section 637Q of ITEPA 2003 (availability of individual's lump sum allowance) occurring in relation to the individual, as if the amount specified in section 637P of ITEPA 2003 (individual's lump sum allowance) were the lower of—

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- (a) an amount equal to £268,275 increased by the pre-commencement pension credit factor calculated under sub-paragraph (5), and
  - (b) £375,000.
- (3) A lump sum and death benefit allowance enhancement factor operates in relation to the relevant benefit crystallisation event mentioned in paragraph 6A(1).
- (4) The lump sum and death benefit allowance enhancement factor is the pre-commencement pension credit factor calculated under sub-paragraph (5).
- (5) The pre-commencement pension credit factor is—

A£1,500,000

where A is the amount which is the appropriate amount for the purposes of section 29(1) of WRPA 1999 or Article 26(1) of WRP(NI)O 1999 in relation to the pension credit, as increased by the percentage specified in sub-paragraph (6).

- (6) The percentage is the percentage by which the retail prices index for April 2006 is greater than that for the month in which the rights were acquired.
- (7) Where this paragraph applies in the case of an individual, for the purposes of this Part a lump sum is not an uncrystallised funds pension lump sum (see paragraph 4A of Schedule 29) if, immediately before the lump sum is paid, the amount given by the formula in sub-paragraph (8) is less than 25% of the lump sum.
- (8) The formula is—

AB4

where—

A is—

- (a) in the case of an individual in relation to whom a relevant protection provision applies, the individual's protected lump sum and death benefit allowance (see paragraph 6A(4));
- (b) in any other case, £1,073,100;

B is the amount that would be the previously-used amount within the meaning of section 637S of ITEPA 2003 (availability of individual's lump sum and death benefit allowance) if a relevant benefit crystallisation event within the meaning of that section had occurred immediately before the lump sum is paid.]

#### Textual Amendments

**F723** Sch. 36 para. 18 substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 75, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

#### *Individuals permitted to take pension before normal minimum pension age*

- 19 (1) This paragraph applies where a [<sup>F724</sup>relevant benefit crystallisation event] occurs in relation to an individual who is a member of a registered pension scheme—
- (a) in protected circumstances, and
  - (b) before the individual reaches normal minimum pension age.



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[<sup>F725</sup>(1A) Chapter 15A of Part 9 of ITEPA 2003 (pension income: lump sums under registered pension schemes) has effect in relation to the individual with the modifications in sub-paragraphs (1B) and (2).

(1B) Where the relevant benefit crystallisation event is the individual becoming entitled to a pension commencement lump sum, section 637P of ITEPA 2003 (individual's lump sum allowance) applies as if the amount specified in that section were £268,275 reduced by the relevant percentage (see sub-paragraph (4).]

[<sup>F726</sup>(2) Where the event is a relevant benefit crystallisation event, section 637R of ITEPA 2003 (individual's lump sum and death benefit allowance) applies as if the amount specified in that section were the amount determined under sub-paragraph (2A) reduced by the relevant percentage (see sub-paragraph (4).

(2A) That amount is—

- (a) £1,073,100, or
- (b) in a case where, disregarding sub-paragraph (2), section 637R of ITEPA 2003 (individual's lump sum and death benefit allowance) would apply in relation to the individual as if it specified any other amount, that amount.]

(3) A [<sup>F727</sup>relevant benefit crystallisation event] occurs in protected circumstances if—

- (a) paragraph 22 or 23 (right to take pension before normal minimum pension age) applies to the individual and the pension scheme,
- (b) the individual's protected pension age (see paragraph 22(8) or 23(8)) is less than 50, and
- (c) the pension scheme is not prescribed by regulations made by the Board of Inland Revenue.

(4) The relevant percentage is—

$$Y \times 2.5$$

where Y is the number of complete years falling between the date on which the [<sup>F728</sup>relevant benefit crystallisation event] occurs and the date on which the individual will reach normal minimum pension age.

<sup>F729</sup>(5) .....

<sup>F730</sup>(6) .....

[<sup>F731</sup>(7) In this paragraph “relevant benefit crystallisation event” has the same meaning as in section 637S of ITEPA 2003 (availability of individual's lump sum and death benefit allowance).]

#### Textual Amendments

**F724** Words in Sch. 36 para. 19(1) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 76\(2\), 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F725** Sch. 36 para. 19(1A)(1B) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 76\(3\), 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)



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- F726** Sch. 36 para. 19(2)(2A) substituted for Sch. 36 para. 19(2) (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 76(4), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F727** Words in Sch. 36 para. 19(3) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 76(5), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F728** Words in Sch. 36 para. 19(4) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 76(5), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F729** Sch. 36 para. 19(5) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 76(6), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F730** Sch. 36 para. 19(6) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 76(6), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F731** Sch. 36 para. 19(7) inserted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 76(7), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

#### *Pre-commencement pensions*

- 20 (1) This paragraph makes provision about an individual who, on 5th April 2006—
- <sup>F732</sup>(a) has an actual (rather than a prospective) right to the payment of one or more relevant existing pensions <sup>F733</sup>, and]
  - <sup>F733</sup>(b) during the period beginning on 5th April 2006 and ending on 5th April 2024, no benefit crystallisation event within the meaning of section 216 as that provision had effect at the end of that period has occurred in relation to the individual.]
- <sup>F734</sup>(1A) Section 637Q of ITEPA 2003 (availability of individual's lump sum allowance) applies as if, immediately before the first relevant benefit crystallisation event occurring in relation to the individual on or after 6th April 2024—
- (a) a relevant benefit crystallisation event within the meaning of that section had occurred in relation to the individual, and
  - (b) the amount of the lump sum to which the relevant benefit crystallisation event relates was an amount equal to 25% of the value of the individual's pre-commencement pension rights immediately before the relevant benefit crystallisation event.]
- (2) <sup>F735</sup>Section 637S of ITEPA 2003 (availability of individual's lump sum and death benefit allowance)] applies as if, immediately before the first <sup>F736</sup>relevant benefit crystallisation event] occurring in relation to the individual—
- (a) a <sup>F737</sup>relevant benefit crystallisation event within the meaning of that section] had occurred in relation to the individual, and
  - (b) the <sup>F738</sup>amount of the lump sum or lump sum death benefit to which the relevant benefit crystallisation event relates was 25% of] the value of the individual's pre-commencement pension rights immediately before the <sup>F739</sup>relevant benefit crystallisation event].
- (3) The value of the individual's pre-commencement pension rights at any time is—

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## 25 × ARP

where (subject to sub-paragraph (4)) ARP is an amount equal to—

(a) the annual rate at which the relevant existing pension is payable to the individual at that time, or

(b) if more than one relevant existing pension is payable to the individual at that time, the aggregate of the annual rates at which each of the relevant existing pensions is so payable.

<sup>F740</sup>(4) In the case of drawdown pension, ARP is—

(a) <sup>F741</sup>80% of] the maximum amount that may be paid in the drawdown pension year in which the time falls in accordance with pension rule 5 (see section 165), or

(b) in the case of an arrangement to which subsection (3A) of section 165 <sup>F742</sup>applied at any time before 6 April 2015], <sup>F743</sup>80% of] the maximum amount that could have been paid in accordance with that rule in the drawdown pension year in which that subsection first applied to the arrangement if it had not so applied.]

<sup>F744</sup>(c) in the case of an arrangement to which section 165(3A) never applied but only if the time falls after the member's drawdown pension fund in respect of the arrangement is converted into the member's flexi-access drawdown fund in respect of the arrangement by the operation of any of paragraphs 8B to 8D of Schedule 28, 80% of the maximum amount that could have been paid in accordance with pension rule 5 in the drawdown pension year in which the conversion occurs had no conversion happened in that year by the operation of any of paragraphs 8B to 8D of Schedule 28.

, or]

(5) In this paragraph “relevant existing pension” has the same meaning as in paragraph 10(2); and paragraph 10(4) and (5) operates for the purposes of this paragraph for determining the annual rate at which a relevant existing pension is payable at any time (treating the references there to 5th April 2006 as to that time).

### Textual Amendments

**F732** Words in Sch. 36 para. 20(1) renumbered as Sch. 36 para. 20(1)(a) (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 77\(2\)\(a\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F733** Sch. 36 para. 20(1)(b) and word inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 77\(2\)\(b\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F734** Sch. 36 para. 20(1A) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 77\(3\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F735** Words in Sch. 36 para. 20(2) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 77\(4\)\(a\)\(i\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F736** Words in Sch. 36 para. 20(2) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 77\(4\)\(a\)\(ii\)](#), 124 (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

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- F737** Words in Sch. 36 para. 20(2)(a) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), **Sch. 9 paras. 77(4)(b)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F738** Words in Sch. 36 para. 20(2)(b) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), **Sch. 9 paras. 77(4)(c)(i)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F739** Words in Sch. 36 para. 20(2)(b) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), **Sch. 9 paras. 77(4)(c)(ii)**, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F740** Sch. 36 para. 20(4) substituted (with effect in accordance with Sch. 16 paras. 85, 104(1) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 82(2)**
- F741** Words in Sch. 36 para. 20(4)(a) inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 77(2) of the amending Act) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 77(1)**
- F742** Words in Sch. 36 para. 20(4)(b) substituted (6.4.2015) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 28(1)(a)**, (2)
- F743** Words in Sch. 36 para. 20(4)(b) inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 77(3) of the amending Act) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 77(1)**
- F744** Sch. 36 para. 20(4)(c) and word inserted (6.4.2015) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 28(1)(b)**, (2)

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

- C100** Sch. 36 para. 20(2)(b) modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), **20**
- C101** Sch. 36 para. 20(4) applied (with modifications) (17.7.2014) by Finance Act 2014 (c. 26), Sch. 6 para. 2(3)(4)(7)(8)
- C102** Sch. 36 para. 20(4) applied (with modifications) (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 4 para. 10(3)**
- C103** Sch. 36 para. 20(4) applied (with modifications) (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 4 para. 10(7)**

### *f<sup>745</sup> Pension credits from previously crystallised rights*

#### Textual Amendments

- F745** Sch. 36 paras. 20A-20G and cross-headings inserted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 78, **124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

- 20A (1) This paragraph applies in relation to a relevant benefit crystallisation event occurring in relation to an individual where—
- the individual has (at any time after 5th April 2006 but before 6th April 2024) acquired rights under a registered pension scheme by reason of having become entitled to a pension credit,
  - the pension credit derived from the same or another registered pension scheme,
  - the rights under the registered pension scheme which became subject to the corresponding pension debit consisted of, or included, rights to a post-commencement pension in payment, and
  - notice of intention to rely on this paragraph is given to His Majesty's Revenue and Customs in accordance with regulations made by the Commissioners for His Majesty's Revenue and Customs.

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- (2) “Post-commencement pension in payment” means a pension to which a person became entitled on or after 6th April 2006.
- (3) A lump sum and death benefit allowance enhancement factor operates in relation to the relevant benefit crystallisation event mentioned in paragraph 6A(1).
- (4) The lump sum and death benefit allowance enhancement factor is the pension credit factor.
- (5) The pension credit factor is—

$$A \times 1,000,000$$

where A is the post-commencement pension in payment portion of the amount which is the appropriate amount for the purposes of section 29(1) of WRPA 1999 or Article 26(1) of WRP(NI)O 1999 in relation to the pension credit.

- (6) The post-commencement pension in payment portion of the appropriate amount referred to in the definition of A—
- (a) in a case where the appropriate amount is arrived at under section 29(2) or (3)(b) of WRPA 1999 or Article 26(2) or (3)(b) of WRP(NI)O 1999, is so much of that amount as is attributable to rights to a post-commencement pension in payment;
  - (b) in a case where the appropriate amount is arrived at under section 29(3)(a) of WRPA 1999 or Article 26(3)(a) of WRP(NI)O 1999, is so much of that amount as is just and reasonable.
- (7) In this paragraph and in paragraphs 20B to 20G, “relevant benefit crystallisation event” has the same meaning as in section 637S of ITEPA 2003 (availability of individual’s lump sum and death benefit allowance).
- (8) Where this paragraph applies, for the purposes of this Part a lump sum is not an uncrystallised funds pension lump sum (see paragraph 4A of Schedule 29) if, immediately before the lump sum is paid, the amount given by the formula in subparagraph (9) is less than 25% of the lump sum.
- (9) The formula is—

$$\frac{AB}{4}$$

where—

A is—

- (a) in the case of an individual in relation to whom a relevant protection provision applies, the individual’s protected lump sum and death benefit allowance (see paragraph 6A(4));
- (b) in any other case, £1,073,100;

B is the amount that would be the previously-used amount within the meaning of section 637S of ITEPA 2003 (availability of individual’s lump sum and death benefit allowance) if a relevant benefit crystallisation event within the meaning of that section had occurred immediately before the lump sum is paid.

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*Non-residence: general*

- 20B (1) This paragraph applies in relation to a relevant benefit crystallisation event occurring in relation to an individual where—
- (a) during any part of the period that is the active membership period in relation to an arrangement relating to the individual under a registered pension scheme, the individual is a relevant overseas individual, and
  - (b) notice of intention to rely on this paragraph is given to His Majesty's Revenue and Customs in accordance with regulations made by the Commissioners for His Majesty's Revenue and Customs.
- (2) A lump sum and death benefit allowance enhancement factor operates in relation to the relevant benefit crystallisation event mentioned in paragraph 6A(1).
- (3) Paragraph 20C provides the lump sum and death benefit allowance enhancement factor in the case of an arrangement that is a money purchase arrangement.
- (4) Paragraph 20D provides the lump sum and death benefit allowance enhancement factor in the case of any other arrangement.
- (5) For the purposes of this Part an individual is a relevant overseas individual at any time if, at that time, the individual either is not a relevant UK individual or—
- (a) is a relevant UK individual by virtue only of paragraph (c) of section 189(1) (individuals resident in UK at some time in previous five tax years), and
  - (b) is not employed by a person resident in the United Kingdom.
- (6) In this paragraph and in paragraphs 20C and 20D “the active membership period”, in relation to an arrangement relating to the individual, is the period—
- (a) beginning with the date on which the benefits first began to accrue to or in respect of the individual under the arrangement or, if later, 6th April 2006, and
  - (b) ending on 5th April 2024.
- (7) But if benefits ceased to accrue to or in respect of the individual under the arrangement at a time before 5th April 2024, the active membership period is to be treated as having ended at that time.
- (8) Where this paragraph applies, for the purposes of this Part a lump sum is not an uncrystallised funds pension lump sum (see paragraph 4A of Schedule 29) if, immediately before the lump sum is paid, the amount given by the formula in subparagraph (9) is less than 25% of the lump sum.
- (9) The formula is—
- AB4
- where—
- A is—
- (a) in the case of an individual in relation to whom a relevant protection provision applies, the individual's protected lump sum and death benefit allowance (see paragraph 6A(4));
  - (b) in any other case, £1,073,100;
- B is the amount that would be the previously-used amount within the meaning of section 637S of ITEPA 2003 (availability of individual's lump sum and death benefit allowance) if a relevant benefit crystallisation event

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within the meaning of that section had occurred immediately before the lump sum is paid.

*Non-residence: money purchase arrangements*

- 20C (1) This paragraph applies in the case of an arrangement that is a money purchase arrangement.
- (2) The lump sum and death benefit allowance enhancement factor is—
- (a) if the arrangement is a cash balance arrangement, the cash balance arrangement non-residence factor (see sub-paragraphs (3) to (5)), and
  - (b) in any other case, the other money purchase arrangement non-residence factor (see sub-paragraphs (6) and (7)).
- (3) The cash balance arrangement non-residence factor is—
- (a) the factor arrived at by the application of sub-paragraph (4) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of sub-paragraph (4) in relation to each of those parts of that period.
- (4) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—
- AB£1,000,000
- where—
- A is the closing value of the individual's rights under the arrangement;
  - B is the opening value of the individual's rights under the arrangement.
- (5) For the purposes of sub-paragraph (4)—
- (a) the closing value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of that part of that period, and
  - (b) the opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of that part of that period.
- (6) The other money purchase arrangement non-residence factor is—
- (a) the factor arrived at by the application of sub-paragraph (7) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of sub-paragraph (7) in relation to each of those parts of that period.

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- (7) The factor arrived at by the application of this sub-paragraph in relation to any part of the active membership period is—

$C\pounds 1,000,000$

where C is the amount of the contributions made under the arrangement by or in respect of the individual in any part of the active membership period during which the individual is a relevant overseas individual.

*Non-residence: other arrangements*

- 20D (1) This paragraph applies in the case of an arrangement that is not a money purchase arrangement.

- (2) The lump sum and death benefit allowance enhancement factor is—
- (a) if the arrangement is a defined benefits arrangement, the defined benefits arrangement non-residence factor (see sub-paragraphs (3) and (4)), and
  - (b) if the arrangement is a hybrid arrangement, the hybrid arrangement non-residence factor (see sub-paragraphs (5) to (7)).

- (3) The defined benefits arrangement non-residence factor is—
- (a) the factor arrived at by the application of sub-paragraph (4) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of sub-paragraph (4) in relation to each of those parts of that period.

- (4) The factor arrived at by the application of this sub-paragraph in relation to any part of the active membership period is—

$A \times B + C \times A \times D + E \pounds 1,000,000$

where—

A is the relevant valuation factor (see section 276);

B is the amount of the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of that part of that period;

C is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the end of that part of that period;

D is the amount of the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of that part of that period;

E is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the beginning of that part of that period.

- (5) The hybrid arrangement non-residence factor is the greater or greatest of such of—

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- (a) what would be the cash balance arrangement non-residence factor (under section 222) if the arrangement were a cash balance arrangement,
- (b) what would be the other money purchase arrangement non-residence factor (under that section) if the arrangement were a collective money purchase arrangement,
- (c) what would be the other money purchase arrangement non-residence factor (under that section) if the arrangement were a money purchase arrangement other than a cash balance arrangement or a collective money purchase arrangement, and
- (d) what would be the defined benefits arrangement non-residence factor (under sub-paragraphs (3) and (4)) if the arrangement were a defined benefits arrangement,

as are relevant factors in relation to the arrangement.

- (6) A factor is a relevant factor in relation to a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits linked to that factor.
- (7) For the purposes of sub-paragraph (6)—
  - (a) cash balance benefits are linked to the cash balance arrangement non-residence factor;
  - (b) other money purchase benefits are linked to the other money purchase arrangement non-residence factor;
  - (c) defined benefits are linked to the defined benefits arrangement non-residence factor.

*Transfers from recognised overseas pension scheme: general*

- 20E (1) This paragraph applies in relation to a relevant benefit crystallisation event occurring in relation to an individual where—
- (a) at any time after 5th April 2006 but before 6th April 2024, there has been a recognised overseas scheme transfer, and
  - (b) notice of intention to rely on it is given to His Majesty’s Revenue and Customs in accordance with regulations made by the Commissioners for His Majesty’s Revenue and Customs.
- (2) There is a “recognised overseas scheme transfer” if any sums or assets—
- (a) held for the purposes of an arrangement under a recognised overseas pension scheme, or
  - (b) representing accrued rights under such an arrangement,
- are transferred so as to become held for the purposes of, or to represent rights under, an arrangement under a registered pension scheme relating to the individual.
- (3) The arrangement specified in sub-paragraph (2)(a) or (b) is referred to in this paragraph and in paragraphs 20F and 20G as the “recognised overseas scheme arrangement”.
- (4) A lump sum and death benefit allowance enhancement factor operates in relation to the relevant benefit crystallisation event mentioned in paragraph 6A(1).
- (5) The lump sum and death benefit allowance enhancement factor is the recognised overseas scheme transfer factor.



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(6) The recognised overseas scheme transfer factor is—

AB£1,000,000

where—

A is the aggregate of the amount of any sums transferred, and the market value of any assets transferred, on the recognised overseas scheme transfer;

B is the relevant relievable amount (see paragraphs 20F and 20G).

(7) In this paragraph and in paragraphs 20F and 20G “the overseas arrangement active membership period” is the period—

- (a) beginning with the date on which the benefits first began to accrue to or in respect of the individual under the recognised overseas scheme arrangement or, if later, 6th April 2006, and
- (b) ending on 5th April 2024.

(8) But if benefits ceased to accrue to or in respect of the individual under the recognised overseas scheme arrangement at a time before 5th April 2024, the overseas arrangement active membership period is to be treated as having ended at that time.

(9) Where this paragraph applies, for the purposes of this Part a lump sum is not an uncrystallised funds pension lump sum (see paragraph 4A of Schedule 29) if, immediately before the lump sum is paid, the amount given by the formula in subparagraph (10) is less than 25% of the lump sum.

(10) The formula is—

AB4

where—

A is—

- (a) in the case of an individual in relation to whom a relevant protection provision applies, the individual’s protected lump sum and death benefit allowance (see paragraph 6A(4));
- (b) in any other case, £1,073,100;

B is the amount that would be the previously-used amount within the meaning of section 637S of ITEPA 2003 (availability of individual’s lump sum and death benefit allowance) if a relevant benefit crystallisation event within the meaning of that section had occurred immediately before the lump sum is paid.

*Overseas scheme transfers: money purchase arrangements*

20F (1) This paragraph applies in the case of a recognised overseas scheme arrangement that was a money purchase arrangement.

(2) The relevant relievable amount is—

- (a) if the recognised overseas scheme arrangement was a cash balance arrangement, the cash balance relevant relievable amount (see subparagraphs (3) to (5)), and
- (b) if the recognised overseas scheme arrangement was any other sort of money purchase arrangement, the other money purchase relevant relievable amount (see subparagraphs (6) and (7)).

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- (3) The cash balance relevant relievable amount is—
- (a) the amount arrived at by the application of sub-paragraph (4) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of sub-paragraph (4) in relation to each of those parts of that period.
- (4) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is—
- AB
- where—
- A is the closing value of the individual's rights under the arrangement, and  
 B is the opening value of the individual's rights under the arrangement.
- (5) For the purposes of sub-paragraph (4)—
- (a) the closing value of the individual's rights under the recognised overseas scheme arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of that part of that period, and
  - (b) the opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of that part of that period.
- (6) The other money purchase relevant relievable amount is—
- (a) the amount arrived at by the application of sub-paragraph (7) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of sub-paragraph (7) in relation to each of those parts of that period.
- (7) The amount arrived at by the application of this sub-paragraph in relation to any part of the overseas arrangement active membership period is the amount of the contributions made under the arrangement by or in respect of the individual in any part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual.

*Overseas scheme transfers: other arrangements*

- 20G (1) This section applies in the case of a recognised overseas scheme arrangement that was not a money purchase arrangement.
- (2) The relevant relievable amount is—

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- (a) if the recognised overseas scheme arrangement was a defined benefits arrangement, the defined benefits relevant relievable amount (see sub-paragraphs (3) and (4)), and
- (b) if the recognised overseas scheme arrangement was a hybrid arrangement, the hybrid relevant relievable amount (see sub-paragraph (5) to (7)).

(3) The defined benefits relevant relievable amount is—

- (a) the amount arrived at by the application of sub-paragraph (4) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or
- (b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of sub-paragraph (4) in relation to each of those parts of that period.

(4) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is—

$$A \times B + C \times D + E$$

where—

A is the relevant valuation factor (see section 276);

B is the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the recognised overseas scheme arrangement if the individual became entitled to payment of it at the end of that part of that period;

C is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the end of that part of that period;

D is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of that part of that period;

E is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the beginning of that part of that period.

(5) The hybrid relevant relievable amount is the greater or greatest of such of—

- (a) what would be the cash balance relevant relievable amount (under section 225) if the recognised overseas scheme arrangement had been a cash balance arrangement,
- (b) what would be the other money purchase relevant relievable amount (under that section) if that arrangement had been a collective money purchase arrangement,
- (c) what would be the other money purchase relevant relievable amount (under that section) if that arrangement had been a money purchase arrangement other than a cash balance arrangement or a collective money purchase arrangement, and

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- (d) what would be the defined benefits relevant relievable amount (under sub-paragraph (3) and (4)) if that arrangement had been a defined benefits arrangement,  
 as are relevant to that arrangement.
- (6) An amount is relevant to a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits linked to that amount.
- (7) For the purposes of sub-paragraph (6)—
- (a) cash balance benefits are linked to the cash balance relevant relievable amount;
  - (b) other money purchase benefits are linked to the other money purchase relevant relievable amount;
  - (c) defined benefits are linked to the defined benefits relevant relievable amount.]

### PART 3

#### PRE-COMMENCEMENT BENEFIT RIGHTS

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

**C104** Sch. 36 Pt. 3 modified (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **31(1)**

#### *Rights to take [<sup>F746</sup>benefit] before normal minimum pension age*

##### **Textual Amendments**

**F746** Word in Sch. 36 para. 21 heading substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 54(3), 64(1)**

- 21 (1) If paragraph 22 [<sup>F747</sup>, 23 or 23ZB] applies in relation to a registered pension scheme and a member of the pension scheme, this Part of this Act (except for section 218(6) and paragraph 19) has effect in relation to the member and the pension scheme as if references to normal minimum pension age were to the member's protected pension age.
- (2) Paragraphs 22(8) [<sup>F748</sup>, 23(8) and 23ZB(7)] define the member's protected pension age.

##### **Textual Amendments**

**F747** Words in [Sch. 36 para. 21\(1\)](#) substituted (24.2.2022) by [Finance Act 2022 \(c. 3\)](#), **s. 10(4)(a)**

**F748** Words in [Sch. 36 para. 21\(2\)](#) substituted (24.2.2022) by [Finance Act 2022 \(c. 3\)](#), **s. 10(4)(b)**

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[<sup>F749</sup>Protected pension age: scheme rights existing before 6 April 2006]

#### Textual Amendments

**F749** Sch. 36 para. 22 cross-heading inserted (24.2.2022) by Finance Act 2022 (c. 3), s. 10(6)(a)

- 22 (1) This paragraph applies in relation to a registered pension scheme and a member of the pension scheme if—
- (a) the pension scheme is a protected pension scheme, and
  - (b) the retirement condition is met in relation to the member and the pension scheme.
- (2) A pension scheme is a protected pension scheme if condition A or condition B is met.
- (3) Condition A is met if—
- (a) the pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1), and
  - (b) the entitlement condition is met in relation to the member and the pension scheme.
- (4) The entitlement condition is met in relation to the member and the pension scheme if—
- (a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to [<sup>F750</sup>any benefit] from an age of less than 55,
  - (b) the rules of the pension scheme on 10th December 2003 included provision conferring such a right on some or all of the persons who were then members of the pension scheme, and
  - (c) such a right either was then conferred on the member or would have been had the member been a member of the scheme on that date.
- (5) Condition B is met if the member is a member of the pension scheme [<sup>F751</sup>(“a transferee pension scheme”) as a result of—
- (a) a block transfer from the pension scheme (“the original pension scheme”) in relation to which condition A is met 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) A transfer is a block transfer if—
- (a) it involves the transfer in a single transaction of all the sums and assets held for the purposes of, or representing accrued rights under, the arrangements under the pension scheme from which the transfer is made which relate to the member and at least one other member of that pension scheme, and
  - [<sup>F752</sup>(b) either the member was not a member of the pension scheme to which the transfer is made before the transfer or he has been a member of that pension scheme for no longer than such period as is prescribed by regulations made by the Board of Inland Revenue.]
- [<sup>F753</sup>(6A) A transfer is also a block transfer if—
- (a) it involves the transfer in a single transaction of all the sums and assets held for the purposes of, or representing accrued rights under, the arrangements

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- under the pension scheme from which the transfer is made which relate to the member,
- (b) the transfer takes place—
    - (i) on or after 19 March 2014, and
    - (ii) before 6 April 2015, and
  - (c) the date mentioned in sub-paragraph (7)(a) is before 6 October 2015.]
- (7) The retirement condition is met in relation to the member and the pension scheme if—
- (a) the member becomes entitled to all the [<sup>F754</sup>benefits] payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date, and
  - [<sup>F755</sup>(b) in a case where on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 50, Condition 1 is met or, in any other case, Condition 2 or 3 is met.]
- [<sup>F756</sup>(7A) Condition 1 is met if—
- (a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected, and
  - (b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.
- (7B) Condition 2 is met if—
- (a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person specified in sub-paragraph (7C), and
  - (b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.
- (7C) The persons referred to in sub-paragraph (7B)(a) are—
- (a) any person who was a sponsoring employer in relation to the pension scheme at any time during the period of six months ending with the day on which the member became entitled to the benefits mentioned in sub-paragraph (7)(a) and by whom the member was employed at any time during that period,
  - (b) any person who is connected with any such person, or
  - (c) any person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected.
- (7D) If the member has become entitled to the benefits payable under arrangements under the pension scheme by reason of service in the armed forces of the Crown, any employment on compulsory recall is to be disregarded for the purposes of sub-paragraph (7B)(a).
- (7E) Condition 3 is met if—
- (a) paragraph (a) of sub-paragraph (7B) is not satisfied but one of the re-employment conditions is met, and
  - (b) paragraph (b) of that sub-paragraph is satisfied.
- (7F) The re-employment conditions are—

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- (a) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of six months beginning with the day on which the member becomes entitled to the benefits mentioned in sub-paragraph (7)(a), and
- (b) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of one month beginning with that day, but is so employed during the period of five months beginning at the end of that period, and either the pension abatement condition or the materially different employment condition is met [<sup>F757</sup>, and
- (c) that the member is or was employed as mentioned in sub-paragraph (7B)(a) where—
  - (i) the employment began at any time during the coronavirus period, and
  - (ii) the only or main reason that the member was taken into employment was to help the employer to respond to the public health, social, economic or other effects of coronavirus.]

(7G) The pension abatement condition is met if—

- (a) the pension scheme is a public service pension scheme, and
- (b) the member's benefits under the scheme consist of or include a scheme pension which is liable to reduction by abatement while the member is employed as mentioned in sub-paragraph (7B)(a) and is under the age of 55.

(7H) The materially different employment condition is met—

- (a) in a case where the member is employed as mentioned in sub-paragraph (7B)(a) in more than one employment during the period of five months mentioned in sub-paragraph (7F)(b), if each of those employments, and
- (b) otherwise, if the employment in which the member is so employed during that period,

is materially different in nature from the employment in which the member was employed immediately before becoming entitled to the benefits mentioned in sub-paragraph (7)(a).

(7I) For the purposes of sub-paragraph (7D) “employment on compulsory recall” means permanent service—

- (a) under Part 4 of the Reserve Forces Act 1996,
- (b) under Part 5 of that Act,
- (c) under a call-out or recall order made under that Act,
- (d) having been called out or recalled under the Reserve Forces Act 1980, or
- (e) because of any other call-out or recall obligation of an officer.

(7J) [<sup>F758</sup>Section 1122 of the Corporation Tax Act 2010] (connected persons) applies for the purposes of this paragraph.]

[<sup>F759</sup>(7K) In sub-paragraph (7F)(c)—

“coronavirus” has the same meaning as in the Coronavirus Act 2020 (see section 1(1) of that Act);

“the coronavirus period” means the period beginning with 1 March 2020 and ending with 1 November 2020.

(7L) The Treasury may by regulations amend the definition of “the coronavirus period” in sub-paragraph (7K) so as to replace the later of the dates specified in it with another date falling before 6 April 2021.

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- (7M) The power in sub-paragraph (7L) may be exercised on more than one occasion.]
- (8) The member’s protected pension age is the age from which the member had an actual or prospective right to [<sup>F760</sup>any benefit] under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).
- (9) But this paragraph does not have effect so as to give the member a protected pension age of more than 50 at any time before 6th April 2010.

#### Textual Amendments

- F750** Words in Sch. 36 para. 22(4)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 54\(5\)](#), [64\(1\)](#)
- F751** Words in Sch. 36 para. 22(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 55\(3\)](#), [64\(1\)](#)
- F752** Sch. 36 para. 22(6)(b) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 55\(4\)](#), [64\(1\)](#)
- F753** Sch. 36 para. 22(6A) inserted (19.3.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 5 paras. 7\(1\)](#), [15](#)
- F754** Word in Sch. 36 para. 22(7)(a) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 54\(6\)](#), [64\(1\)](#)
- F755** Sch. 36 para. 22(7)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 43\(2\)](#)
- F756** Sch. 36 para. 22(7A)-(7J) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 43\(3\)](#)
- F757** Sch. 36 para. 22(7F)(c) and word inserted (retrospective to 1.3.2020) by [Finance Act 2020 \(c. 14\)](#), s. [108\(2\)\(4\)](#)
- F758** Words in Sch. 36 para. 22(7J) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 432\(3\)](#) (with Sch. 2)
- F759** Sch. 36 para. 22(7K)-(7M) inserted (retrospective to 1.3.2020) by [Finance Act 2020 \(c. 14\)](#), s. [108\(3\)\(4\)](#)
- F760** Words in Sch. 36 para. 22(8) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 54\(7\)](#), [64\(1\)](#)

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

- C105** Sch. 36 para. 22(7)(a) modified by S.I. 2006/572, art. 43(3) (as inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\)](#), arts. 1(1), 4)
- C106** Sch. 36 para. 22(7)(a) modified by S.I. 2006/572, art. 42(3) (as inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\)](#), arts. 1(1), 4)

- 23 (1) This paragraph applies in relation to a registered pension scheme and a member of the pension scheme if—
- (a) the pension scheme is a protected pension scheme, and
  - (b) the retirement condition is met in relation to the member and the pension scheme.
- (2) A pension scheme is a protected pension scheme if condition A or condition B is met.
- (3) Condition A is met if—
- (a) the pension scheme was within paragraph (f) or (g) of paragraph 1(1), and
  - (b) the entitlement condition is met in relation to the member and the pension scheme.



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- (4) The entitlement condition is met in relation to the member and the pension scheme if—
- (a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to a pension from an age of less than 50, and
  - (b) the member’s occupation was on that date (or had been) one prescribed by regulations made by the Board of Inland Revenue.
- (5) Condition B is met if the member is a member of the pension scheme [<sup>F761</sup>(“a transferee pension scheme”) as a result of—
- (a) a block transfer from the pension scheme (“the original pension scheme”) in relation to which condition A is met 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) [<sup>F762</sup>and (6A), but for this purpose paragraph 22(6A)(c) is to be read as if its reference to paragraph 22(7) (a) were a reference to sub-paragraph (7) of this paragraph].
- (7) The retirement condition is met in relation to the member and the pension scheme if the member becomes entitled to all the pensions payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date.
- (8) The member’s protected pension age is the age from which the member had an actual or prospective right to a pension under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).

#### Textual Amendments

**F761** Words in Sch. 36 para. 23(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 55\(5\), 64\(1\)](#)

**F762** Words in Sch. 36 para. 23(6) inserted (19.3.2014) by [Finance Act 2014 \(c. 26\), Sch. 5 paras. 7\(2\), 15](#)

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

**C107** Sch. 36 para. 23(7) modified by S.I. 2006/572, art. 42(3) (as inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\), arts. 1\(1\), 4](#))

**C108** Sch. 36 para. 23(7) modified by S.I. 2006/572, art. 43(4) (as inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\), arts. 1\(1\), 4](#))

[<sup>F763</sup>23(1A) Sub-paragraph (2) applies if—

- (a) there is a recognised transfer from one registered pension scheme (“the old scheme”) to another registered pension scheme (“the new scheme”), and
- (b) as a result of paragraph 21 or the previous operation of sub-paragraph (2), immediately before the transfer this Part (except for section 218(6) and paragraph 19) applied in relation to all of the transferred sums or assets as if references to normal minimum pension age were to the member’s protected pension age as defined by paragraph 22(8) or, as the case may be, paragraph 23(8).

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- (2) This Part [<sup>F764</sup>of this Act] (except for section 218(6) and paragraph 19) applies in relation to—
- (a) the transferred sums or assets while held for the purposes of an arrangement under the new scheme, and
  - (b) any sums or assets held for the purposes of such an arrangement that arise, or (directly or indirectly) derive, from—
    - (i) any of the transferred sums or assets, or
    - (ii) sums or assets which so arise or derive,
 as if references to normal minimum pension age were to the member's protected pension age as defined by paragraph 22(8) or, as the case may be, paragraph 23(8).
- (3) Paragraphs 22(7)(a) and 23(7) have effect as if the benefits or pensions to which they refer do not include any that are in respect of sums or assets within sub-paragraph (2) (a) or (b) of this paragraph.]

#### Textual Amendments

**F763** Sch. 36 para. 23ZA inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 78(2) of the amending Act) by Taxation of Pensions Act 2014 (c. 30), Sch. 1 para. 78(1)

**F764** Words in Sch. 36 para. 23ZA(2) inserted (24.2.2022) by Finance Act 2022 (c. 3), s. 10(6)(b)

*Protected pension age: scheme rights existing before 4 November 2021*

- [<sup>F765</sup>23(1) This paragraph applies in relation to a relevant registered pension scheme and a member of the pension scheme if—
- (a) neither paragraph 22 nor 23 applies in relation to them, and
  - (b) the entitlement condition or the block transfer condition is met in relation to the scheme and the member.
- (2) A registered pension scheme is “relevant” if it is not a uniformed services pension scheme (as defined in section 279(4)).
- (3) The entitlement condition is met if—
- (a) immediately before 4 November 2021 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 57,
  - (b) the rules of the pension scheme on 11 February 2021 included provision conferring such a right on some or all of the persons who were then members of the pension scheme, and
  - (c) the member either had such a right under the scheme on 11 February 2021 or would have had such a right had the member been a member of the scheme on 11 February 2021.
- (4) Where—
- (a) a recognised transfer is made on or after 4 November 2021 in execution of a request made before that date, and
  - (b) that transfer would, if executed before that date, have resulted in the member having an actual or prospective right under a pension scheme to any benefit from the age of less than 57 immediately before that date,

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the member is, for the purposes of this paragraph, to be treated as having that right under that scheme at that time.

- (5) The block transfer condition is met if the member is a member of the pension scheme (the “transferee pension scheme”) as a result of—
- (a) a block transfer to the transferee pension scheme on or after 4 November 2021 from a pension scheme (the “original pension scheme”) where the entitlement condition is met in relation to the original scheme and the member,
  - (b) a block transfer to the transferee pension scheme from a pension scheme (the “original pension scheme”) on or before 3 November 2021 where—
    - (i) immediately before the transfer the member had an actual or prospective right under the original pension scheme to any benefit from an age of less than 57,
    - (ii) the rules of the original pension scheme met paragraph (b) of the entitlement condition, and
    - (iii) paragraph (c) of that condition is met in relation to the original pension scheme and the member, or
  - (c) a block transfer to the transferee pension scheme from a pension scheme (the “transferor pension scheme”) that was a transferee pension scheme in relation to an original pension scheme or another transferor pension scheme by virtue of the previous application of paragraph (a) or (b) or the previous application (on one or more occasions) of this paragraph.
- (6) For the purposes of sub-paragraph (5), a transfer is a “block transfer”, if it involves the transfer, in a single transaction, of all of the sums and assets held for the purposes of, or representing accrued rights under, the arrangements under a pension scheme which relate to the member and at least one other member of the scheme.
- (7) The member’s protected pension age is the higher of 55 and the age from which the member had an actual or prospective right to any benefit immediately before 4 November 2021 under—
- (a) in a case where the entitlement condition is met in relation to the member and the scheme, that scheme, or
  - (b) in a case where the block transfer condition is met in relation to the member and the scheme and the entitlement condition is not so met, whichever of that scheme, the original scheme or the transferor scheme that the member was a member of at that time.
- (8) But this paragraph does not have effect so as to give the member a protected pension age of more than 55 at any time before 6 April 2028.

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**Textual Amendments**

**F765** Sch. 36 paras. 23ZB, 23ZC and cross-headings inserted (24.2.2022) by Finance Act 2022 (c. 3), s. 10(5)

<sup>F765</sup>~~23(1)~~ This paragraph applies in relation to sums or assets of a relevant registered pension scheme and the member of the scheme to which those sums and assets relate if—

- (a) none of paragraphs 22, 23 or 23ZB apply in relation to the scheme and the member, and
- (b) those sums or assets were subject to a relevant transfer to the scheme.

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- (2) Sums or assets relate to a member of a pension scheme if they are held by that scheme for the purposes of, or represent accrued rights under, an arrangement relating to the member under the pension scheme.
- (3) Sums or assets were subject to a relevant transfer to a relevant registered pension scheme if they were transferred to that scheme from another relevant registered pension scheme (“the transferor scheme”) as a result of a recognised transfer and, immediately before the transfer—
- (a) they were sums or assets held by the transferor scheme for the purposes of, or representing accrued rights under, an arrangement relating to a member of the transferor scheme, and
  - (b) paragraph 23ZB applied in relation to the transferor scheme and that member or this paragraph applied to those sums or assets and that member as a result of a relevant transfer to the transferor scheme.
- (4) If this paragraph applies in relation to sums or assets (“transferred sums or assets”) and a member of a relevant registered pension scheme, this Part of this Act (except for section 218(6) and paragraph 19) applies in relation to—
- (a) the transferred sums or assets while held for the purposes of, or representing accrued rights under, an arrangement under the scheme, and
  - (b) any sums or assets held for the purposes of, or representing accrued rights under, such an arrangement that arise, or (directly or indirectly) derive, from—
    - (i) any of the transferred sums or assets, or
    - (ii) sums or assets which so arise or derive,
 as if references to normal minimum pension age were to the member’s protected pension age under the first relevant registered pension scheme from which there was a relevant transfer of the sums or assets (see paragraph 23ZB(7)).
- (5) In this paragraph “relevant registered pension scheme” means a pension scheme that is not a uniformed services pension scheme (as defined in section 279(4)).]

**Textual Amendments**

**F765** Sch. 36 paras. 23ZB, 23ZC and cross-headings inserted (24.2.2022) by Finance Act 2022 (c. 3), s. 10(5)

<sup>F766</sup>23A .....

**Textual Amendments**

**F766** Sch. 36 para. 23A and cross-heading omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 80, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**Textual Amendments**

**F765** Sch. 36 paras. 23ZB, 23ZC and cross-headings inserted (24.2.2022) by Finance Act 2022 (c. 3), s. 10(5)  
**F766** Sch. 36 para. 23A and cross-heading omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 80, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

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*Lump sum rights exceeding £375,000: primary and enhanced protection*

- 24 (1) If the lump sum condition and the registration condition are met in relation to an individual—
- (a) paragraphs 27 to 29 (which modify Schedule 29 [<sup>F767</sup>and paragraph 12 of this Schedule] in relation to pension commencement lump sums), and
  - [<sup>F768</sup>(b) paragraph 29A (which makes provision modifying the value of the individual’s lump sum allowance),]
- apply in relation to the individual.
- (2) The lump sum condition is met if on 5th April 2006 the amount of an individual’s total lump sum rights exceeds £375,000 (25% of the standard lifetime allowance for the tax year 2006-07).
- (3) Paragraph 25 defines the amount of an individual’s total lump sum rights on that date.
- (4) The registration condition is met if either or both of the notice requirements is met.
- (5) The first notice requirement is met if notice of intention to rely on paragraph 7 (primary protection) is given to the Inland Revenue in accordance with regulations under that paragraph in relation to the individual.
- (6) The second notice requirement is met 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 relation to the individual.

**Textual Amendments**

**F767** Words in Sch. 36 para. 24(1)(a) inserted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 81\(2\), 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

**F768** Sch. 36 para. 24(1)(b) substituted (for the tax year 2024-25 and subsequent tax years) by [Finance Act 2024 \(c. 3\)](#), [Sch. 9 paras. 81\(3\), 124](#) (with [Sch. 9 paras. 125-132A](#)) (as amended by [S.I. 2024/356](#), regs. 1, 4)

- 25 (1) The amount of an individual’s total lump sum rights on 5th April 2006 is—

$$\frac{VCPR}{4} + VULSR$$

where—

VCPR is the value of the individual’s relevant crystallised pension rights on 5th April 2006, calculated in accordance with paragraph 10, and

VULSR is the value of the individual’s relevant uncrystallised lump sum rights on that date.

- (2) The value of the individual’s relevant uncrystallised lump sum rights on 5th April 2006 is the aggregate value of the individual’s uncrystallised lump sum rights on that date under each relevant pension arrangement relating to the individual.
- (3) An uncrystallised lump sum right is a right to a lump sum which on 5th April 2006 is prospective (rather than actual).

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- (4) An arrangement is a “relevant pension arrangement” if it is an arrangement under a pension scheme within paragraph 1(1).
- (5) The value of the individual’s uncrystallised lump sum rights under an arrangement on 5th April 2006—
- (a) in the case of an arrangement under a pension scheme falling within paragraph 1(1)(f), is 25% of the value of the funds held for the purposes of the arrangement on that date, and
  - (b) in the case of any other arrangement, is an amount calculated in accordance with sub-paragraph (6).
- (6) The amount is the amount of any lump sum to which the individual would have been entitled under the arrangement on 5th April 2006 on the assumption that the individual became entitled to the present payment of a lump sum under the arrangement on that date.
- (7) In calculating an amount in accordance with sub-paragraph (6) the valuation assumptions apply but 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.
- 26 (1) This paragraph applies if any of the individual’s uncrystallised lump sum 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 lump sum rights on 5th April 2006 under the arrangement, or the aggregate of the values of the individual’s uncrystallised lump sum rights on 5th April 2006 under such of the arrangements as relate to a particular employment, is <sup>F769</sup>...—
- (a) the value, or the aggregate of the values, calculated under paragraph 25, [<sup>F770</sup>or (if lower)]
  - (b) the maximum permitted lump sum.
- (3) “The maximum permitted lump sum” means
- [<sup>F771</sup>(a) in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section [<sup>F772</sup>611A(1)(a)] of ICTA, the maximum lump sum that could be paid to the individual under the pension scheme on 5th April 2006, and
  - (b) in any other case,]
- the maximum lump sum 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.
- (4) For the purposes of sub-paragraph (3) it is to be assumed—

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- (a) [<sup>F773</sup>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 [<sup>F774</sup>2006] the individual left the employment on that date, and
- [<sup>F775</sup>(aa) in the case of an arrangement within sub-paragraph (3)(a), that the valuation assumptions apply (see section 277),]
- (b) [<sup>F776</sup>in the case of any other arrangement, that] if the individual had not reached the lowest age at which a lump sum 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 [<sup>F777</sup>scheme] that fact would not give the Board such grounds.
- (5) Whether an arrangement relating to an individual relates to an employment is to be determined in accordance with paragraph 9(6).

#### Textual Amendments

- F769** Words in Sch. 36 para. 26(2) repealed (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(7)(a), 64(1), Sch. 11 Pt. 4
- F770** Words in Sch. 36 para. 26(2)(a) substituted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(7)(b), 64(1)
- F771** Words in Sch. 36 para. 26(3) inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(8), 64(1)
- F772** Word in Sch. 36 para. 26(3)(a) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), Sch. 23 para. 45
- F773** Words in Sch. 36 para. 26(4)(a) inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(9)(a), 64(1)
- F774** Word in Sch. 36 para. 26(4)(a) substituted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(9)(a), 64(1)
- F775** Sch. 36 para. 26(4)(aa) inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(9)(b), 64(1)
- F776** Words in Sch. 36 para. 26(4)(b) inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(9)(c), 64(1)
- F777** Word in Sch. 36 para. 26(4)(b) substituted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(9)(c), 64(1)

- [<sup>F778</sup>27 If (and for so long as) paragraph 12 (enhanced protection) applies in relation to the individual, that paragraph has effect as if, for paragraph (i) of sub-paragraph (3B) there were substituted—
- “(i) paragraph 2 of Schedule 29 to FA 2004 (pension commencement lump sum: definition of “permitted maximum”) has effect as if, for sub-paragraphs (b) and (c), there were substituted—
- “(b) an amount equal to—
- (i) the maximum amount of a pension commencement lump sum that could have been paid to the individual on 5 April 2023 under the arrangement pursuant to which the individual becomes entitled to the relevant pension mentioned in paragraph 1(1)(aa), less
- (ii) the aggregate of the amounts of any pension commencement lump sums to which the member has previously become



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entitled under that arrangement after that date.””]

#### Textual Amendments

**F778** Sch. 36 para. 27 substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 82, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

28 (1) If paragraph 12 (enhanced protection) does not apply in relation to the individual,<sup>F779</sup>... Schedule 29 applies in relation to the individual with the following modifications.

(2) If the value of the individual’s relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26) was nil, the permitted maximum under paragraph 2 [<sup>F780</sup>of Schedule 29] is nil.

[<sup>F781</sup>(3) Otherwise, for paragraph 2 of Schedule 29 substitute—

“2 (1) In paragraph 1 “the permitted maximum”, in relation to a lump sum, means an amount equal to—

AB

where—

A is the value of the individual’s relevant uncrystallised lump sum rights on 5 April 2006 (calculated in accordance with paragraphs 25 and 26), as adjusted under sub-paragraph (2);

B is the aggregate of the amounts of each pension commencement lump sum to which the individual has previously become entitled, as adjusted under sub-paragraph (3) (or, if the individual has not previously become entitled to a pension commencement lump sum, is nil).

(2) The adjustment referred to in the definition of A is the multiplication of the value of the individual’s relevant uncrystallised lump sum rights on 5th April 2006 by 1.2 (being £1,800,000 divided by £1,500,000).

(3) The adjustment of the amount of a pension commencement lump sum to which the individual has previously become entitled referred to in the definition of B is the multiplication of the amount by—

£1,800,000C

where C is—

(a) if the individual became entitled to the lump sum before 6th April 2012, the standard lifetime allowance at that time;

(b) otherwise, £1,800,000.”]

#### Textual Amendments

**F779** Words in Sch. 36 para. 28(1) omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 83(2), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)



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**F780** Words in Sch. 36 para. 28(2) inserted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 83(3), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**F781** Sch. 36 para. 28(3) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 83(4), 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

[<sup>F782</sup>29(1) If (and for so long as) paragraph 12 (enhanced protection) applies in relation to the individual, paragraphs 2A to 2D of Schedule 29 (meaning of “the applicable amount” in relation to a relevant pension) apply with the following modifications.

(2) Paragraph 2A of that Schedule (meaning of “the applicable amount” where the relevant pension is income withdrawal) applies as if, for sub-paragraphs (2) to (4), there were substituted—

“(2) The applicable amount is—

$$AB \times C + D$$

where—

A is the value of the individual’s relevant uncrystallised lump sum rights on 5 April 2006, calculated in accordance with paragraphs 25 and 26 of Schedule 36;

B is the value of the individual’s uncrystallised pension rights on 5 April 2006, calculated in accordance with paragraphs 8 and 9 of that Schedule;

C is the pension commencement lump sum paid;

D is—

(a) the aggregate of the sums, and the market value of the assets, designated as available for the payment of drawdown pension on that occasion, less

(b) so much (if any) of that amount as represents rights which are attributable to a disqualifying pension credit.”

(3) Paragraph 2B of that Schedule (meaning of “the applicable amount” where the relevant pension is a lifetime annuity) applies as if, for sub-paragraph (2) there were substituted—

“(2) The applicable amount is (subject to sub-paragraph (4))—

$$AB \times C + DE$$

where—

A is the value of the individual’s relevant uncrystallised lump sum rights on 5 April 2006, calculated in accordance with paragraphs 25 and 26 of Schedule 36 to FA 2004;

B is the value of the individual’s uncrystallised pension rights on 5 April 2006, calculated in accordance with paragraphs 8 and 9 of that Schedule;

C is the pension commencement lump sum paid;

D is the annuity purchase price;

E is—

(a) if the annuity is purchased (in whole or in part) by the application of sums or assets representing the whole or part of the member’s drawdown pension fund or flexi-access

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drawdown fund, the aggregate of the amount of those sums and the market value of those assets;

- (b) otherwise, so much (if any) of the aggregate of the lump sum and the annuity purchase price as represents the rights which are attributable to a disqualifying pension credit.”

- (4) Paragraph 2C of that Schedule (meaning of “the applicable amount” where the relevant pension is a defined benefits arrangement or a collective money purchase arrangement) applies as if—

- (a) for sub-paragraph (2) there were substituted—

“(2) The applicable amount is (subject to sub-paragraph (3))—

$$AB \times C + D$$

where—

A is the value of the individual’s relevant uncrystallised lump sum rights on 5 April 2006, calculated in accordance with paragraphs 25 and 26 of Schedule 36;

B is the value of the individual’s uncrystallised pension rights on 5 April 2006, calculated in accordance with paragraphs 8 and 9 of that Schedule;

C is the pension commencement lump sum paid;

D is an amount equal to the value of the pension rights crystallised by reason of the individual becoming entitled to the pension (see sub-paragraph (4)).”;

- (b) after sub-paragraph (3) there were inserted—

“(4) The Commissioners for His Majesty’s Revenue and Customs may by regulations make provision about how the value of the pension rights crystallised by reason of the individual becoming entitled to the pension is to be determined for the purposes of sub-paragraph (2).”

- (5) Paragraph 2D of that Schedule (meaning of “the applicable amount” where the relevant pension is a money purchase arrangement) applies as if, for sub-paragraph (2), there were substituted—

“(2) The applicable amount is—

$$AB \times C + D$$

where—

A is the value of the individual’s relevant uncrystallised lump sum rights on 5 April 2006, calculated in accordance with paragraphs 25 and 26 of Schedule 36;

B is the value of the individual’s uncrystallised pension rights on 5 April 2006, calculated in accordance with paragraphs 8 and 9 of that Schedule;

C is the pension commencement lump sum paid;

D is the scheme pension purchase price.”]

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**Textual Amendments**

**F782** Sch. 36 para. 29 substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 84, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**F783** 29A .....

**Textual Amendments**

**F783** Sch. 36 para. 29A inserted and then immediately omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 85, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4) and The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, 3(14)

**F784** 30 .....

**Textual Amendments**

**F784** Sch. 36 para. 30 omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 86, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

*Entitlement to lump sums exceeding 25% of uncrystallised rights*

- 31 (1) If the pension condition is met in relation to an individual and a registered pension scheme which is a protected pension scheme, the provisions of Schedule 29 relating to pension commencement lump sums apply in relation to the individual and the pension scheme with the modifications specified in paragraph 34 (but subject to subparagraph (2)).
- (2) Those provisions do not apply with those modifications if the lump sum condition and registration condition in paragraph 24 are met.
- (3) The pension condition is that the individual becomes entitled to all the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) on the same date.
- (4) A registered pension scheme is a protected pension scheme if condition A or condition B is met.
- (5) Condition A is met if—
- (a) the pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1), and
  - (b) on 5th April 2006 the lump sum percentage of the individual's uncrystallised rights under the pension scheme exceeded 25%.
- (6) The lump sum percentage of an individual's uncrystallised pension rights under a pension scheme on 5th April 2006 is—

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$$\frac{\text{VULSR}}{\text{VUR}} \times 100$$

where—

VULSR is the value of the individual’s uncrystallised lump sum rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 32, and

VUR is the value of the individual’s uncrystallised rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 33.

- (7) Condition B is met if the individual is a member of the pension scheme [F785 (“a transferee pension scheme”) as a result of—
- (a) a block transfer from the pension scheme (“the original pension scheme”) in relation to which condition A is met 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.]
- (8) “Block transfer” has the same meaning as in paragraph 22(6) [F786 and (6A)], but treating the references there to the member as references to the individual [F787 and reading paragraph 22(6A)(c) as if its reference to paragraph 22(7)(a) were a reference to sub-paragraph (3) of this paragraph.]
- (9) Where a pension scheme is a protected pension scheme because condition B is met, Schedule 29 as modified by paragraph 34 applies as if the protected pension scheme were the same pension scheme as the original pension scheme.

#### Textual Amendments

**F785** Words in Sch. 36 para. 31(7) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 55\(6\), 64\(1\)](#)

**F786** Words in Sch. 36 para. 31(8) inserted (19.3.2014) by [Finance Act 2014 \(c. 26\), Sch. 5 paras. 9\(a\), 15](#)

**F787** Words in Sch. 36 para. 31(8) inserted (19.3.2014) by [Finance Act 2014 \(c. 26\), Sch. 5 paras. 9\(b\), 15](#)

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

**C109** Sch. 36 para. 31 applied (6.4.2006) by [The Registered Pension Schemes \(Enhanced Lifetime Allowance\) Regulations 2006 \(S.I. 2006/131\), regs. 1, 9\(8\)](#)

**C110** Sch. 36 para. 31 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\), arts. 1\(1\), 21, 22](#)

**C111** Sch. 36 para. 31(3) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\), arts. 1\(1\), 26](#)

**C112** Sch. 36 para. 31(3) modified by S.I. 2006/572, art. 23ZE(3) (as inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\), arts. 1\(1\), 3](#))

**C113** Sch. 36 para. 31(3) modified by S.I. 2006/572, art. 23ZA(2) (as inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\), arts. 1\(1\), 3](#))

**C114** Sch. 36 para. 31(3) modified by S.I. 2006/572, art. 23ZD(2) (as inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\), arts. 1\(1\), 3](#))

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**C115** Sch. 36 para. 31(3) modified by S.I. 2006/572, art. 23ZC(3) (as inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\)](#), arts. 1(1), 3)

- 32 (1) Subject to sub-paragraph (2), the value of the individual's uncrystallised lump sum rights under the pension scheme on 5th April 2006 is the aggregate of the value of the individual's uncrystallised lump sum rights under each arrangement in respect of the individual under the pension scheme, calculated in accordance with paragraph 25(5), on that date.
- (2) If the pension scheme is a relevant pension scheme, the value of the individual's uncrystallised lump sum rights on 5th April 2006 under an arrangement—
- (a) which relates to a particular employment, and
  - (b) in relation to which the excess lump sum condition is met (see sub-paragraph (5) or (6)),
- is the amount arrived at in accordance with sub-paragraph (7) or (8).
- (3) A pension scheme is a relevant pension scheme if it falls within paragraph 1(1)(a) to (d).
- (4) Whether an arrangement relating to the individual relates to a particular employment is to be determined in accordance with paragraph 9(6).
- (5) If no other arrangement relating to the individual under a relevant pension scheme relates to the employment to which the arrangement relates, the excess lump sum condition is met in relation to the arrangement if—
- (a) the value of the individual's uncrystallised lump sum rights under the arrangement calculated in accordance with paragraph 25(5), exceeds
  - (b) the amount arrived at in relation to the arrangement in accordance with paragraph 26.
- (6) If one or more other arrangements relating to the individual under a relevant pension scheme or relevant pension schemes relates or relate to the employment to which the arrangement relates, the excess lump sum condition is met in relation to the arrangement if—
- (a) the aggregate of the values of the individual's uncrystallised lump sum rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 25(5), exceeds
  - (b) the amount arrived at in relation to those arrangements in accordance with paragraph 26;
- and the amount by which the aggregate of those values exceeds that amount is the "lump sum excess".
- (7) Where the excess lump sum condition is met by virtue of sub-paragraph (5), the value of the individual's uncrystallised lump sum rights under the arrangement is the amount arrived at in accordance with paragraph 26.
- (8) Where the excess lump sum condition is met by virtue of sub-paragraph (6), the value of the individual's uncrystallised lump sum rights under the arrangement is the value of those rights calculated in accordance with paragraph 25(5), less the appropriate proportion of the lump sum excess.
- (9) The appropriate proportion of the lump sum excess is—

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$$\frac{V}{AV}$$

where—

V is the value of the individual's uncrystallised lump sum rights under the arrangement, calculated in accordance with paragraph 25(5), and

AV is the aggregate of the values of the individual's uncrystallised lump sum rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 25(5).

- 33 (1) Subject to sub-paragraph (2), the value of the individual's uncrystallised rights under the pension scheme on 5th April 2006 is the aggregate of the value of the individual's uncrystallised rights under each arrangement in respect of the individual under the pension scheme, calculated in accordance with paragraph 8(5).
- (2) If the pension scheme is a relevant pension scheme, the value of the individual's uncrystallised rights on 5th April 2006 under an arrangement—
- (a) which relates to a particular employment, and
  - (b) in relation to which the excess rights condition is met (see sub-paragraph (5) or (6)),
- is the amount arrived at in accordance with sub-paragraph (7) or (8).
- (3) A pension scheme is a relevant pension scheme if it falls within paragraph 1(1)(a) to (d).
- (4) Whether an arrangement relating to the individual relates to a particular employment is to be determined in accordance with paragraph 9(6).
- (5) If no other arrangement relating to the individual under a relevant pension scheme relates to the employment to which the arrangement relates, the excess rights condition is met in relation to the arrangement if—
- (a) the value of the individual's uncrystallised rights under the arrangement calculated in accordance with paragraph 8(5), exceeds
  - (b) the amount arrived at in relation to the arrangement in accordance with paragraph 9(3).
- (6) If one or more other arrangements relating to the individual under a relevant pension scheme or relevant pension schemes relates or relate to the employment to which the arrangement relates, the excess rights condition is met in relation to the arrangement if—
- (a) the aggregate of the values of the individual's uncrystallised rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 8(5), exceeds
  - (b) the amount arrived at in relation to those arrangements in accordance with paragraph 9(3);
- and the amount by which the aggregate of those values exceeds that amount is the "rights excess".
- (7) Where the excess rights condition is met by virtue of sub-paragraph (5), the value of the individual's uncrystallised rights under the arrangement is the amount arrived at in accordance with paragraph 9(3).

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- (8) Where the excess rights condition is met by virtue of sub-paragraph (6), the value of the individual's uncrystallised rights under the arrangement is the value of those rights calculated in accordance with paragraph 8(5), less the appropriate proportion of the rights excess.
- (9) The appropriate proportion of the rights excess is—

$$\frac{V}{AV}$$

where—

V is the value of the individual's uncrystallised rights under the arrangement, calculated in accordance with paragraph 8(5), and

AV is the aggregate of the values of the individual's uncrystallised rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 8(5).

- [<sup>F788</sup>34(1) Paragraph 2 of Schedule 29 (pension commencement lump sums: definition of "permitted maximum") applies as if the permitted maximum were—

$$A \times 1.2 + B$$

where—

A is the value of the individual's uncrystallised lump sum rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 32;

B is the additional lump sum amount.

- (2) The additional lump sum amount is—

$$C + (D \times 4)E \times 0.71544$$

where—

C is the pension commencement lump sum paid;

[<sup>F789</sup>"D" is—

- (a) if the relevant pension is income withdrawal, the applicable amount determined in accordance with paragraph 2A of Schedule 29;
- (b) if the relevant pension is a lifetime annuity, the applicable amount determined in accordance with paragraph 2B of Schedule 29;
- (c) if the relevant pension is a scheme pension under a defined benefits arrangement, or a collective money purchase arrangement, the applicable amount determined in accordance with paragraph 2C of Schedule 29;
- (d) if the relevant pension is a scheme pension under a money purchase arrangement that is not a collective money purchase arrangement, the scheme pension purchase price as it would be defined by paragraph 2D of Schedule 29 if the words "(subject to sub-paragraph (4))" in sub-paragraph (3), and sub-paragraph (4), were omitted;]

E is the value of the individual's uncrystallised rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 33.

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- (3) For the purposes of section 637Q of ITEPA 2003 (availability of individual’s lump sum allowance), the “non-taxable amount” of a pension commencement lump sum paid to the individual is to be treated as an amount equal to the applicable amount in relation to the relevant pension.
- (4) Any part of what would otherwise be D or E which represents rights attributable to a disqualifying pension credit is to be disregarded.]

#### Textual Amendments

- F788** Sch. 36 para. 34 substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 87, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)
- F789** Words in Sch. 36 para. 34(2) substituted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 (S.I. 2024/356), regs. 1, 3(15)

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

- C116** Sch. 36 para. 34 modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), 21, 23 (as amended (1.1.2009) by S.I. 2008/2990, arts. 1(1), 4; and (with effect in accordance with art. 1(2) of the amending S.I.) by S.I. 2011/1782, arts. 1(1), 2(2))

F790  
...

#### Textual Amendments

- F790** Sch. 36 para. 35 and cross-heading omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 88, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

F790<sup>35</sup> .....

#### *Right to payment of lump sum death benefit*

- 36 (1) This paragraph applies to a member of a registered pension scheme if on 5th April 2006—
- (a) the pension scheme is within any of paragraphs (a) to (e) of paragraph 1(1),
  - (b) the member has an actual (rather than a prospective) right to a pension under an arrangement under the pension scheme, and
  - (c) under the arrangement a lump sum death benefit is payable if the member dies within the guarantee period.
- (2) The guarantee period is the period of five years beginning with the day on which the member became entitled to the pension or, if later, the day on which the pension was first paid.
- (3) If the member dies after having reached the age of 75 and before the end of the guarantee period—
- (a) paragraph 14 of Schedule 29 (pension protection lump sum death benefit), [F791 and]



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(b) paragraph 16 of that Schedule (annuity protection lump sum death benefit),  
F792

...  
F792(c) .....

apply in relation to the member and the arrangement with the following modifications.

F793(4) .....

(5) Paragraph 14 (1) applies as if paragraph (d) were omitted.

(6) Paragraph 14(2) applies as if the reference to the pension protection limit were to the transitional protection limit.

(7) Paragraph 16(2) applies as if the reference to the annuity protection limit were to the transitional protection limit.

F794(8) .....

(9) Section 206 (1) (special lump sum death benefits charge) does not apply to any pension protection lump sum death benefit [F795 or annuity protection lump sum death benefit] or unsecured pension fund lump sum death benefit paid by virtue of [F796 sub-paragraphs (3) to (7)].

(10) If the member dies before having reached the age of 75 and before the end of the guarantee period—

(a) section 206 (1) does not apply to so much of any pension protection lump sum death benefit [F797 or annuity protection lump sum death benefit] or unsecured pension fund lump sum death benefit paid under the arrangement as does not exceed the transitional protection limit, and

(b) if the arrangement is a defined benefits arrangement, paragraph 14(1)(d) of Schedule 29 is to be treated as satisfied in relation to so much of the lump sum death benefit paid under the arrangement as does not exceed the transitional protection limit.

(11) The transitional protection limit is—

## *P – TPLS*

where—

P is the amount of pension to which (had the member lived) the member would have been entitled under the arrangement in respect of the period beginning with the day of the member's death and ending with the last day of the guarantee period, and

TPLS is the amount of any pension protection lump sum death benefit [F798 or annuity protection lump sum death benefit] previously paid in respect of the pension.

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### Textual Amendments

**F791** Word in Sch. 36 para. 36(3) inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by Finance Act 2011 (c. 11), Sch. 16 para. 82(6)(a)(i)

**F792** Sch. 36 para. 36(3)(c) and word omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of Finance Act 2011 (c. 11), Sch. 16 para. 82(6)(a)(ii)

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- F793** Sch. 36 para. 36(4) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 82\(6\)\(b\)](#)
- F794** Sch. 36 para. 36(8) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 82\(6\)\(b\)](#)
- F795** Words in Sch. 36 para. 36(9) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 82\(6\)\(c\)\(i\)](#)
- F796** Words in Sch. 36 para. 36(9) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 82\(6\)\(c\)\(ii\)](#)
- F797** Words in Sch. 36 para. 36(10)(a) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 82\(6\)\(d\)](#)
- F798** Words in Sch. 36 para. 36(11) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 82\(6\)\(e\)](#)

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

- C117** Sch. 36 paras. 35, 36 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, [32](#)

**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.

*[<sup>F799</sup>Pre-commencement holdings of taxable property*

**Textual Amendments**

- F799** 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,

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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

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- (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.

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- (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,

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- (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

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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

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- (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) [<sup>F800</sup>Section 1122 of the Corporation Tax Act 2010] (connected persons) applies for the purposes of this paragraph.

#### Textual Amendments

**F800** Words in Sch. 36 para. 37H(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 432\(4\)](#) (with [Sch. 2](#))

- 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.



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- (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)**

**C118** 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 <sup>F801</sup> Part 2 of ITTOIA 2005 (trading income) or] Case I or II of Schedule D,

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- (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

**F801** 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*

<sup>F802</sup>43 .....

#### Textual Amendments

**F802** 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

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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.

*<sup>F803</sup>Taxation of certain annuities for dependants purchased pre-commencement*

**Textual Amendments**

**F803** Sch. 36 para. 45 and cross-heading inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 19](#)

- 45A (1) The charge to tax under Part 9 of ITEPA 2003 (taxation of pension income) does not apply to an annuity payable to a person (“the dependant”) if—
- (a) the annuity is payable on the death of a member of a pension scheme,
  - (b) the annuity is paid in respect of the deceased member,
  - (c) the member had not reached the age of 75 at the date of the member's death,
  - (d) the member died on or after 3 December 2014,
  - (e) no payment of the annuity is made before 6 April 2015,
  - (f) the annuity has fulfilled the transitional conditions at all times on or after 6 April 2006,
  - (g) the annuity was purchased together with an annuity payable to the member, and
  - (h) that annuity payable to the member fulfilled the transitional conditions at all times in the period beginning with 6 April 2006 and ending with the member's death.
- (2) For the purposes of sub-paragraph (1)(g), an annuity is purchased together with another if they are purchased—
- (a) in the form of a joint life annuity, or
  - (b) separately in circumstances in which the day on which the one is purchased is no earlier than seven days before, and no later than seven days after, the day on which the other is purchased.
- (3) In sub-paragraph (1) “the transitional conditions” means the conditions specified in the subsection (3A) set out in article 2(3) of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572).]

*Application of PAYE to certain annuities in payment at commencement*

<sup>F804</sup>46

**Textual Amendments**

**F804** 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](#)

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*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.

F805 ...

**Textual Amendments**

**F805** Sch. 36 para. 49 cross-heading omitted (with effect in accordance with Sch. 17 Pt. 2 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 17 para. 25](#)

F806<sup>49</sup> .....

**Textual Amendments**

**F806** Sch. 36 para. 49 omitted (with effect in accordance with Sch. 17 Pt. 2 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 17 para. 25](#)

*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

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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 <sup>F807</sup>an event that is the individual becoming entitled to a benefit under a pension scheme].
- (5) The references in sub-paragraphs (2) and (3) to the pension scheme include a pension scheme <sup>F808</sup>(“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

**F807** Words in Sch. 36 para. 51(4) substituted (for the tax year 2024-25 and subsequent tax years) by Finance Act 2024 (c. 3), Sch. 9 paras. 89, 124 (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, 4)

**F808** Words in Sch. 36 para. 51(5) substituted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 55(7), 64(1)

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

**C119** Sch. 36 para. 51 applied (N.I.) (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (S.R. 2010/122), regs. 1(1), 47(6) (as amended (1.7.2012) by S.R. 2012/237, regs. 1(1)(b), 2(2))

#### *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—

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- (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 [<sup>F809</sup>to 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**

**F809** 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)

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

**C120** Sch. 36 para. 53(3) applied by 2003 c. 1, s. 554U(2) (as inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 1](#))

- 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 [<sup>F810</sup>or former civil partner] of the employee or any other individual designated by the employee, or
  - (b) the scheme was entered into before [<sup>F811</sup>1st 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—

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- (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
  - [<sup>F812</sup>“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 [<sup>F813</sup>spouse or civil partner] of the employee,
    - (b) the widow or widower [<sup>F814</sup>or surviving civil partner] of the employee,
    - (c) a child of the employee, or
    - (d) a dependant of the employee.

#### Textual Amendments

- F810** 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)**
- F811** 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**
- F812** 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)**
- F813** 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)**
- F814** 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.



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### *Inheritance tax*

- 56 (1) This paragraph applies in relation to a fund or scheme—
- (a) which is not a registered pension scheme [<sup>F815</sup>, 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.
- [<sup>F816</sup>(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**

**F815** Words in Sch. 36 para. 56(1)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2008 \(c. 9\)](#), [Sch. 29 para. 18\(7\)\(a\)\(8\)](#)

**F816** 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 [<sup>F817</sup>percentage] of the assets of the fund or scheme which at any time is the protected [<sup>F817</sup>percentage] 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 [<sup>F818</sup>percentage]” 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



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- (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

**F817** Word in Sch. 36 para. 57(1) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 58\(2\), 64\(1\)](#)

**F818** 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 [<sup>F819</sup>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

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

**Textual Amendments**

**F819** Word in Sch. 36 para. 58(6)(b) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 58\(3\), 64\(1\)](#)

SCHEDULE 37

Section 285

OIL TAXATION: TAX-EXEMPT TARIFFING RECEIPTS AND ASSETS PRODUCING THEM

**PART 1**

AMENDMENTS OF THE OIL TAXATION ACT 1983 RELATING  
 TO ALLOWABLE EXPENDITURE AND DISPOSAL RECEIPTS

*Introductory*

- 1 The Oil Taxation Act 1983 (c. 56) is amended in accordance with the following provisions of this Part.

*Expenditure incurred on long-term assets other than non-dedicated mobile assets*

- 2 (1) Section 3 (expenditure incurred on long-term assets other than non-dedicated mobile assets) is amended as follows.
- (2) In subsection (4) (whole of expenditure to be allowable, except as provided by the provisions there specified) for “section 4” substitute “sections 3A and 4”.

*Exclusion from s.3(4) of expenditure on assets giving rise to tax-exempt tariffing receipts*

- 3 After section 3 insert—

**“3A Exclusion from section 3(4) of expenditure on assets giving rise to tax-exempt tariffing receipts**

- (1) This section applies where—
- (a) expenditure incurred on or after 1st January 2004 falls within section 3 (1) above, but
  - (b) some of the use (or expected use) of the asset in relation to which the expenditure was incurred is use in a way that gives rise to tax-exempt tariffing receipts (see section 6A(2) below).
- (2) In any such case, such part of the expenditure as it is just and reasonable to apportion to the use mentioned in subsection (1)(b) above shall be excluded from the expenditure which is allowable as mentioned in section 3(4) above.”.

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*Expenditure related to exempt gas: asset use giving rise to tax-exempt tariffing receipts*

4 (1) Section 4 (expenditure related to exempt gas and deballasting) is amended as follows.

(2) After subsection (5) insert—

“(6) But where—

- (a) expenditure would (apart from this subsection) fall within paragraph (a) of subsection (5) above, and
- (b) the asset has, at any time in the period of 6 years ending with the date on which the expenditure was incurred, been used in a way that gives rise to tax-exempt tariffing receipts,

the expenditure shall not be regarded for the purposes of that subsection as expenditure incurred in enhancing the value of the asset with a view to the subsequent disposal of the asset, or of an interest in it, to the extent that the amount of the expenditure falls to be reduced in accordance with subsection (7) below.

(7) The reduction is to be made by applying section 7A below in relation to the expenditure as it applies in relation to disposal receipts in respect of a disposal, but with the substitution—

- (a) for references to the disponor, of references to the person incurring the expenditure (“the relevant participator”),
- (b) for references to the amount or value (apart from that section) of any disposal receipts of the disponor in respect of the disposal, of references to the amount which would, apart from subsection (6) above, be the amount of the expenditure incurred by the relevant participator with a view to the subsequent disposal of the asset or of an interest in it,
- (c) for references to the interest disposed of, of references to the asset or interest whose subsequent disposal gives or is expected to give rise to disposal receipts,
- (d) for references to the date of the disposal, of references to the date on which the expenditure was incurred,

and taking the reference in subsection (6)(b) of that section to a reduction made by virtue of that section as a reference to a reduction made by virtue of that section for the purposes of section 7(9) of this Act.”.

*Disposal receipts from assets used in a way that gives rise to tax-exempt tariffing receipts*

5 (1) Section 7 (chargeable receipts from disposals) is amended as follows.

(2) In subsection (4) (no account to be taken of disposal more than 2 years after cessation of use in connection with any oil field whatsoever or ceasing to give rise to tariff receipts)—

- (a) at the end of paragraph (b) insert “or
  - (c) ceases to give rise to tax-exempt tariffing receipts of that participator,”; and
- (b) in the closing words, for “later” substitute “ latest ”.

(3) After subsection (8) insert—

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“(9) In determining the amount or value of the disposal receipts of the participator in question in a case where the qualifying asset has been used in a way that gives rise to tax-exempt tariffing receipts, the amount or value (apart from this subsection) of any disposal receipts of his in respect of the disposal shall be reduced in accordance with section 7A below.”.

(4) After section 7 insert—

**“7A Reduction of disposal receipts: use giving rise to tax-exempt tariffing receipts**

- (1) Where this section applies, the amount or value (apart from this section) of any disposal receipts of the participator (“the disporor”) in respect of the disposal shall be reduced in accordance with the following provisions of this section.
- (2) The reduction is to be made by multiplying that amount or value by the fraction that is equal to—

$$1 - \frac{T}{A}$$

(3) In that formula—

T is the aggregate of the tax-exempt tariffing use of the asset in the reference period by—

- (a) the disporor, so far as referable to the interest disposed of, and
- (b) each of the previous owners, so far as referable to that previous owner’s represented interest, and

A is the aggregate of all use of the asset in the reference period by—

- (a) the disporor, so far as referable to the interest disposed of, and
- (b) each of the previous owners, so far as referable to that previous owner’s represented interest,

but only taking into account for this purpose use of the asset by a person at a time when he is or was a participator in a taxable field.

(4) For the purposes of this section—

“the interest disposed of” means the asset, or the interest in an asset, the disposal of which gives rise to the disposal receipts mentioned in subsection (1) above;

“previous owner” means any person from whom the disporor directly or indirectly derives his title to the whole or any part of the interest disposed of;

“the reference period” means the shorter of the following periods ending with the date of the disposal—

- (a) the period of 6 years; or
- (b) the period beginning with the bringing into existence of the asset;

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“represented interest”, in the case of a previous owner, means so much of the interest which that previous owner had in the asset as is represented in the interest disposed of;

“tax-exempt tariffing use”, in relation to an asset, means use of the asset in a way that gives rise to tax-exempt tariffing receipts.

(5) Any apportionment that falls to be made for the purpose of determining a previous owner’s represented interest shall be made using a method which is just and reasonable, having regard to—

- (a) the proportion of any person’s interest that was acquired from any particular person, and
- (b) the proportion of any person’s interest that was transferred to any particular person.

(6) Where—

- (a) the disponor or any previous owner acquired the asset or an interest in the asset from another person, and
- (b) on that other person’s corresponding disposal of the asset or interest a reduction was made by virtue of this section,

use of the asset shall not be brought into account in determining T or A in the formula in subsection (2) above to the extent that it was so brought into account in relation to that corresponding disposal.

(7) Where paragraph 9 of Schedule 2 to this Act (reduction of disposal receipts in respect of brought-in assets) applies in relation to an asset, no account shall be taken for the purposes of this section of any use of the asset during the initial period.

In this subsection “the initial period”, in relation to an asset, has the same meaning as it has in relation to that asset in paragraph 7 of Schedule 1 to this Act (restriction on allowable expenditure on brought-in asset).

(8) For the purposes of this section, the amount of use of an asset—

- (a) where the use is in relation to oil, is to be determined by reference to the volume of oil in relation to which the asset is used, and
- (b) where the use is otherwise than in relation to oil, is to be determined on a just and reasonable basis.

(9) For the purposes of this section, the extent to which use of an asset is referable to—

- (a) the interest disposed of, or
- (b) the represented interest of a previous owner,

shall be determined on a just and reasonable basis, having regard to the size of the interest in question and the size from time to time of the whole interest in the asset of the disponor or, as the case may be, that previous owner.”.

*Assets no longer in use for the principal field*

6 (1) In Schedule 1 (allowable expenditure) in Part 1 (extensions of allowable expenditure for assets generating receipts) paragraph 3 is amended as follows.

(2) After sub-paragraph (2) insert—

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“(2A) But where—

- (a) the expenditure would (apart from this sub-paragraph) be regarded as incurred with a view to the subsequent disposal of the asset or of an interest in it, and
- (b) the asset has, at any time in the period of 6 years ending with the date on which the expenditure was incurred, been used in a way that gives rise to tax-exempt tariffing receipts,

the expenditure shall not be regarded for the purposes of this paragraph as expenditure incurred with a view to the subsequent disposal of the asset or of an interest in it, to the extent that the amount of the expenditure falls to be reduced in accordance with sub-paragraph (2B) below.

(2B) The reduction is to be made by applying section 7A of this Act in relation to the expenditure as it applies in relation to disposal receipts in respect of a disposal, but with the substitution—

- (a) for references to the disponor, of references to the participator incurring the expenditure (“the relevant participator”),
- (b) for references to the amount or value (apart from that section) of any disposal receipts of the disponor in respect of the disposal, of references to the amount which would, apart from sub-paragraph (2A) above, be the amount of the expenditure incurred by the relevant participator with a view to the subsequent disposal of the asset or of an interest in it,
- (c) for references to the interest disposed of, of references to the asset or interest whose subsequent disposal gives or is expected to give rise to disposal receipts,
- (d) for references to the date of the disposal, of references to the date on which the expenditure was incurred,

and taking the reference in subsection (6)(b) of that section to a reduction made by virtue of that section as a reference to a reduction made by virtue of that section for the purposes of section 7(9) of this Act.”.

#### *Brought-in assets*

- 7 (1) In Part 2 of Schedule 1, paragraph 7 is amended as follows.
- (2) In sub-paragraph (1)(c) (use of asset otherwise than in connection with a taxable field between acquisition etc and first use in connection with oil field)—
- (a) after “was used” insert “ (i) ”;
  - (b) after “otherwise than in connection with a taxable field,” insert “ or ”;
  - (c) after the word “or” so inserted, insert the following sub-paragraph—
    - “(ii) in connection with a taxable field in a way that gives rise to tax-exempt tariffing receipts.”.

#### *Subsequent use of new asset otherwise than in connection with a taxable field*

- 8 (1) In Part 2 of Schedule 1, paragraph 8 is amended as follows.
- (2) In sub-paragraph (3) (asset giving rise to tariff receipts attributable to taxable field treated as used in connection with a taxable field)—
- (a) after “gives rise to” insert “ (a) ”;

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- (b) after “attributable to a taxable field,” insert “ or ”;
  - (c) after the word “or” so inserted, insert the following paragraph—
    - “(b) tax-exempt tariffing receipts which, if they were tariff receipts (and expenditure were or had been allowable accordingly), would be tariff receipts of the purchaser attributable to a taxable field.”.
- (3) In sub-paragraph (5) (chargeable period to be determined in relation to field in respect of which asset last gave rise to tariff receipts of purchaser etc) at the end of paragraph (b) insert “or
- (c) if it is later than paragraph (a) and (where otherwise applicable) paragraph (b) above, in respect of which the asset would have last given rise to tariff receipts of the purchaser had tax-exempt tariffing receipts of the purchaser been tariff receipts of his (and if expenditure were or had been allowable accordingly);”.

## PART 2

### TRANSITIONAL PROVISION

#### *Expenditure incurred in transitional period: restriction of tax-exempt tariffing receipts*

- 9 (1) In this paragraph—
- “claim period” has the same meaning as in Part 1 of the Oil Taxation Act 1975 (c. 22);
  - “relevant receipts” means each of the following—
    - (a) tax-exempt tariffing receipts;
    - (b) amounts that would be tax-exempt tariffing receipts apart from sub-paragraph (4);
  - “the transitional period” means the period—
    - (a) beginning with 9th April 2003, and
    - (b) ending with 31st December 2003.
- (2) This paragraph applies where—
- (a) expenditure was incurred in the transitional period by a participator in an oil field in acquiring, bringing into existence or enhancing the value of an asset,
  - (b) the asset is one whose useful life continues, or is expected to continue, after the end of the claim period in which the expenditure was incurred,
  - (c) the expenditure is allowable for a claim period ending after 9th April 2003,
  - (d) at the time the expenditure was incurred, the asset was being, or was expected to be, used to any extent in relation to—
    - (i) an oil field or foreign field (a “user field”), or
    - (ii) oil won from such a field, and
  - (e) that use (or expected use) is use in such a way as, in a chargeable period ending on or after 30th June 2004, gives rise, or would have given rise, to relevant receipts of the participator or, where sub-paragraph (3) applies, of a successor.
- (3) This sub-paragraph applies where—

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- (a) after the incurring of the expenditure, there is or has been a transfer of an interest of the participator's in the asset, and
  - (b) as a result of that transfer (or of any subsequent transfer of the whole or any part of that interest), relevant receipts ("consequential relevant receipts") arise, or are expected to arise, to a person (a "successor") who is a participator in an oil field.
- (4) In the case of each user field, the initial portion of the aggregate of the relevant receipts of the participator, and the consequential relevant receipts of each successor, that are referable to—
- (a) use of the asset in relation to that field or oil won from it, or
  - (b) the provision of services or other business facilities of whatever kind in connection with any such use of the asset (otherwise than by the participator or the successor himself),

shall not be tax-exempt tariffing receipts (and shall accordingly continue to be tariff receipts).

- (5) In this paragraph—

"the initial portion", in relation to the aggregate of any relevant receipts, means so much of that aggregate as does not exceed the qualifying threshold for the user field in question; and for this purpose amounts received or receivable at an earlier date are to be attributed to the initial portion before amounts received or receivable at a later date;

"the qualifying threshold", in relation to a user field, means an amount equal to such part of the aggregate of the expenditure—

- (a) incurred by the participator in relation to the asset in question, and
- (b) falling within sub-paragraph (2),

as it is just and reasonable to apportion to the use (or expected use) of the asset, in relation to that user field or oil won from it, in a way that gives rise to relevant receipts of the participator or consequential relevant receipts of any successor.

- (6) Expressions used in this paragraph and in section 6A of the Oil Taxation Act 1983 (c. 56) have the same meaning in this paragraph as they have in that section.

### PART 3

#### AMENDMENTS OF THE TAXES ACT 1988

##### *Introductory*

F820<sup>10</sup> .....

#### **Textual Amendments**

**F820** Sch. 37 para. 11 repealed (1.4.2010) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 10 Pt. 6](#) (with [Sch. 9 paras. 1-9, 22](#)) and repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 2](#) (with [Sch. 2](#))



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*Section 496: treatment of tax-exempt tariffing receipts for income and corporation tax*

F820 11 .....

**Textual Amendments**

**F820** Sch. 37 para. 11 repealed (1.4.2010) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 10 Pt. 6** (with Sch. 9 paras. 1-9, 22) and repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 2** (with Sch. 2)

**PART 4**

AMENDMENTS OF OTHER ENACTMENTS

*FINANCE ACT 1999*

*Qualifying assets*

*Qualifying assets*

- 12 (1) Section 98 of the Finance Act 1999 (c. 16) is amended as follows.
- (2) After the words “tariff receipts”, in each place where they occur, insert “, tax-exempt tariffing receipts”.
- (3) After subsection (6) insert—
- “(6A) In relation to tax-exempt tariffing receipts, any reference in this section—
- (a) to being attributable to a field for a period, or
- (b) to being referable to an asset,
- shall be construed as if tax-exempt tariffing receipts were tariff receipts (and expenditure were or had been allowable accordingly).”.

SCHEDULE 38

Section 286

SCHEDULE TO BE INSERTED AS SCHEDULE 19B TO THE TAXES ACT 1988

The following is the Schedule to be inserted as Schedule 19B to the Taxes Act 1988—

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“SCHEDULE 19B

Section 496A

PETROLEUM EXTRACTION ACTIVITIES: EXPLORATION EXPENDITURE SUPPLEMENT

**PART 1**

INTRODUCTORY

**About this Schedule**

- 1 (1) This Schedule entitles a company carrying on a ring fence trade, on making a claim in respect of an accounting period ending on or after 1st January 2004, to a supplement (initially of 6%, but variable by Treasury order) in respect of—
  - (a) qualifying capital expenditure incurred before the trade is set up and commenced,
  - (b) losses incurred in the trade, determined by reference to allowances under Part 6 of the Capital Allowances Act (expenditure on research and development) in respect of qualifying capital expenditure, and
  - (c) some or all of the supplement allowed in respect of earlier periods.
- (2) To qualify, the capital expenditure in question must be incurred on or after 1st January 2004 in respect of oil and gas exploration and appraisal (as well as satisfying other conditions).
- (3) Part 2 makes provision about the application and interpretation of this Schedule.
- (4) Part 3 makes provision about supplement in relation to expenditure incurred by the company—
  - (a) with a view to carrying on a ring fence trade, but
  - (b) in an accounting period before the company sets up and commences that trade.
- (5) Part 4 makes provision about supplement in relation to losses incurred in carrying on the ring fence trade.
- (6) There is a limit on the number of accounting periods (6) in respect of which a company may claim supplement.
- (7) In determining the amount of supplement allowable, reductions fall to be made in respect of—
  - (a) disposal receipts by virtue of section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value),
  - (b) ring fence losses that could be set off under section 393A against ring fence profits of earlier periods,
  - (c) ring fence losses incurred in earlier periods that fall to be set off under section 393 against profits of succeeding periods,
  - (d) unrelieved group ring fence profits.

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## PART 2

### APPLICATION AND INTERPRETATION

#### Qualifying companies

- 2 This Schedule applies in relation to any company which—
- (a) carries on a ring fence trade, or
  - (b) is engaged in oil and gas exploration and appraisal (see section 837B) with a view to carrying on a ring fence trade,
- and in this Schedule any such company is referred to as a “qualifying company”.

#### Accounting periods

- 3 (1) In this Schedule, in the case of any qualifying company,—
- “the commencement period” means the accounting period in which the company sets up and commences its ring fence trade;
  - “post-commencement period” means any accounting period ending on or after 1st January 2004—
    - (a) which is the commencement period, or
    - (b) which ends after the commencement period;
  - “pre-commencement period” means any accounting period ending—
    - (a) on or after 1st January 2004, and
    - (b) before the commencement period.
- (2) For the purposes of this Schedule a company not within the charge to corporation tax which incurs qualifying E&A expenditure is to be treated as having such accounting periods as it would have if—
- (a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and
  - (b) it had started to carry on that trade when it started to carry on the research and development on which the expenditure is incurred.

#### The relevant percentage

- 4 (1) For the purposes of this Schedule, the relevant percentage for any accounting period ending on or after 1st January 2004 is 6%.
- (2) The Treasury may by order vary the percentage for the time being specified in subparagraph (1) for such accounting periods as may be specified in the order.

#### Limit on number of accounting periods for which supplement may be claimed

- 5 (1) A company may claim supplement under this Schedule in respect of no more than 6 accounting periods.
- (2) The accounting periods in respect of which claims are made need not be consecutive.

#### Qualifying E&A expenditure

- 6 (1) For the purposes of this Schedule “qualifying E&A expenditure” is any expenditure as respects which the following conditions are satisfied.

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- (2) Condition 1 is that the expenditure is incurred on or after 1st January 2004.
- (3) Condition 2 is that, for the purposes of Part 6 of the Capital Allowances Act, the expenditure is qualifying expenditure incurred on research and development consisting of oil and gas exploration and appraisal (see section 437(2)(b) of that Act).
- (4) Condition 3 is that an allowance under section 441 of that Act is claimed in respect of the expenditure.
- (5) Condition 4 is that the expenditure is incurred in the course of oil extraction activities.
- (6) Condition 5 is that—
  - (a) those oil extraction activities are comprised in a ring fence trade, or
  - (b) after incurring the expenditure, the person incurring it sets up and commences a ring fence trade connected with the research and development.

### **Unrelieved group ring fence profits for accounting periods**

- 7 (1) There is an amount of unrelieved group ring fence profits for an accounting period of a qualifying company (“company Q”) in any case where—
- (a) the company and any other company (“company X”) are members of the same group of companies, within the meaning given by section 413(3)(a), and
  - (b) company X has an amount of taxable ring fence profits (see paragraph 8) for a corresponding accounting period.
- (2) An accounting period of company X corresponds to an accounting period of company Q if—
- (a) it coincides with, or falls wholly within, the accounting period of company Q, or
  - (b) it falls partly within the accounting period of company Q.
- (3) Where an accounting period of company X—
- (a) coincides with an accounting period of company Q, or
  - (b) falls wholly within an accounting period of company Q,
- there is, for the accounting period of company Q, an amount of unrelieved group ring fence profits equal to the whole of company X’s taxable ring fence profits for its accounting period.
- (4) Where an accounting period of company X falls partly within an accounting period of company Q—
- (a) there is an amount of unrelieved group ring fence profits for the accounting period of company Q, and
  - (b) that amount is an amount equal to the part of company X’s taxable ring fence profits for its accounting period that is attributable, on an apportionment in accordance with section 834(4), to the part of that period which falls within the accounting period of company Q.
- (5) This paragraph applies for the purposes of this Schedule.

### **Taxable ring fence profits of an accounting period**

- 8 For the purposes of this Schedule, a company has taxable ring fence profits for an accounting period if it has an amount of ring fence profits which is chargeable to

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corporation tax for that accounting period after any group relief claimed under Chapter 4 of Part 10.

### PART 3

#### PRE-COMMENCEMENT SUPPLEMENT

#### Supplement in respect of a pre-commencement accounting period

- 9 (1) Where—
- (a) a qualifying company claims an allowance under section 441 of the Capital Allowances Act (research and development allowances) for the commencement period, and
  - (b) the claim is for an allowance in respect of qualifying E&A expenditure incurred before that period,
- the company may also claim supplement under this Part of this Schedule (“pre-commencement supplement”) in respect of one or more pre-commencement periods.
- (2) Any pre-commencement supplement allowed on a claim in respect of a pre-commencement period shall be treated as an allowance under Part 6 of the Capital Allowances Act for the commencement period in respect of qualifying E&A expenditure incurred by the company.
- (3) The amount of the supplement for any pre-commencement period in respect of which a claim under this paragraph is made is the relevant percentage for that period of the reference amount for that period.
- (4) If the pre-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.
- (5) Paragraphs 10 to 13 have effect for the purpose of determining the reference amount for a pre-commencement period.

#### The mixed pool of qualifying E&A expenditure and supplement previously allowed

- 10 (1) For the purpose of determining the amount of any pre-commencement supplement, a qualifying company shall be taken to have had, at all times in the pre-commencement periods of the company, a continuing mixed pool of qualifying E&A expenditure and pre-commencement supplement.
- (2) The pool shall be taken to have consisted of—
- (a) the company’s qualifying E&A expenditure, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (3), and
  - (b) the company’s pre-commencement supplement, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (4).
- (3) To allocate qualifying E&A expenditure to the pool for any pre-commencement period, take the following steps—
- (a) *Step 1:* count as eligible expenditure for that period so much of the qualifying E&A expenditure mentioned in paragraph 9(1)(b) as was incurred in that period,
  - (b) *Step 2:* find the total of all the eligible expenditure for that period (amount E),

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- (c) *Step 3*: if paragraph 11 applies, reduce amount E in accordance with that paragraph,
  - (d) *Step 4*: if paragraph 12 applies, reduce (or, as the case may be, further reduce) amount E in accordance with that paragraph,
- and so much of amount E as remains after making those reductions shall be taken to have been added to the pool in that period.
- (4) If any pre-commencement supplement is allowed on a claim in respect of a pre-commencement period, the amount of that supplement shall be taken to have been added to the pool in that period.

### **Treatment of disposal value on disposal of oil licence with exploitation value**

- 11 (1) This paragraph applies in any case where—
- (a) the qualifying company disposes of an interest in an oil licence in a pre-commencement period,
  - (b) part of the value of the interest (the “deductible amount”) is attributable to qualifying E&A expenditure incurred by the company, and
  - (c) section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value) has effect in relation to the disposal.
- (2) For the purpose of allocating qualifying E&A expenditure to the pool for each pre-commencement period—
- (a) find the total of the deductible amounts in the case of all such disposals made by the company (amount D), and
  - (b) taking later periods before earlier periods, reduce (but not below nil) amount E for any pre-commencement period by setting against it so much of amount D as does not fall to be set against amount E for a later pre-commencement period.
- (3) In this paragraph “oil licence” has the same meaning as in section 555 of the Capital Allowances Act (see section 552 (1) of that Act).

### **Reduction in respect of unrelieved group ring fence profits**

- 12 (1) This paragraph applies if there is an amount of unrelieved group ring fence profits for a pre-commencement period.
- (2) For the purpose of allocating qualifying E&A expenditure to the pool for that period—
- (a) find so much (if any) of amount E for that period as remains after any reduction falling to be made under paragraph 11, and
  - (b) reduce that amount (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

### **The reference amount for a pre-commencement period**

- 13 For the purposes of this Part of this Schedule, the reference amount for a pre-commencement period is the amount in the pool at the end of the period—
- (a) after the addition to the pool of any qualifying E&A expenditure allocated to the pool for that period in accordance with paragraph 10(3), but
  - (b) before determining, and adding to the pool, the amount of any pre-commencement supplement claimed in respect of the period.

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### **Claims for pre-commencement supplement**

- 14 (1) Any claim for pre-commencement supplement in respect of a pre-commencement period must be made at the same time as, and as if it were part of, the claim under section 441 of the Capital Allowances Act mentioned in paragraph 9(1)(a).
- (2) Subsection (3) of that section (claim for reduced amount) applies in relation to any such claim.

## **PART 4**

### **POST-COMMENCEMENT SUPPLEMENT**

#### **Supplement in respect of a post-commencement period**

- 15 (1) A qualifying company which incurs a qualifying E&A loss (see paragraph 17) in a post-commencement period may claim supplement under this Part of this Schedule (“post-commencement supplement”) in respect of—
- (a) that period, or
  - (b) any subsequent accounting period in which it carries on its ring fence trade.
- (2) Any post-commencement supplement allowed on a claim in respect of a post-commencement period shall be treated for the purposes of the Corporation Tax Acts (other than this Part of this Schedule) as if it were a loss—
- (a) incurred in carrying on the ring fence trade in that period,
  - (b) which falls in whole to be set off under section 393 against trading income from the ring fence trade in succeeding accounting periods.
- (3) Paragraph 74 of Schedule 18 to the Finance Act 1998 (company tax returns etc: time limit for claims for group relief) shall apply in relation to a claim for post-commencement supplement as it applies in relation to a claim for group relief.

#### **Amount of post-commencement supplement for a post-commencement period**

- 16 (1) The amount of the post-commencement supplement for any post-commencement period in respect of which a claim under paragraph 15 is made is the relevant percentage for that period of the reference amount for that period.
- (2) If the post-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.
- (3) Paragraphs 19 to 24 have effect for the purpose of determining the reference amount for a post-commencement period.

#### **Ring fence losses and qualifying E&A losses**

- 17 (1) Where—
- (a) in any post-commencement period (“the period of the loss”) a qualifying company carrying on a ring fence trade incurs a loss in the trade, and
  - (b) some or all of the loss falls to be set off under section 393 against trading income from the trade in succeeding accounting periods,
- so much of the loss as falls to be so set off is a “ring fence loss” of the company.

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- (2) In determining for the purposes of this Part of this Schedule how much of a loss incurred in a ring fence trade falls to be set off as mentioned in sub-paragraph (1)(b), it shall be assumed that every claim is made that could be made by the company under section 393A to set losses incurred in the ring fence trade against ring fence profits of earlier post-commencement periods.
- (3) So much of a ring fence loss as is attributable to qualifying E&A allowances for the period of the loss is a “qualifying E&A loss”.
- (4) A ring fence loss is attributable to qualifying E&A allowances to the extent that the amount of the ring fence loss does not exceed the amount of the qualifying E&A allowances for the period of the loss.
- (5) But a claim for post-commencement supplement may include an election for a ring fence loss to be treated—
  - (a) as attributable to qualifying E&A allowances for the period of the loss to such lesser extent as may be specified in the election, or
  - (b) as not attributable to such allowances.
- (6) “Qualifying E&A allowances”, in the case of an accounting period, means allowances for that period under Part 6 of the Capital Allowances Act in respect of qualifying E&A expenditure incurred by the company (including any pre-commencement supplement treated under paragraph 9(2) as such an allowance).
- (7) This paragraph has effect for the purposes of this Part of this Schedule.

### **Ring fence losses and non-qualifying losses**

- 18 (1) So much of a ring fence loss as is not a qualifying E&A loss is a non-qualifying loss.
- (2) Where—
  - (a) a loss was incurred by a qualifying company in its ring fence trade in an accounting period ending on or before 31st December 2003, and
  - (b) some or all of that loss falls to be set off under section 393 against profits of that trade in accounting periods ending on or after that date,
 so much of the loss as falls to be so set off is a ring fence loss and that loss is a non-qualifying loss.
- (3) This paragraph has effect for the purposes of this Part of this Schedule.

### **The pool of qualifying E&A losses and the pool of non-qualifying losses**

- 19 (1) For the purpose of determining the amount of any post-commencement supplement, a qualifying company shall be taken at all times in its post-commencement periods to have—
  - (a) a continuing pool of the company’s non-qualifying losses (the “non-qualifying pool”), and
  - (b) a continuing mixed pool of the company’s qualifying E&A losses and post-commencement supplement (the “qualifying pool”).
- (2) A pool continues even if the amount in it is nil.



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### **The non-qualifying pool**

- 20 (1) The non-qualifying pool consists of the company's non-qualifying losses, allocated to the pool in accordance with sub-paragraph (2).
- (2) A non-qualifying loss is allocated to the pool by adding the amount of the non-qualifying loss to the pool in the period of the loss.
- (3) In the case of a non-qualifying loss incurred in an accounting period ending on or before 31st December 2003, the period of the loss shall be taken for the purposes of sub-paragraph (2) to be the first accounting period of the company that ends on or after 1st January 2004.
- (4) The amount in the non-qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.
- (5) Where a reduction in the amount in the non-qualifying pool falls to be made in any accounting period—
- (a) the reduction is to be made after the addition to the pool of any non-qualifying loss allocated to the pool in that period in accordance with sub-paragraph (2), and
  - (b) references to the amount in the non-qualifying pool shall be construed accordingly.

### **The qualifying pool**

- 21 (1) The qualifying pool consists of—
- (a) the company's qualifying E&A losses, allocated to the pool in accordance with sub-paragraph (2)(a), and
  - (b) the company's post-commencement supplement, allocated to the pool in accordance with sub-paragraph (2)(b).
- (2) The allocation of qualifying E&A losses and post-commencement supplement to the pool is as follows—
- (a) the amount of a qualifying E&A loss is added to the pool in the period of the loss, and
  - (b) if any post-commencement supplement is allowed on a claim in respect of a post-commencement period, the amount of that supplement is added to the pool in that period.
- (3) The amount in the qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.
- (4) Where a reduction in the amount in the qualifying pool falls to be made in any accounting period, the reduction is to be made—
- (a) after the addition to the pool of the amount of any qualifying E&A losses allocated to the pool in that period in accordance with sub-paragraph (2)(a), but
  - (b) before determining, and adding to the pool, the amount of any supplement claimed in respect of the period,
- and references to the amount in the pool shall be construed accordingly.

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### **Reductions in respect of utilised ring fence losses**

- 22 (1) If one or more ring fence losses are set off under section 393 against any profits of a post-commencement period, reductions shall be made in that period in accordance with this paragraph.
- (2) The amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the total amount so set off.
- (3) If any of that sum remains after being so set against the amount in the non-qualifying pool, the amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

### **Reductions in respect of unrelieved group ring fence profits**

- 23 (1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions shall be made in that period in accordance with this paragraph.
- (2) In the following provisions of this paragraph, references to the remaining amount in a pool are references to so much (if any) of the amount in the pool as remains after making any reductions that fall to be made in accordance with paragraph 22.
- (3) The remaining amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.
- (4) If any of that sum remains after being so set against the remaining amount in the non-qualifying pool, the remaining amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

### **The reference amount for a post-commencement period**

- 24 For the purposes of this Part of this Schedule the reference amount for a post-commencement period is so much of the amount in the qualifying pool as remains after making any reductions required by paragraph 22 or 23.”.

## SCHEDULE 39

Section 296

### STAMP DUTY LAND TAX AND STAMP DUTY

#### **PART 1**

#### AMENDMENTS TO PART 4 OF THE FINANCE ACT 2003: GENERAL

##### *Introduction*

- 1 Part 4 of the Finance Act 2003 (c. 14) (stamp duty land tax) is amended in accordance with this Part of this Schedule.

##### *Variation of lease*

- 2 In section 43 (land transactions)—

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- (a) in paragraph (c) of subsection (3) (variation of chargeable interest), after “interest” insert “ (other than a lease) ”;
- (b) after that paragraph insert—
  - “(d) the variation of a lease is an acquisition and disposal of a chargeable interest only where it takes effect, or is treated for the purposes of this Part, as the grant of a new lease.”.

*Agreement for lease*

3 In section 44 (contract and conveyance), after subsection (9) insert—

“(9A) Where—

- (a) paragraph 12A of Schedule 17A applies (agreement for lease), or
- (b) paragraph 19(3) to (6) of Schedule 17A applies (missives of let etc in Scotland),

it applies in place of subsections (4), (8) and (9).”.

*Contract providing for conveyance to third party*

4 (1) After section 44 insert—

**“44A Contract providing for conveyance to third party**

- (1) This section applies where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
  - (a) to a person (C) who is not a party to the contract, or
  - (b) either to such a person or to B.

(2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.

(3) If the contract is substantially performed B is treated for the purposes of this Part as acquiring a chargeable interest, and accordingly as entering into a land transaction.

The effective date of the transaction is when the contract is substantially performed.

(4) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the contract.

(5) Subject to subsection (6), section 44 (contract and conveyance) does not apply (except so far as it defines “substantial performance”) in relation to the contract.

(6) Where—

- (a) this section applies by virtue of subsection (1)(b), and
- (b) by reason of B’s direction or request, A becomes obliged to convey a chargeable interest to B,

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section 44 applies to that obligation as it applies to a contract for a land transaction that is to be completed by a conveyance.

- (7) Section 44 applies in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1) above, that is to be completed by a conveyance.

References to completion in that section, as it so applies, include references to conveyance by A to C of the subject matter of the contract between B and C.

- (8) In this section “contract” includes any agreement and “conveyance” includes any instrument.”.

- (2) In section 48 (chargeable interests), after subsection (6) insert—

“(7) This section has effect subject to subsection (3) of section 44A (contract and conveyance to third party).”.

- (3) In section 77 (notifiable transactions), after subsection (4) insert—

“(5) A land transaction that a person is treated as entering into by virtue of subsection (3) of section 44A (contract and conveyance to third party) is notifiable.”.

*Contract and conveyance: effect of transfer of rights*

- 5 (1) Section 45 (contract and conveyance: effect of transfer of rights) is amended as follows.

- (2) In subsection (1)—

- (a) after paragraph (b) insert “, and  
(c) paragraph 12B of Schedule 17A (assignment of agreement for lease) does not apply.”;
- (b) at the end insert “, and references to the transferor and the transferee shall be read accordingly”.

- (3) For subsection (5) substitute—

“(5) Where a transfer of rights relates to part only of the subject-matter of the original contract (“the relevant part”)—

- (a) subsection (8)(b) of section 44 (restriction of charge to tax on subsequent conveyance) has effect as if the reference to the amount of tax chargeable on that contract were a reference to an appropriate proportion of that amount, and
- (b) a reference in the second sentence of subsection (3) above to the original contract, or a reference in subsection (4) above to the secondary contract arising from an earlier transfer of rights, is to that contract so far as relating to the relevant part (and that contract so far as not relating to the relevant part shall be treated as a separate contract).”.

- (4) After that subsection insert—

“(5A) In relation to a land transaction treated as taking place by virtue of subsection (3)—

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- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to the vendor under the original contract;
- (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either the vendor under the original contract or the transferor.”.

(5) After section 45 insert—

**“45A Contract providing for conveyance to third party: effect of transfer of rights**

- (1) This section applies where—
  - (a) a contract (“the original contract”) is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
    - (i) to a person (C) who is not a party to the contract, or
    - (ii) either to such a person or to B,
  - and
  - (b) there is an assignment or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person (D) becomes entitled to exercise any of B’s rights under the original contract in place of B.

References in the following provisions of this section to a transfer of rights are to any such assignment or other transaction.

- (2) D is not regarded as entering into a land transaction by reason of the transfer of rights, but section 44A (contract providing for conveyance to third party) has effect in accordance with the following provisions of this section.
- (3) That section applies as if—
  - (a) D had entered into a contract (a “secondary contract”) in the same terms as the original contract except with D as a party instead of B, and
  - (b) the consideration due from D under the secondary contract were—
    - (i) so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given (directly or indirectly) by D or a person connected with him, and
    - (ii) the consideration given for the transfer of rights.
- (4) The substantial performance of the original contract shall be disregarded if—
  - (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract, or
  - (b) it occurs after the transfer of rights.
- (5) Where there are successive transfers of rights, subsection (3) has effect in relation to each of them.
- (6) The substantial performance of the secondary contract arising from an earlier transfer of rights shall be disregarded if—

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- (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract arising from a subsequent transfer of rights, or
  - (b) it occurs after that subsequent transfer.
- (7) Where a transfer of rights relates to only part of the subject matter of the original contract, or to only some of the rights under that contract—
- (a) a reference in subsection (3)(a) or (4) to the original contract, or a reference in subsection (6) to the secondary contract arising from an earlier transfer, is to that contract so far as relating to that part or those rights, and
  - (b) that contract so far as not relating to that part or those rights shall be treated as a separate contract.
- (8) The effective date of a land transaction treated as entered into by virtue of subsection (3) is not earlier than the date of the transfer of rights.
- (9) In relation to a such a transaction—
- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to A;
  - (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either A or B.
- (10) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of subsection (3)(b).
- (11) In this section “contract” includes any agreement.”.
- (6) In section 122 (index of defined expressions), in the entry for “vendor” insert at the end “ (see too sections 45(5A) and 45A(9)) ”.

*Relief for sale and leaseback arrangements*

<sup>6</sup> [F821(1) Section 57A (sale and leaseback arrangements) (inserted by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816)) is amended as follows.

- (2) In subsection (3) (the qualifying conditions), for paragraph (b) substitute—
- “(aa) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
  - (b) that the only other consideration (if any) for the sale is the payment of money or the assumption, satisfaction or release of a debt (or both),”.
- (3) After paragraph (c) of that subsection insert—
- “(d) that the sale is not a transfer of rights within the meaning of section 45 (contract and conveyance: effect of transfer of rights) or 45A (contract providing for conveyance to third party: effect of transfer of rights), and
  - (e) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7) at that date.”.

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- (4) Omit subsection (4) (chargeable consideration for sale taken to be not less than market value).]

#### Textual Amendments

**F821** Sch. 39 para. 6 repealed (with effect in accordance with Sch. 39 para. 26 of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#)

#### *Registration of land transactions*

- 7 In section 79 (registration of land transactions etc), in subsection (2) (transactions to which section does not apply), for the words from “other than” to the end of paragraph (b) substitute “other than a transaction treated as taking place—
- (a) under subsection (4) of section 44 (contract and conveyance) or under that section as it applies by virtue of section 45 (contract and conveyance: effect of transfer of rights), or
  - (b) under subsection (3) of section 44A (contract providing for conveyance to third party) or under that section as it applies by virtue of section 45A (contract providing for conveyance to third party: effect of transfer of rights).”.

#### *“Effective date” of a transaction*

- 8 In section 119 (meaning of “effective date” of a transaction), in subsection (2) (cases where effective date is not date of completion)—
- (a) after the entry for section 44(4) insert— “ section 44A(3) (contract providing for conveyance to third party), section 45A(8) (contract providing for conveyance to third party: effect of transfer of rights), ”;
  - (b) at the end insert— “ paragraph 12A(2) of Schedule 17A (agreement for lease followed by substantial performance), paragraph 12B(3) of that Schedule (assignment of agreement for lease occurring after agreement substantially performed), and paragraph 19(3) of that Schedule (missives of let etc in Scotland followed by substantial performance). ”.

#### *Chargeable consideration*

- 9 (1) Schedule 4 (chargeable consideration) is amended as follows.
- (2) In paragraph 10 (carrying out of works), after sub-paragraph (2) insert—
- “(2A) Where subsection (8) of section 44 (contract and conveyance) applies, so that there are two notifiable transactions (the first being the contract and the second being the transaction effected on completion), the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.”.
- (3) In paragraph 17 (arrangements involving public or educational bodies) (inserted by the Stamp Duty Land Tax (Amendment of Schedule 4 to the Finance Act 2003) Regulations 2003 (S.I. 2003/3293)), after sub-paragraph (4) insert—
- “(4A) Sub-paragraphs (3) and (4) shall be disregarded for the purposes of determining whether the land transaction in question is notifiable.”.

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*Provisions relating to leases*

10 In Schedule 5 (amount of tax chargeable: rent), after paragraph 1 insert—

*“Amounts payable in respect of periods before grant of lease*

1A For the purposes of this Part “rent” does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease.”

*Provisions relating to leases*

11 <sup>F822</sup>(1) Schedule 17A (further provisions relating to leases) (inserted by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816)) is amended as follows.

(2) After paragraph 7 insert—

*“First rent review in final quarter of fifth year*

7A Where—

- (a) a lease contains provision under which the rent may be adjusted,
- (b) under that provision the first (or only) such adjustment—
  - (i) is to an amount that (before the adjustment) is uncertain, and
  - (ii) has effect from a date (the “review date”) that is expressed as falling five years after a specified date,
- and
- (c) the specified date falls within the three months before the beginning of the term of the lease,

this Schedule has effect as if references to the first five years of the term of the lease were to the period beginning with the start of the term of the lease and ending with the review date.

References to the fifth year of the term of the lease shall be read accordingly.”.

(3) In paragraph 9 (rent for overlap period in case of grant of further lease), in subparagraph (1), at the end of paragraph (b) insert

- (c) a person claiming relief against re-entry or forfeiture as under-lessee in relation to the original sub-lease (“the old lease”) is granted a lease (“the new lease”) in pursuance of an order of a court.”.

(4) After paragraph 12 insert—

*“Agreement for lease*

12A(1) This paragraph applies where in England and Wales or Northern Ireland—

- (a) an agreement for a lease is entered into, and
- (b) the agreement is substantially performed without having been completed.



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- (2) The agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.

The effective date of the transaction is that date.

- (3) Where a lease is subsequently granted in pursuance of the agreement—
- (a) the notional lease is treated as if it were surrendered at that time, and
  - (b) the lease itself is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.

- (4) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.

- (5) In this paragraph “substantially performed” and “completed” have the same meanings as in section 44 (contract and conveyance).

#### *Assignment of agreement for lease*

12B (1) This paragraph applies, in place of section 45 (contract and conveyance: effect of transfer of rights), where in England and Wales or Northern Ireland a person assigns his interest as lessee under an agreement for a lease.

- (2) If the assignment occurs without the agreement having been substantially performed, section 44 (contract and conveyance) has effect as if—
- (a) the contract were with the assignee and not the assignor, and
  - (b) the consideration given by the assignee for entering into the contract included any consideration given by him for the assignment.

- (3) If the assignment occurs after the agreement has been substantially performed—
- (a) the assignment is a separate land transaction, and
  - (b) the effective date of that transaction is the date of the assignment.

- (4) Where there are successive assignments, this paragraph has effect in relation to each of them.”.

- (5) In paragraph 16 (surrender of existing lease in return for new lease), at the end insert — “ Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case. ”.

- (6) In paragraph 19 (provisions relating to leases in Scotland), for sub-paragraph (2) substitute—

“(2) Where in Scotland there is a lease constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”)—

- (a) the first lease is treated as if it were surrendered at that time, and

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- (b) the second lease is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (3) Where in Scotland—
- (a) there are concluded missives of let that do not constitute a lease, and
  - (b) the agreement represented by the missives of let is substantially performed without a lease having been executed,
- the missives of let are treated as if they did constitute a lease (“the notional lease”).
- The effective date of the transaction is when the agreement is substantially performed.
- (4) Where sub-paragraph (3) applies and at some later time a lease is executed—
- (a) the notional lease is treated as if it were surrendered at that time, and
  - (b) the lease itself is treated for the purposes of paragraph 9 as if it were granted in consideration of that surrender.
- (5) References in sub-paragraphs (2) to (4) to the execution of a lease are to the execution of a lease that either—
- (a) is in conformity with the missives of let, or
  - (b) relates to substantially the same property and period as the missives of let.
- (6) Where sub-paragraph (3) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.”.]

#### Textual Amendments

**F822** Sch. 39 para. 11 repealed (with effect in accordance with Sch. 39 para. 26 of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#)

#### *Transfer of rights after 10th July 2003 relating to earlier contract: applicability of SDLT regime*

- 12 In Schedule 19 (commencement and transitional provisions), in paragraph 3 (contract entered into before first relevant date), for paragraph (c) of sub-paragraph (3) substitute—
- “(c) if on or after that date there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.”.

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### *Commencement*

- 13 (1) Paragraph 4, and paragraphs 7 and 8 so far as relating to the section 44A inserted by that paragraph, apply in relation to any contract entered into after 17th March 2004.
- (2) Paragraph 5, and paragraphs 7 and 8 so far as relating to the section 45A inserted by that paragraph, apply in relation to any transfer of rights occurring after that date.
- (3) Subject to sub-paragraphs (4) and (5), the amendments made by the other provisions of this Part of this Schedule apply in relation to any transaction of which the effective date is after 17th March 2004.
- (4) Paragraph 12 does not apply in relation to a contract that was substantially performed before 17th March 2004.
- (5) Paragraphs 6 and 11 (which contain amendments the effect of which is reproduced in Part 2 of this Schedule) do not apply in relation to any transaction of which the effective date is on or after the day on which this Act is passed.
- (6) In this paragraph—  
“effective date” and “substantially performed” have the same meaning as in Part 4 of the Finance Act 2003 (as amended by this Part of this Schedule);  
“transfer of rights” has the same meaning as in section 45 of that Act or, as the case may require, section 45A of that Act (inserted by paragraph 5(5)).

## **PART 2**

### RE-ENACTMENT, WITH CHANGES, OF AMENDMENTS MADE BY SECTION 109 REGULATIONS

#### *Introduction and revocation*

- 14 (1) This Part of this Schedule contains amendments to Parts 4 and 5 of the Finance Act 2003 (c. 14) (stamp duty land tax and stamp duty) corresponding, subject to certain changes, to those made by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816) (made under section 109 of that Act).
- (2) Those regulations are revoked.

#### *Meaning of taking possession*

- 15 (1) Section 44 (contract and conveyance) is amended as follows.
- (2) In subsection (5)(a) (meaning of “substantial performance”: purchaser taking possession), after “the purchaser” insert “, or a person connected with the purchaser,”.
- (3) In subsection (6) (meaning of taking possession)—  
(a) for paragraph (a) substitute—  
“ (a) possession includes receipt of rents and profits or the right to receive them, and”; and  
(b) in paragraph (b), for “the purchaser takes possession” substitute “possession is taken”.

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(4) After subsection (10) add—

“(11) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this section.”.

*Relief for sale and leaseback arrangements*

16 After section 57 (disadvantaged areas relief) insert—

**“57A Sale and leaseback arrangements**

(1) The leaseback element of a sale and leaseback arrangement is exempt from charge if the qualifying conditions specified below are met.

(2) A “sale and leaseback” arrangement means an arrangement under which—

- (a) A transfers or grants to B a major interest in land (the “sale”), and
- (b) out of that interest B grants a lease to A (the “leaseback”).

(3) The qualifying conditions are—

- (a) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
- (b) that the only other consideration (if any) for the sale is the payment of money or the assumption, satisfaction or release of a debt (or both),
- (c) that the sale is not a transfer of rights within the meaning of section 45 (contract and conveyance: effect of transfer of rights) or 45A (contract providing for conveyance to third party: effect of transfer of rights), and
- (d) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7) at that date.

(4) In this section—

“debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date; and

“money” means money in sterling or another currency.”.

*Relief for certain acquisitions of residential property*

17 (1) For sections 58 and 59 (relief for certain exchanges of residential property and relocation relief) substitute—

**“58A Relief for certain acquisitions of residential property**

Schedule 6A provides for relief in the case of certain acquisitions of residential property.”.

(2) After Schedule 6 insert—

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“SCHEDULE  
6A

Section 58A

RELIEF FOR CERTAIN ACQUISITIONS OF RESIDENTIAL PROPERTY

**Acquisition by house-building company from individual acquiring new dwelling**

- 1 (1) Where a dwelling (“the old dwelling”) is acquired by a house-building company from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
- (a) that the individual (whether alone or with other individuals) acquires from the house-building company a new dwelling,
  - (b) that the individual—
    - (i) occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition, and
    - (ii) intends to occupy the new dwelling as his only or main residence,
  - (c) that each acquisition is entered into in consideration of the other, and
  - (d) that the area of land acquired by the house-building company does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met but the area of land acquired by the house-building company exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (4) A “house-building company” means a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings.

References in this paragraph to such a company include any company connected with it.

- (5) In this paragraph—
- (a) references to the acquisition of the new dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling;
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (c) references to the market value of the old dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

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### **Acquisition by property trader from individual acquiring new dwelling**

- 2 (1) Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies,
  - (b) that the individual (whether alone or with other individuals) acquires a new dwelling from a house-building company,
  - (c) that the individual—
    - (i) occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition, and
    - (ii) intends to occupy the new dwelling as his only or main residence,
  - (d) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the old dwelling, or
    - (ii) to grant a lease or licence of the old dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and
  - (e) that the area of land acquired by the property trader does not exceed the permitted area.
- Paragraph (d)(ii) does not apply to the grant of lease or licence to the individual for a period of no more than six months.
- (3) Where the conditions in sub-paragraph (2)(a) to (d) are met, but the area of land acquired by the property trader exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (4) The provisions of paragraph 1(4) (meaning of “house-building company” etc) also have effect for the purposes of this paragraph.
- (5) In this paragraph—
- (a) references to the acquisition of a new dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling;
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (c) references to the market value of the old dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

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### **Acquisition by property trader from personal representatives**

- 3 (1) Where a dwelling is acquired by a property trader from the personal representatives of a deceased individual, the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from personal representatives of deceased individuals,
  - (b) that the deceased individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of his death,
  - (c) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the dwelling, or
    - (ii) to grant a lease or licence of the dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling, and
  - (d) that the area of land acquired does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met, but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph—
- (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (b) references to the market value of the dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

### **Acquisition by property trader from individual where chain of transactions breaks down**

- 4 (1) Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if—
- (a) the individual has made arrangements to sell a dwelling (“the old dwelling”) and acquire another dwelling (“the second dwelling”),
  - (b) the arrangements to sell the old dwelling fail, and
  - (c) the acquisition of the old dwelling is made for the purpose of enabling the individual’s acquisition of the second dwelling to proceed,
- and the following conditions are met.
- (2) The conditions are—

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- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in those circumstances,
- (b) that the individual—
  - (i) occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition, and
  - (ii) intends to occupy the second dwelling as his only or main residence,
- (c) that the property trader does not intend—
  - (i) to spend more than the permitted amount on refurbishment of the old dwelling, or
  - (ii) to grant a lease or licence of the old dwelling, or
  - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and
- (d) that the area of land acquired does not exceed the permitted area.

Paragraph (c)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than six months.

- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met, but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (4) In this paragraph—
  - (a) references to the acquisition of the second dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling;
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (c) references to the market value of the old dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

### **Acquisition by employer in case of relocation of employment**

- 5 (1) Where a dwelling is acquired from an individual (whether alone or with other individuals) by his employer, the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
  - (a) that the individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of the acquisition,
  - (b) that the acquisition is made in connection with a change of residence by the individual resulting from relocation of employment,
  - (c) that the consideration for the acquisition does not exceed the market value of the dwelling, and



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- (d) that the area of land acquired does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph “relocation of employment” means a change of the individual’s place of employment due to—
  - (a) his becoming an employee of the employer,
  - (b) an alteration of the duties of his employment with the employer, or
  - (c) an alteration of the place where he normally performs those duties.
- (5) For the purposes of this paragraph a change of residence is one “resulting from” relocation of employment if—
  - (a) the change is made wholly or mainly to allow the individual to have his residence within a reasonable daily travelling distance of his new place of employment, and
  - (b) his former residence is not within a reasonable daily travelling distance of that place.

The individual’s “new place of employment” means the place where he normally performs, or is normally to perform, the duties of his employment after the relocation.

- (6) In this paragraph—
  - (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling;
  - (b) references to the market value of the dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area; and
  - (c) references to an individual’s employer include a prospective employer.

### **Acquisition by property trader in case of relocation of employment**

- 6 (1) Where a dwelling is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
  - (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in connection with a change of residence resulting from relocation of employment,
  - (b) that the individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of the acquisition,
  - (c) that the acquisition is made in connection with a change of residence by the individual resulting from relocation of employment,
  - (d) that the consideration for the acquisition does not exceed the market value of the dwelling,
  - (e) that the property trader does not intend—

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- (i) to spend more than the permitted amount on refurbishment of the dwelling, or
- (ii) to grant a lease or licence of the dwelling, or
- (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling, and

(f) that the area of land acquired does not exceed the permitted area.

Paragraph (e)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than six months.

- (3) Where the conditions in sub-paragraph (2)(a) to (e) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph “relocation of employment” means a change of the individual’s place of employment due to—
- (a) his becoming employed by a new employer,
  - (b) an alteration of the duties of his employment, or
  - (c) an alteration of the place where he normally performs those duties.
- (5) For the purposes of this paragraph a change of residence is one “resulting from” relocation of employment if—
- (a) the change is made wholly or mainly to allow the individual to have his residence within a reasonable daily travelling distance of his new place of employment, and
  - (b) his former residence is not within a reasonable daily travelling distance of that place.

An individual’s “new place of employment” means the place where he normally performs, or is normally to perform, the duties of his employment after the relocation.

- (6) In this paragraph—
- (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (b) references to the market value of the dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

### **Meaning of “dwelling”, “new dwelling” and “the permitted area”**

- 7 (1) “Dwelling” includes land occupied and enjoyed with the dwelling as its garden or grounds.
- (2) A building or part of a building is a “new dwelling” if—
- (a) it has been constructed for use as a single dwelling and has not previously been occupied, or
  - (b) it has been adapted for use as a single dwelling and has not been occupied since its adaptation.

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- (3) “The permitted area”, in relation to a dwelling, means land occupied and enjoyed with the dwelling as its garden or grounds that does not exceed—
- (a) an area (inclusive of the site of the dwelling) of 0.5 of a hectare, or
  - (b) such larger area as is required for the reasonable enjoyment of the dwelling as a dwelling having regard to its size and character.
- (4) Where sub-paragraph (3)(b) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the dwelling as its garden or grounds if the rest of the land were separately occupied.

### **Meaning of “property trader” and “principal”**

- 8 (1) A “property trader” means—
- (a) a company,
  - (b) a limited liability partnership, or
  - (c) a partnership whose members are all either companies or limited liability partnerships,
- that carries on the business of buying and selling dwellings.
- (2) In relation to a property trader a “principal” means—
- (a) in the case of a company, a director;
  - (b) in the case of a limited liability partnership, a member;
  - (c) in the case of a partnership whose members are all either companies or limited liability partnerships, a member or a person who is a principal of a member.
- (3) For the purposes of this Schedule—
- (a) anything done by or in relation to a company connected with a property trader is treated as done by or in relation to that property trader, and
  - (b) references to the principals or employees of a property trader include the principals or employees of any such company.

### **Meaning of “refurbishment” and “the permitted amount”**

- 9 (1) “Refurbishment” of a dwelling means the carrying out of works that enhance or are intended to enhance the value of the dwelling, but does not include—
- (a) cleaning the dwelling, or
  - (b) works required solely for the purpose of ensuring that the dwelling meets minimum safety standards.
- (2) The “permitted amount”, in relation to the refurbishment of a dwelling, is—
- (a) 10,000, or
  - (b) 5% of the consideration for the acquisition of the dwelling,
- whichever is the greater, but subject to a maximum of £20,000.

### **Connected companies etc**

- 10 Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this Schedule.

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### **Withdrawal of relief under this Schedule**

- 11 (1) Relief under this Schedule is withdrawn in the following circumstances.
- (2) Relief under paragraph 2 (acquisition by property trader from individual acquiring new dwelling) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling, or
  - (b) grants a lease or licence of the old dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

Paragraph (b) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (3) Relief under paragraph 3 (acquisition by property trader from personal representatives) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the dwelling, or
  - (b) grants a lease or licence of the dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling.
- (4) Relief under paragraph 4 (acquisition by property trader from individual where chain of transactions breaks down) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling, or
  - (b) grants a lease or licence of the old dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

Paragraph (b) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (5) Relief under paragraph 6 (acquisition by property trader in case of relocation of employment) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the dwelling, or
  - (b) grants a lease or licence of the dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling.

Paragraph (b) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (6) Where relief is withdrawn the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief.”.

- (3) In section 81 (further return where relief withdrawn)—
- (a) in subsection (1) (obligation to deliver a further return), before paragraph (a) insert—

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- “(za) paragraph 11 of Schedule 6A (relief for certain acquisitions of residential property),”; and
- (b) in subsection (4) (meaning of disqualifying event), before paragraph (a) insert—
  - “(za) in relation to the withdrawal of relief under Schedule 6A, an event mentioned in paragraph (a), (b) or (c) of paragraph 11(2), (3), (4) or (5) of that Schedule;”.
- (4) In section 87 (interest on unpaid tax)—
  - (a) in subsection (3)(a) (relevant date where relief is withdrawn), before subparagraph (i) insert—
    - “(ia) Schedule 6A (relief for certain acquisitions of residential property),”; and
  - (b) in subsection (4) (meaning of disqualifying event), before paragraph (a) insert—
    - “(za) in relation to the withdrawal of relief under Schedule 6A an event mentioned in paragraph (a), (b) or (c) of paragraph 11(2), (3), (4) or (5) of that Schedule;”.

*Initial transfer of assets to trustees of unit trust scheme*

F823 18 .....

**Textual Amendments**

**F823** Sch. 39 para. 18 repealed (with effect in accordance with Sch. 26 Pt. 7(3) Note of the amending Act) by Finance Act 2006 (c. 25), Sch. 26 Pt. 7(3)

*Return or further return in consequence of later linked transaction*

19 (1) After section 81 (further return where relief withdrawn) insert—

**“81A Return or further return in consequence of later linked transaction**

- (1) Where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that the earlier transaction becomes notifiable, or that additional tax is payable in respect of the earlier transaction or that tax is payable in respect of the earlier transaction where none was payable before—
  - (a) the purchaser under the earlier transaction must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the effective date of the later transaction,
  - (b) the return must include a self-assessment of the amount of tax chargeable as a result of the later transaction,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the earlier transaction, and
  - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (2) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this section as they apply to a return under

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section 76 (general requirement to deliver land transaction return), with the following adaptations—

- (a) in paragraph 5 (formal notice to deliver return), the requirement in sub-paragraph (2)(a) that the notice specify the transaction to which it relates shall be read as requiring both the earlier and later transactions to be specified;
  - (b) references to the effective date of the transaction to which the return relates shall be read as references to the effective date of the later transaction.
- (3) This section does not affect any requirement to make a return under section 76 in respect of the later transaction.”
- (2) In section 81(3) for “land transaction return” substitute “ return under section 76 (general requirement to deliver land transaction return) ”.
- (3) In section 87 (interest on unpaid tax), in subsection (3) (meaning of “the relevant date”), after paragraph (a) insert—
- “(aa) in the case of an amount payable under section 81A in respect of an earlier transaction because of the effect of a later linked transaction, the effective date of the later transaction;”.

*Declaration by person authorised to act on behalf of purchaser*

20 After section 81A (inserted by paragraph 19 above) insert—

**“81B Declaration by person authorised to act on behalf of individual**

- (1) This section applies to the declaration mentioned in paragraph 1(1)(c) of Schedule 10 or paragraph 2(1)(c) of Schedule 11 (declaration that return or self-certificate is correct and complete).
- (2) The requirement that an individual make such a declaration (alone or jointly with others) is treated as met if a declaration to that effect is made by a person authorised to act on behalf of that individual in relation to the matters to which the return or certificate relates.
- (3) For the purposes of this section a person is not regarded as authorised to act on behalf of an individual unless he is so authorised by a power of attorney in writing, signed by that individual.

In this subsection as it applies in Scotland “power of attorney” includes factory and commission.

- (4) Nothing in this section affects the making of a declaration in accordance with—
  - (a) section 100(2) (persons through whom a company acts), or
  - (b) section 106 (1) or (2) (person authorised to act on behalf of incapacitated person or minor).”.

*Crown application*

- 21 (1) Section 107 (Crown application) is amended as follows.
- (2) For subsection (1) (extent of Crown application) substitute—

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“(1) This Part binds the Crown, subject to the following provisions of this section.”.

(3) After subsection (3) add—

“(4) Nothing in this section shall be read as making the Crown liable to prosecution for an offence.”.

*Further provision relating to leases*

22 (1) For section 120 (meaning of “lease” and other supplementary provisions) substitute—

**“120 Further provisions relating to leases**

Schedule 17A contains further provisions relating to leases.”.

(2) After Schedule 17 insert—

“SCHEDULE  
17A

Section 120

FURTHER PROVISIONS RELATING TO LEASES

**Meaning of “lease”**

1 In the application of this Part to England and Wales or Northern Ireland “lease” means—

- (a) an interest or right in or over land for a term of years (whether fixed or periodic), or
- (b) a tenancy at will or other interest or right in or over land terminable by notice at any time.

**Leases for a fixed term**

2 In the application of the provisions of this Part to a lease for a fixed term, no account shall be taken of—

- (a) any contingency as a result of which the lease may determine before the end of the fixed term, or
- (b) any right of either party to determine the lease or renew it.

**Leases that continue after a fixed term**

3 (1) This paragraph applies to—

- (a) a lease for a fixed term and thereafter until determined, or
- (b) a lease for a fixed term that may continue beyond the fixed term by operation of law.

(2) For the purposes of this Part (except section 77 (notifiable transactions)), a lease to which this paragraph applies is treated—

- (a) in the first instance as if it were a lease for the original fixed term and no longer,

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- (b) if the lease continues after the end of that term, as if it were a lease for a fixed term one year longer than the original fixed term,
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term two years longer than the original fixed term,
- and so on.
- (3) Where the effect of sub-paragraph (2) in relation to the continuation of the lease after the end of a fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—
    - (a) the purchaser must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,
    - (b) the return must include a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,
    - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
    - (d) the return must be accompanied by payment of the tax or additional tax payable.
  - (4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.
  - (5) For the purposes of section 77 (notifiable transactions) a lease to which this paragraph applies is a lease for whatever is its fixed term.

#### **Treatment of leases for indefinite term**

- 4 (1) For the purposes of this Part (except section 77 (notifiable transactions))—
  - (a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of a year,
  - (b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of two years,
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of three years,

and so on.
- (2) No account shall be taken for the purposes of this Part of any other statutory provision in England and Wales or Northern Ireland deeming a lease for an indefinite period to be a lease for a different term.
- (3) Where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that additional tax is payable



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in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—

- (a) the purchaser must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,
  - (b) the return must include a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.
- (4A) For the purposes of section 77 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than seven years.
- (5) References in this paragraph to a lease for an indefinite period include—
- (a) a periodic tenancy or other interest or right terminable by a period of notice,
  - (b) a tenancy at will in England and Wales or Northern Ireland, or
  - (c) any other interest or right terminable by notice at any time.

### **Treatment of successive linked leases**

- 5 (1) This paragraph applies where—
- (a) successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
  - (b) those grants are linked transactions.
- (2) This Part applies as if the series of leases were a single lease—
- (a) granted at the time of the grant of the first lease in the series,
  - (b) for a term equal to the aggregate of the terms of all the leases, and
  - (c) in consideration of the rent payable under all of the leases.
- (3) The grant of later leases in the series is accordingly disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction).

### **Rent**

- 6 (1) For the purposes of this Part a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, shall be treated as entirely rent.

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- (2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of Schedule 4 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.

### **Variable or uncertain rent**

- 7 (1) This paragraph applies to determine the amount of rent payable under a lease where that amount—
- (a) varies in accordance with provision in the lease, or
  - (b) is contingent, uncertain or unascertained.
- (2) As regards rent payable in respect of any period before the end of the fifth year of the term of the lease—
- (a) the provisions of this Part apply as in relation to other chargeable consideration, and
  - (b) the provisions of section 51 (1) and (2) accordingly apply if the amount is contingent, uncertain or unascertained.
- (3) As regards rent payable in respect of any period after the end of the fifth year of the term of the lease, the annual amount is assumed for the purposes of this Part to be, in every case, equal to the highest amount of rent payable in respect of any consecutive twelve month period in the first five years of the term.

In determining that amount take into account (if necessary) any amounts determined as mentioned in sub-paragraph (2)(b), but disregard paragraph 9(2) (deemed reduction of rent for overlap period in case of grant of further lease).

- (4) This paragraph has effect subject to paragraph 8 (adjustment where rent payable ceases to be uncertain).
- (5) No account shall be taken for the purposes of this Part of any provision for rent to be adjusted in line with the retail prices index.

### *First rent review in final quarter of fifth year*

- 7A Where—
- (a) a lease contains provision under which the rent may be adjusted,
  - (b) under that provision the first (or only) such adjustment—
    - (i) is to an amount that (before the adjustment) is uncertain, and
    - (ii) has effect from a date (the “review date”) that is expressed as falling five years after a specified date,
- and
- (c) the specified date falls within the three months before the beginning of the term of the lease,

this Schedule has effect as if references to the first five years of the term of the lease were to the period beginning with the start of the term of the lease and ending with the review date. References to the fifth year of the term of the lease shall be read accordingly.

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*Adjustment where rent ceases to be uncertain*

- 8 (1) Where the provisions of section 51 (1) and (2) (contingent, uncertain or unascertained consideration) apply in relation to a transaction by virtue of paragraph 7 (uncertain rent) and—
- (a) the end of the fifth year of the term of the lease is reached, or
  - (b) the amount of rent payable in respect of the first five years of the term of the lease ceases to be uncertain at an earlier date,
- the following provisions have effect to require or permit reconsideration of how this Part applies to the transaction (and to any transaction in relation to which it is a linked transaction).
- (2) For the purposes of this paragraph the amount of rent payable ceases to be uncertain when—
- (a) in the case of contingent rent, the contingency occurs or it becomes clear that it will not occur, and
  - (b) in the case of uncertain or unascertained rent, the amount becomes ascertained.
- (3) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that a transaction becomes notifiable, or that additional tax is payable in respect of a transaction or that tax is payable where none was payable before—
- (a) the purchaser must make a return to the Inland Revenue within 30 days of the date referred to in sub-paragraph (1)(a) or (b),
  - (b) the return must contain a self-assessment of the tax chargeable in respect of the transaction on the basis of the information contained in the return,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (d) the return must be accompanied by payment of any tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessment and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to make land transaction return), subject to the adaptation that references to the effective date of the transaction shall be read as references to the date referred to in sub-paragraph (1)(a) or (b).
- (5) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that less tax is payable in respect of the transaction than has already been paid—
- (a) the purchaser may, within the period allowed for amendment of the land transaction return, amend the return accordingly;
  - (b) after the end of that period he may (if the land transaction return is not so amended) make a claim to the Inland Revenue for repayment of the amount overpaid.

*Rent for overlap period in case of grant of further lease*

- 9 (1) This paragraph applies where—

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- (a) A surrenders an existing lease to B (“the old lease”) and in consideration of that surrender B grants a lease to A of the same or substantially the same premises (“the new lease”),
  - (b) the tenant under a lease (“the old lease”) of premises to which Part 2 of the Landlord and Tenant Act 1954 or the Business Tenancies (Northern Ireland) Order 1996 applies makes a request for a new tenancy (“the new lease”) which is duly executed,
  - (c) on termination of a lease (“the head lease”) a sub-tenant is granted a lease (“the new lease”) of the same or substantially the same premises as those comprised in his original lease (“the old lease”)—
    - (i) in pursuance of an order of a court on a claim for relief against re-entry or forfeiture, or
    - (ii) in pursuance of a contractual entitlement arising in the event of the head lease being terminated,
- or
- (d) a person who has guaranteed the obligations of a lessee under a lease that has been terminated (“the old lease”) is granted a lease of the same or substantially the same premises (“the new lease”) in pursuance of the guarantee.
- (2) For the purposes of this Part the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease.
- (3) The overlap period is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.
- (4) The rent that would have been payable under the old lease shall be taken to be the amount taken into account in determining the stamp duty land tax chargeable in respect of the acquisition of the old lease.
- (5) This paragraph does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

*Tenants' obligations etc that do not count as chargeable consideration*

- 10 (1) In the case of the grant of a lease none of the following counts as chargeable consideration—
- (a) any undertaking by the tenant to repair, maintain or insure the demised premises (in Scotland, the leased premises);
  - (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord’s costs of management;
  - (c) any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market;
  - (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease;

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- (e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease.
- (2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.
- (3) The release of any such obligation as is mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the surrender of the lease.

*Cases where assignment of lease treated as grant of lease*

- 11 (1) This paragraph applies where—
- (a) the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), or
  - (b) a lease is granted to a person as bare trustee of the grantor, with the result that the lease is treated as vested in the grantor by virtue of paragraph 3 of Schedule 16.
- (2) The first assignment of the lease that is not exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), and in relation to which the assignee does not acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Part as if it were the grant of a lease by the assignor—
- (a) for a term equal to the unexpired term of the lease referred to in sub-paragraph (1), and
  - (b) on the same terms as those on which the assignee holds that lease after the assignment.
- (3) The provisions are—
- (a) section 57A (sale and leaseback arrangements);
  - (b) Part 1 or 2 of Schedule 7 (group relief or reconstruction or acquisition relief);
  - (c) section 66 (transfers involving public bodies);
  - (d) Schedule 8 (charities relief);
  - (e) any such regulations as are mentioned in section 123(3) (regulations reproducing in relation to stamp duty land tax the effect of enactments providing for exemption from stamp duty).
- (4) This paragraph does not apply where the relief in question is group relief, reconstruction or acquisition relief or charities relief and is withdrawn as a result of a disqualifying event occurring before the effective date of the assignment.
- (5) For the purposes of sub-paragraph (4) “disqualifying event” means—
- (a) in relation to the withdrawal of group relief, the purchaser ceasing to be a member of the same group as the vendor (within the meaning of Part 1 of Schedule 7);
  - (b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in paragraph 9(1)(a) of that Schedule or, as the case may be, the event mentioned in paragraph 11(1)(a) or (2)(a) of that Schedule;

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- (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 2(3) or 3(2) of Schedule 8.

*Assignment of lease: responsibility of assignee for returns etc*

- 12 (1) Where a lease is assigned, anything that but for the assignment would be required or authorised to be done by or in relation to the assignor under or by virtue of—
- (a) section 80 (adjustment where contingency ceases or consideration is ascertained),
  - (b) section 81A (return or further return in consequence of later linked transaction),
  - (c) paragraph 3 or 4 of this Schedule (return or further return required where lease for indefinite period continues), or
  - (d) paragraph 8 of this Schedule (adjustment where rent ceases to be uncertain),
- shall, if the event giving rise to the adjustment or return occurs after the effective date of the assignment, be done instead by or in relation to the assignee.
- (2) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor shall be treated as if it had been done by or in relation to the assignee.
- (3) This paragraph does not apply if the assignment falls to be treated as the grant of a lease by the assignor (see paragraph 11).

*Agreement for lease*

- 12A (1) This paragraph applies where in England and Wales or Northern Ireland—
- (a) an agreement for a lease is entered into, and
  - (b) the agreement is substantially performed without having been completed.
- (2) The agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.

The effective date of the transaction is that date.

- (3) Where a lease is subsequently granted in pursuance of the agreement—
- (a) the notional lease is treated as if it were surrendered at that time, and
  - (b) the lease itself is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (4) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.

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- (5) In this paragraph “substantially performed” and “completed” have the same meanings as in section 44 (contract and conveyance).

*Assignment of agreement for lease*

- 12B (1) This paragraph applies, in place of section 45 (contract and conveyance: effect of transfer of rights), where in England and Wales or Northern Ireland a person assigns his interest as lessee under an agreement for a lease.
- (2) If the assignment occurs without the agreement having been substantially performed, section 44 (contract and conveyance) has effect as if—
- (a) the contract were with the assignee and not the assignor, and
  - (b) the consideration given by the assignee for entering into the contract included any consideration given by him for the assignment.
- (3) If the assignment occurs after the agreement has been substantially performed—
- (a) the assignment is a separate land transaction, and
  - (b) the effective date of that transaction is the date of the assignment.
- (4) Where there are successive assignments, this paragraph has effect in relation to each of them.

*Increase of rent treated as grant of new lease: variation of lease*

- 13 (1) Where a lease is varied so as to increase the amount of the rent, the variation is treated for the purposes of this Part as if it were the grant of a lease in consideration of the additional rent made payable by it.
- (2) Sub-paragraph (1) does not apply to an increase of rent in pursuance of a provision contained in the lease (but see paragraph 14).

*Increase of rent treated as grant of new lease: abnormal increase after fifth year*

- 14 (1) This paragraph applies if, after the end of the fifth year of the term of a lease—
- (a) the amount of rent payable increases (or is increased) in accordance with the provisions of the lease, and
  - (b) the rent payable as a result (“the new rent”) is such that the increase falls to be regarded as abnormal (see paragraph 15).
- (2) The increase in rent is treated as if it were the grant of a lease in consideration of the excess rent.
- (3) The excess rent is the difference between the new rent and the rent previously taxed.
- (4) The rent previously taxed is—
- (a) where the provisions of this paragraph have not previously applied to a rent increase under the lease, the rent that is assumed to be payable after the fifth year of the term of the lease (in accordance with paragraph 7(3));

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- (b) where the provisions of this paragraph have previously so applied, the rent payable as a result of the last increase in relation to which the provisions of this paragraph applied.
- (5) The deemed grant is treated as—
- (a) made on the date on which the increased rent first became payable, and
  - (b) for a term equal to the unexpired part of the original lease, and as linked with the grant of the original lease (and with any other transaction with which that transaction is linked).
- (6) The assumption in paragraph 7(3) (that the rent does not change after the end of the fifth year of the term of a lease) does not apply for the purposes of this paragraph or paragraph 15 except for the purpose of determining the rent previously taxed.

*Increase of rent after fifth year: whether regarded as abnormal*

- 15 Whether an increase in rent is to be regarded for the purposes of paragraph 14 as abnormal is determined as follows:— *Step One*

Find the start date, which is—

- (a) where the provisions of that paragraph have not previously applied to a rent increase under the lease, the beginning of the period by reference to which the rent assumed to be payable after the fifth year of the term of the lease is determined in accordance with paragraph 7(3);
- (b) where the provisions of that paragraph have previously so applied, the date of the last increase in relation to which the provisions of that paragraph applied.

*Step Two*

Divide the period between the start date and the date on which the new rent first becomes payable (“the reference period”) into—

- (a) successive periods of twelve months running from the start date (if any), and
- (b) any remaining period which does not fall within paragraph (a).

*Step Three*

Find the factor by which the retail prices index has increased over each period identified in step two.

This is a figure expressed as a decimal and determined by the formula—

If, in relation to any period, RD is equal to or less than RI, the factor by which the retail prices index has increased over the period in question shall be treated as nil.

If, in relation to any period, the figure determined in accordance with the formula would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

*Step Four*



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Find the relevant factor for each period identified in step two.

This is a figure expressed as a decimal and determined by the formula—

where—

m is the number of months in the period in question (treating part of a month as a whole month), and

r is the factor by which the retail prices index has increased over the period in question, determined under step three.

If, in relation to any period, the figure determined in accordance with the formula would have more than 3 decimal places, round it to the nearest third decimal place.

#### *Step Five*

Find the uplift factor for the reference period as follows.

If there is only one period identified in step two, the uplift factor for the reference period is the relevant factor for that period.

If there are only two periods identified in step two, the uplift factor for the reference period is calculated by multiplying the relevant factors for those periods.

If there are more than two periods identified in step two, the uplift factor for the reference period is calculated by—

- (a) multiplying the relevant factors for the first two periods,
- (b) multiplying the result by the relevant factor for the next period,
- (c) if there are further periods, multiplying the result by the relevant factor for the next period,

until all periods have been taken into account.

If the uplift factor for the reference period would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

#### *Step Six*

The rent increase is regarded as abnormal if the new rent is greater than:

#### *Reduction of rent or term*

- 15A (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Part as an acquisition of a chargeable interest by the lessee.
- (2) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Part as an acquisition of a chargeable interest by the lessor.

#### *Surrender of existing lease in return for new lease*

- 16 Where a lease is granted in consideration of the surrender of an existing lease between the same parties—

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- (a) the grant of the new lease does not count as chargeable consideration for the surrender, and
- (b) the surrender does not count as chargeable consideration for the grant of the new lease.

Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case.

*Assignment of lease: assumption of obligations by assignee*

- 17 In the case of an assignment of a lease the assumption by the assignee of the obligation—
- (a) to pay rent, or
  - (b) to perform or observe any other undertaking of the tenant under the lease,
- does not count as chargeable consideration for the assignment.

*Reverse premium*

- 18 (1) In the case of the grant, assignment or surrender of a lease a reverse premium does not count as chargeable consideration.
- (2) A “reverse premium” means—
- (a) in relation to the grant of a lease, a premium moving from the landlord to the tenant;
  - (b) in relation to the assignment of a lease, a premium moving from the assignor to the assignee;
  - (c) in relation to the surrender of a lease, a premium moving from the tenant to the landlord.

*Provisions relating to leases in Scotland*

- 19 (1) In the application of this Part to Scotland—
- (a) any reference to the term of a lease is to the period of the lease, and
  - (b) any reference to the reversion on a lease is to the interest of the landlord in the property subject to the lease.
- (2) Where in Scotland there is a lease constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”)—
- (a) the first lease is treated as if it were surrendered at that time, and
  - (b) the second lease is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (3) Where in Scotland—
- (a) there is an agreement (including missives of let not constituting a lease) under which a lease is to be executed, and
  - (b) the agreement is substantially performed without a lease having been executed,

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the agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.

The effective date of the transaction is when the agreement is substantially performed.

- (4) Where sub-paragraph (3) applies and at some later time a lease is executed—
- (a) the notional lease is treated as if it were surrendered at that time, and
  - (b) the lease itself is treated for the purposes of paragraph 9 as if it were granted in consideration of that surrender.
- (5) References in sub-paragraphs (2) to (4) to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same property and period as, the missives of let or other agreement.
- (6) Where sub-paragraph (3) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.”.

- (3) In section 51 (contingent, uncertain or unascertained consideration), after subsection (4) add—

“(5) This section applies in relation to chargeable consideration consisting of rent only to the extent that it is applied by paragraph 7 of Schedule 17A.”.

- (4) In section 80 (adjustment where contingency ceases or consideration becomes certain)—

- (a) in subsection (3) for “land transaction return” substitute “ return under section 76 (general requirement to make land transaction return), subject to the adaptation that references to the effective date of the transaction shall be read as references to the date of the event as a result of which the return is required ”; and
- (b) after subsection (4) add—

“(5) This section does not apply so far as the consideration consists of rent (see paragraph 8 of Schedule 17A).”.

- (5) In section 87 (interest on unpaid tax), in subsection (3) (meaning of “the relevant date”), after paragraph (aa) (inserted by paragraph 19(3) above) insert—

“(ab) in the case of an amount payable under paragraph 3(3) or 4(3) of Schedule 17A (leases that continue after a fixed term and treatment of leases for an indefinite term), the day on which the lease becomes treated as being for a longer fixed term;”.

- (6) In section 90 (application to defer payment in case of contingent or uncertain consideration), after subsection (6) add—

“(7) This section does not apply so far as the consideration consists of rent.”.

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- (7) In the table in section 122 (index of defined expressions), in the second column of the entry for “lease and related expressions” for “section 120” substitute “Schedule 17A”.
- (8) In paragraph 7 of Schedule 19 (commencement and transitional provisions: earlier related transactions under stamp duty), after sub-paragraph (3) add—
- “(4) For the purposes of paragraph 5 of Schedule 17A (treatment of successive linked leases) no account shall be taken of any transaction that is not an SDLT transaction.”.
- Abolition of stamp duty: application to duplicates and counterparts*
- 23 In section 125(5) (abolition of stamp duty except on instruments relating to stock or marketable securities: instruments to which the section applies)—
- (a) in paragraph (a), after “instrument effecting a land transaction”,
- (b) in paragraph (b), after “instrument effecting a transaction other than a land transaction”, and
- (c) in the second sentence, after “instrument effecting both a land transaction and a transaction other than a land transaction”, insert “ (or any duplicate or counterpart of such an instrument) ”.
- Application of transitional provisions to certain contracts*
- 24 In Schedule 19 (commencement and transitional provisions), after paragraph 4 (contracts entered into before the implementation date) insert—
- “Contracts substantially performed after implementation date*
- 4A Where—
- (a) a transaction is effected in pursuance of a contract entered into before the first relevant date,
- (b) the contract is substantially performed, without having been completed, after the implementation date, and
- (c) there is subsequently an event within paragraph 3(3) by virtue of which the transaction is an SDLT transaction,
- the effective date of the transaction shall be taken to be the date of the event referred to in paragraph (c) (and not the date of substantial performance).
- Application of provisions in case of transfer of rights*
- 4B (1) This paragraph applies where section 44 (contract and conveyance) has effect in accordance with section 45 (effect of transfer of rights).
- (2) Any reference in paragraph 3, 4 or 4A to the date when a contract was entered into (or made) shall be read, in relation to a contract deemed to exist by virtue of section 45(3) (deemed secondary contract with transferee), as a reference to the date of the assignment, subsale or other transaction in question.”.

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*Stamping of contract or agreement where transaction on completion or grant of lease subject to stamp duty land tax*

- 25 (1) In Schedule 19 (commencement and transitional provisions), after paragraph 7 (earlier related transactions under stamp duty) insert—

*“Stamping of contract where transaction on completion subject to stamp duty land tax*

- 7A (1) This paragraph applies where—
- (a) a contract that apart from paragraph 7 of Schedule 13 to the Finance Act 1999 (contracts chargeable as conveyances on sale) would not be chargeable with stamp duty is entered into before the implementation date,
  - (b) a conveyance made in conformity with the contract is effected on or after the implementation date, and
  - (c) the transaction effected on completion is an SDLT transaction or would be but for an exemption or relief from stamp duty land tax.

- (2) If in those circumstances the contract is presented for stamping together with a Revenue certificate as to compliance with the provisions of this Part of this Act in relation to the transaction effected on completion—

- (a) the payment of stamp duty land tax on that transaction or, as the case may be, the fact that no such tax was payable shall be denoted on the contract by a particular stamp, and
- (b) the contract shall be deemed thereupon to be duly stamped.

- (3) In this paragraph “conveyance” includes any instrument.”.

- (2) In paragraph 8 of Schedule 19 (time for stamping agreement for lease: lease subject to stamp duty land tax)—

- (a) for the heading substitute “ Stamping of agreement for lease where grant of lease subject to stamp duty land tax ”, and
- (b) in sub-paragraph (1) for the opening words substitute “ This paragraph applies where— ”.

- (3) For sub-paragraph (2) of that paragraph substitute—

“(2) If in those circumstances the agreement is presented for stamping together with a Revenue certificate as to compliance with the provisions of this Part of this Act in relation to the grant of the lease—

- (a) the payment of stamp duty land tax in respect of the grant of the lease or, as the case may be, the fact that no such tax was payable shall be denoted on the agreement by a particular stamp, and
- (b) the agreement shall be deemed thereupon to be duly stamped.”.

- (4) In section 122 (index of defined expressions), at the appropriate place insert—

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“Revenue certificate

section 79(3)(a)”.

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### *Commencement*

- 26 This Part of this Schedule applies in relation to any transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is on or after the day on which this Act is passed.

## SCHEDULE 40

Section 299

### STAMP DUTY LAND TAX: CLAIMS NOT INCLUDED IN RETURNS

The following is the Schedule inserted after Schedule 11 to the Finance Act 2003 (c. 14)—

## “SCHEDULE 11A

Section 82A

### STAMP DUTY LAND TAX: CLAIMS NOT INCLUDED IN RETURNS

#### *Introductory*

- 1 This Schedule applies to a claim under any provision of this Part other than a claim that is required to be made in, or by amendment to, a return under this Part. References in this Schedule to a claim shall be read accordingly.

#### *Making of claims*

- 2 (1) A claim must be made in such form as the Inland Revenue may determine.
- (2) The form of claim must provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the claimant's information and belief.
- (3) The form of claim may require—
- (a) a statement of the amount of tax that will be required to be discharged or repaid in order to give effect to the claim;
  - (b) such information as is reasonably required for the purpose of determining whether and, if so, the extent to which the claim is correct;
  - (c) the delivery with the claim of such statements and documents, relating to the information contained in the claim, as are reasonably required for the purpose mentioned in paragraph (b).
- (4) A claim for repayment of tax may not be made unless the claimant has documentary evidence that the tax has been paid.

#### *Duty to keep and preserve records*

- 3 (1) A person who may wish to make a claim must—
- (a) keep such records as may be needed to enable him to make a correct and complete claim, and
  - (b) preserve those records in accordance with this paragraph.
- (2) The records must be preserved until the latest of the following times—
- (a) the end of the period of twelve months beginning with day on which the claim was made;

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- (b) where there is an enquiry into the claim, or into an amendment of the claim, the time when the enquiry is completed;
  - (c) where the claim is amended and there is there is no enquiry into the amendment, the time when the Inland Revenue no longer have power to enquire into the amendment.
- (3) The duty under this paragraph to preserve records may be satisfied by the preservation of the information contained in them.
- (4) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.
- (5) A person who fails to comply with this paragraph in relation to a claim that he makes is liable to a penalty not exceeding £3,000, subject to the following exception.
- (6) No penalty is incurred if the Inland Revenue are satisfied that any facts that they reasonably require to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to them.

#### *Amendment of claim by claimant*

- 4 (1) The claimant may amend his claim by notice to the Inland Revenue.
- (2) No such amendment may be made—
- (a) more than twelve months after the day on which the claim was made, or
  - (b) if the Inland Revenue give notice under paragraph 7 (notice of enquiry), during the period—
    - (i) beginning with the day on which notice is given, and
    - (ii) ending with the day on which the enquiry under that paragraph is completed.

#### *Correction of claim by Revenue*

- 5 (1) The Inland Revenue may by notice to the claimant amend a claim so as to correct obvious errors or omissions in the claim (whether errors of principle, arithmetical mistakes or otherwise).
- (2) No such correction may be made—
- (a) more than nine months after the day on which the claim was made, or
  - (b) if the Inland Revenue give notice under paragraph 7 (notice of enquiry), during the period—
    - (i) beginning with the day on which notice is given, and
    - (ii) ending with the day on which the enquiry under that paragraph is completed.
- (3) A correction under this paragraph is of no effect if, within three months from the date of issue of the notice of correction, the claimant gives notice rejecting the correction.
- (4) Notice under sub-paragraph (3) must be given to the officer of the Board by whom the notice of correction was given.

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*Giving effect to claims and amendments*

- 6 (1) As soon as practicable after a claim is made, or is amended under paragraph 4 or 5, the Inland Revenue shall give effect to the claim or amendment by discharge or repayment of tax.
- (2) Where the Inland Revenue enquire into a claim or amendment—
- (a) sub-paragraph (1) does not apply until a closure notice is given under paragraph 11 (completion of enquiry), and then it applies subject to paragraph 13 (giving effect to amendments under paragraph 11), but
  - (b) the Inland Revenue may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as they think fit.

*Notice of enquiry*

- 7 (1) The Inland Revenue may enquire into a person's claim or amendment of a claim if they give him notice of their intention to do so ("notice of enquiry") before the end of the period of nine months after the day on which the claim or amendment was made.
- (2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

*Notice to produce documents etc for purposes of enquiry*

- 8 (1) If the Inland Revenue give a person a notice of enquiry, they may by notice in writing require him—
- (a) to produce to them such documents in his possession or power, and
  - (b) to provide them with such information, in such form,
- as they may reasonably require for the purposes of the enquiry.
- (2) A notice given to a person under this paragraph (which may be given at the same time as the notice of enquiry) must specify the time (which must not be less than 30 days) within which he is to comply with it.
- (3) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
- (a) the copies must be photographic or other facsimiles, and
  - (b) the Inland Revenue may by notice require the original to be produced for inspection.

A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the person is to comply with it.

- (4) The Inland Revenue may take copies of, or make extracts from, any documents produced to them under this paragraph.
- (5) A notice under this paragraph does not oblige a person to produce documents or provide information relating to the conduct of any pending appeal by him.

*Appeal against notice to produce documents etc*

- 9 (1) An appeal may be brought against a requirement imposed by a notice under paragraph 8 to produce documents or provide information.
- (2) Notice of appeal must be given—



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- (a) in writing,
  - (b) within 30 days after the issue of the notice appealed against,
  - (c) to the officer of the Board by whom that notice was given.
- (3) An appeal under this paragraph shall be heard and determined in the same way as an appeal against an assessment.
- (4) On an appeal under this paragraph the Commissioners—
- (a) shall set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them not reasonably required for the purposes of the enquiry, and
  - (b) shall confirm the notice so far as it requires the production of documents, or the provision of information, that appears to them reasonably required for the purposes of the enquiry.
- (5) A notice that is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
- (6) The decision of the Commissioners on an appeal under this paragraph is final.

*Penalty for failure to produce documents etc*

- 10 (1) A person who fails to comply with a notice under paragraph 8 (notice to produce documents etc for purposes of enquiry) is liable—
- (a) to a penalty of £50, and
  - (b) if the failure continues after a penalty is imposed under paragraph (a), to a further penalty or penalties not exceeding £30 for each day on which the failure continues.
- (2) No penalty shall be imposed under this paragraph in respect of a failure at any time after the failure has been remedied.

*Completion of enquiry*

- 11 (1) An enquiry under paragraph 7 is completed when the Inland Revenue by notice (a “closure notice”) inform the purchaser that they have completed their enquiries and state their conclusions.
- (2) A closure notice must either—
- (a) state that in the opinion of the Inland Revenue no amendment of the claim is required, or
  - (b) if in the Inland Revenue’s opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.
- In the case of an enquiry into an amendment of a claim, paragraph (b) applies only so far as the deficiency or excess is attributable to the amendment.
- (3) A closure notice takes effect when it is issued.

*Direction to complete enquiry*

- 12 (1) The claimant may apply to the General or Special Commissioners for a direction that the Inland Revenue give a closure notice within a specified period.

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- (2) Any such application shall be heard and determined in the same way as an appeal.
- (3) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

*Giving effect to amendments under paragraph 11*

- 13 (1) Within 30 days after the date of issue of a notice under paragraph 11(2)(b) (closure notice that amends claim), the Inland Revenue shall give effect to the amendment by making such adjustment as may be necessary, whether—
  - (a) by way of assessment on the claimant, or
  - (b) by discharge or repayment of tax.
- (2) An assessment made under sub-paragraph (1) is not out of time if it is made within the time mentioned in that sub-paragraph.

*Appeals against amendments under paragraph 11*

- 14 (1) An appeal may be brought against a conclusion stated or amendment made by a closure notice.
- (2) Notice of the appeal must be given—
  - (a) in writing,
  - (b) within 30 days after the date on which the closure notice was issued,
  - (c) to the officer of the Board by whom the closure notice was given.
- (3) The notice of appeal must specify the grounds of appeal.
- (4) On the hearing of the appeal the Commissioners may allow the appellant to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not deliberate or unreasonable.
- (5) Paragraph 37 of Schedule 10 (settling of appeals by agreement) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under paragraph 35 of that Schedule.
- (6) On an appeal against an amendment made by a closure notice, the Commissioners may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.
- (7) Where any such amendment is varied, whether by the Commissioners or by the order of a court, paragraph 13 (giving effect to amendments under paragraph 11) applies (with the necessary modifications) in relation to the variation as it applied in relation to the amendment.

*Jurisdiction of Commissioners*

- 15 (1) An appeal against a conclusion stated or amendment made by a closure notice is to be made to the Special Commissioners if it relates to a claim made to the Board.
- (2) Subject to—
  - (a) sub-paragraph (1),

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- (b) paragraph 33(4) of Schedule 10 (appeal against decision on claim for relief in case of double assessment), and
  - (c) any right to elect to bring an appeal before the Special Commissioners conferred by regulations under Schedule 17 (General and Special Commissioners, appeals and other proceedings),
- an appeal under any provision of this Schedule is to be made to the General Commissioners.”

## SCHEDULE 41

Section 304

### STAMP DUTY LAND TAX: APPLICATION TO CERTAIN PARTNERSHIP TRANSACTIONS

- 1 In Schedule 15 to the Finance Act 2003 (c. 14) (stamp duty land tax: partnerships), for Part 3 (transactions excluded from stamp duty land tax) substitute—

#### “PART 3

#### TRANSACTIONS TO WHICH SPECIAL PROVISIONS APPLY

##### Introduction

- 9 (1) This Part of this Schedule applies to certain transactions involving—
- (a) the transfer of a chargeable interest to a partnership (paragraph 10),
  - (b) the transfer of an interest in a partnership (paragraphs 14, 17, 31 and 32), or
  - (c) the transfer of a chargeable interest from a partnership (paragraph 18).
- (2) References in this Part of this Schedule to the transfer of a chargeable interest include—
- (a) the grant or creation of a chargeable interest,
  - (b) the variation of a chargeable interest, and
  - (c) the surrender, release or renunciation of a chargeable interest.

##### Transfer of chargeable interest to a partnership: general

- 10 (1) This paragraph applies where—
- (a) a partner transfers a chargeable interest to the partnership, or
  - (b) a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or
  - (c) a person connected with—
    - (i) a partner, or
    - (ii) a person who becomes a partner as a result of or in connection with the transfer,transfers a chargeable interest to the partnership.

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It applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.

- (2) The chargeable consideration for the transaction shall (subject to paragraph 13) be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual consideration for the transaction.

- (3) The relevant chargeable proportion in relation to the market value of the interest transferred is—

$$(100 - SLP)\%$$

where SLP is the sum of the lower proportions.

- (4) The relevant chargeable proportion in relation to the actual consideration for the transaction is—

$$SLP\%$$

where SLP is the sum of the lower proportions.

- (5) Paragraph 12 provides for determining the sum of the lower proportions.
- (6) Paragraph 11 applies (instead of sub-paragraphs (2) to (5)) if the whole or part of the chargeable consideration for the transaction is rent.
- (7) Paragraphs 6 to 8 (responsibility of partners) have effect in relation to a transaction to which this paragraph applies, but the responsible partners are—
- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.

**Transfer of chargeable interest to a partnership: chargeable consideration including rent**

- 11 (1) This paragraph applies in relation to a transaction to which paragraph 10 applies where the whole or part of the chargeable consideration for the transaction is rent.

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- (2) Schedule 5 provides for the calculation of the tax chargeable in respect of the transaction, subject to the following provisions of this paragraph.
- (3) Paragraph 2 of Schedule 5 (calculation of tax chargeable in respect of rent) has effect as if—
- (a) for “the net present value of the rent payable over the term of the lease” there were substituted “ the relevant chargeable proportion of the net present value of the rent payable over the term of the lease ”, and
  - (b) for “the net present values of the rent payable over the terms of all the leases” there were substituted “ the relevant chargeable proportions of the net present values of the rent payable over the terms of all the leases ”.
- (4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual chargeable consideration other than rent.

- (5) If there is no chargeable consideration other than rent—
- (a) there shall (despite that) be taken to be chargeable consideration other than rent (in particular for the purposes of paragraph 9 of Schedule 5), and
  - (b) that chargeable consideration shall be taken to be equal to—

$$RCP \times MV$$

where—

RCP is the relevant chargeable proportion, and

MV is the market value of the interest transferred.

- (6) The relevant chargeable proportion in relation to—
- (a) the net present value of the rent payable over the term of a lease, or
  - (b) the market value of the interest transferred,
- is—

$$(100 - SLP)\%$$

where SLP is the sum of the lower proportions.

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- (7) The relevant chargeable proportion in relation to the actual consideration other than rent is—

$$\text{SLP} \%$$

where SLP is the sum of the lower proportions.

- (8) Paragraph 12 provides for determining the sum of the lower proportions.  
 (9) This paragraph is subject to paragraph 13.

### **Transfer of chargeable interest to a partnership: sum of the lower proportions**

- 12 (1) The sum of the lower proportions in relation to a transaction to which paragraph 10 applies is determined as follows:—

#### *Step One*

Identify the relevant owner or owners.

A person is a relevant owner if—

- (a) immediately before the transaction, he was entitled to a proportion of the chargeable interest, and
- (b) immediately after the transaction, he is a partner or connected with a partner.

#### *Step Two*

For each relevant owner, identify the corresponding partner or partners.

A person is a corresponding partner in relation to a relevant owner if, immediately after the transaction—

- (a) he is a partner, and
- (b) he is the relevant owner or is connected with the relevant owner.

#### *Step Three*

For each relevant owner, find the proportion of the chargeable interest to which he was entitled immediately before the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

#### *Step Four*

Find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners.

The lower proportion is—

- (a) the proportion of the chargeable interest attributable to the partner, or
- (b) if lower, the partner's partnership share immediately after the transaction.

The proportion of the chargeable interest attributable to the partner is—

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- (i) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (at Step Three) in respect of that owner;
- (ii) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to him (at Step Three) in respect of each of those owners.

#### *Step Five*

Add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners.

The result is the sum of the lower proportions.

- (2) For the purposes of this paragraph persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) shall be taken to be entitled to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

### **Transfer of chargeable interest to a partnership consisting wholly of bodies corporate**

- 13 (1) This paragraph applies where—
  - (a) there is a transaction to which paragraph 10 applies;
  - (b) immediately after the transaction all the partners are bodies corporate;
  - (c) the sum of the lower proportions is 75 or more.
- (2) Paragraphs 10 and 11 have effect with these modifications.
- (3) In paragraph 10, for sub-paragraphs (2) to (5) substitute—

“(2) The chargeable consideration for the transaction shall be taken to be equal to the market value of the interest transferred.”.
- (4) In paragraph 10(6), for “sub-paragraphs (2) to (5)” substitute “ sub-paragraph (2) ”.
- (5) In paragraph 11, omit sub-paragraphs (3) and (6) to (8).
- (6) In paragraph 11, for sub-paragraph (4) substitute—

“(4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (7) In paragraph 11, for sub-paragraph (5)(b) substitute—

“(b) that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (8) Paragraph 12 provides for determining the sum of the lower proportions.

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### **Transfer of partnership interest: consideration given and chargeable interest held**

- 14 (1) This paragraph applies where—
- (a) there is a transfer of an interest in a partnership,
  - (b) consideration is given for the transfer, and
  - (c) the relevant partnership property includes a chargeable interest.
- (2) The transfer—
- (a) shall be taken for the purposes of this Part to be a land transaction;
  - (b) is a chargeable transaction.
- (3) The purchaser under the transaction is the person who acquires an increased partnership share or, as the case may be, becomes a partner in consequence of the transfer.
- (4) Consideration is regarded as given for the transfer—
- (a) in a case within paragraph 36(a), if consideration in money or money's worth is given by or on behalf of the person acquiring the interest;
  - (b) in a case within paragraph 36(b), if there is a withdrawal of money or money's worth from the partnership by the person reducing his interest or ceasing to be a partner.
- (5) The “relevant partnership property”, in relation to a transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
- (a) any interest that was transferred to the partnership in connection with the transfer;
  - (b) a lease to which paragraph 15 (exclusion of market rent leases) applies.
- (6) The chargeable consideration for the transaction shall be taken to be equal to a proportion of the market value of the relevant partnership property.
- (7) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.

### **Exclusion of market rent leases**

- 15 (1) A lease held as partnership property immediately after a transfer of an interest in the partnership is not relevant partnership property for the purposes of paragraph 14(5) if the following four conditions are met.
- (2) The first condition is that—



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- (a) no chargeable consideration other than rent has been given in respect of the grant of the lease, and
  - (b) no arrangements are in place at the time of the transfer for any chargeable consideration other than rent to be given in respect of the grant of the lease.
- (3) The second condition is that the rent payable under the lease as granted was a market rent at the time of the grant.
- (4) The third condition is that—
- (a) the term of the lease is 5 years or less, or
  - (b) if the term of the lease is more than 5 years—
    - (i) the lease provides for the rent payable under it to be reviewed at least once in every 5 years of the term, and
    - (ii) the rent payable under the lease as a result of a review is required to be a market rent at the review date.
- (5) The fourth condition is that there has been no change to the lease since it was granted which is such that, immediately after the change has effect, the rent payable under the lease is less than a market rent.
- (6) The market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market.
- (7) A review date is a date from which the rent determined as a result of a rent review is payable.

#### **Partnership interests: application of provisions about exchanges etc.**

- 16 (1) Where paragraph 5 of Schedule 4 (exchanges) applies to the acquisition of an interest in a partnership in consideration of entering into a land transaction with an existing partner, the interest in the partnership shall be treated as a major interest in land for the purposes of that paragraph if the relevant partnership property includes a major interest in land.
- (2) In sub-paragraph (1) “relevant partnership property” has the meaning given by paragraph 14(5).
- (3) The provisions of paragraph 6 of Schedule 4 (partition etc: disregard of existing interest) do not apply where this paragraph applies.

#### **Transfer of partnership interest pursuant to earlier arrangements**

- 17 (1) This paragraph applies where—
- (a) there is a transfer of a chargeable interest to a partnership (“the land transfer”);
  - (b) the land transfer falls within paragraph (a), (b) or (c) of paragraph 10(1);
  - (c) there is subsequently a transfer of an interest in the partnership (“the partnership transfer”);
  - (d) the partnership transfer is made—
    - (i) if the land transfer falls within paragraph 10(1)(a) or (b), by the person who makes the land transfer;

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- (ii) if the land transfer falls within paragraph 10(1)(c), by the partner concerned;
  - (e) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer;
  - (f) the partnership transfer is not (apart from this paragraph) a chargeable transaction.
- (2) The partnership transfer—
- (a) shall be taken for the purposes of this Part to be a land transaction;
  - (b) is a chargeable transaction.
- (3) The partners shall be taken to be the purchasers under the transaction.
- (4) The chargeable consideration for the transaction shall be taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer.
- (5) That proportion is—
- (a) if the person making the partnership transfer is not a partner immediately after the transfer, his partnership share immediately before the transfer;
  - (b) if he is a partner immediately after the transfer, the difference between his partnership share before and after the transfer.
- (6) The partnership transfer and the land transfer shall be taken to be linked transactions.
- (7) Paragraphs 6 to 8 (responsibility of partners) have effect in relation to the partnership transfer, but the responsible partners are—
- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.

#### **Transfer of chargeable interest from a partnership: general**

- 18 (1) This paragraph applies where a chargeable interest is transferred—
- (a) from a partnership to a person who is or has been one of the partners, or
  - (b) from a partnership to a person connected with a person who is or has been one of the partners.
- (2) The chargeable consideration for the transaction shall (subject to paragraph 24) be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

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AC is the actual consideration for the transaction.

- (3) The relevant chargeable proportion in relation to the market value of the interest transferred is—

$$(100 - \text{SLP})\%$$

where SLP is the sum of the lower proportions.

- (4) The relevant chargeable proportion in relation to the actual consideration for the transaction is—

$$\text{SLP}\%$$

where SLP is the sum of the lower proportions.

- (5) Paragraph 20 provides for determining the sum of the lower proportions.
- (6) Paragraph 19 applies (instead of sub-paragraphs (2) to (5)) if the whole or part of the chargeable consideration for the transaction is rent.
- (7) For the purposes of this paragraph property that was partnership property before the partnership was dissolved or otherwise ceased to exist shall be treated as remaining partnership property until it is distributed.

**Transfer of chargeable interest from a partnership: chargeable consideration including rent**

- 19 (1) This paragraph applies in relation to a transaction to which paragraph 18 applies where the whole or part of the chargeable consideration for the transaction is rent.
- (2) Schedule 5 provides for the calculation of the tax chargeable in respect of the transaction, subject to the following provisions of this paragraph.
- (3) Paragraph 2 of Schedule 5 (calculation of tax chargeable in respect of rent) has effect as if—
- (a) for “the net present value of the rent payable over the term of the lease” there were substituted “ the relevant chargeable proportion of the net present value of the rent payable over the term of the lease ”, and
  - (b) for “the net present values of the rent payable over the terms of all the leases” there were substituted “ the relevant chargeable proportions of the net present values of the rent payable over the terms of all the leases ”.
- (4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to—

$$(\text{RCP} \times \text{MV}) + (\text{RCP} \times \text{AC})$$

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where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual chargeable consideration other than rent.

- (5) If there is no chargeable consideration other than rent—
- (a) there shall (despite that) be taken to be chargeable consideration other than rent (in particular for the purposes of paragraph 9 of Schedule 5), and
  - (b) that chargeable consideration shall be taken to be equal to—

$$\text{RCP} \times \text{MV}$$

where—

RCP is the relevant chargeable proportion, and

MV is the market value of the interest transferred.

- (6) The relevant chargeable proportion in relation to—
- (a) the net present value of the rent payable over the term of a lease, or
  - (b) the market value of the interest transferred,
- is—

$$(100 - \text{SLP})\%$$

where SLP is the sum of the lower proportions.

- (7) The relevant chargeable proportion in relation to the actual consideration other than rent is—

$$\text{SLP}\%$$

where SLP is the sum of the lower proportions.

- (8) Paragraph 20 provides for determining the sum of the lower proportions.  
 (9) This paragraph is subject to paragraph 24.

**Transfer of chargeable interest from a partnership: sum of the lower proportions**

- 20 (1) The sum of the lower proportions in relation to a transaction to which paragraph 18 applies is determined as follows:—

*Step One*

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Identify the relevant owner or owners.

A person is a relevant owner if—

- (a) immediately after the transaction, he is entitled to a proportion of the chargeable interest, and
- (b) immediately before the transaction, he was a partner or connected with a partner.

*Step Two*

For each relevant owner, identify the corresponding partner or partners.

A person is a corresponding partner in relation to a relevant owner if, immediately before the transaction—

- (a) he was a partner, and
- (b) he was the relevant owner or was connected with the relevant owner.

*Step Three*

For each relevant owner, find the proportion of the chargeable interest to which he is entitled immediately after the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

*Step Four*

Find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners.

The lower proportion is—

- (a) the proportion of the chargeable interest attributable to the partner, or
- (b) if lower, the partnership share attributable to the partner.

The proportion of the chargeable interest attributable to the partner is—

- (i) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (at Step Three) in respect of that owner;
- (ii) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to him (at Step Three) in respect of each of those owners.

Paragraph 21 provides for determining the partnership share attributable to the partner.

*Step Five*

Add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners.

The result is the sum of the lower proportions.

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- (2) For the purposes of this paragraph persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) shall be taken to be entitled to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

**Transfer of chargeable interest from a partnership: partnership share attributable to partner**

- 21 (1) This paragraph provides for determining the partnership share attributable to a partner for the purposes of paragraph 20 (1) (see Step Four).
- (2) Paragraph 22 applies for determining the partnership share attributable to a partner where—
- (a) the effective date of the transfer of the relevant chargeable interest to the partnership was before 20th October 2003, or
  - (b) the effective date of the transfer of the relevant chargeable interest to the partnership was on or after that date and—
    - (i) the instrument by which the transfer was effected has been duly stamped with *ad valorem* stamp duty, or
    - (ii) any tax payable in respect of the transfer has been duly paid under this Part.
- (3) Where the effective date of the transfer of the relevant chargeable interest to the partnership was on or after 20th October 2003 but neither of the conditions in sub-paragraphs (i) and (ii) of sub-paragraph (2)(b) is met, the partnership share attributable to the partner is zero.
- (4) The relevant chargeable interest is—
- (a) the chargeable interest which ceases to be partnership property as a result of the transaction to which paragraph 18 applies, or
  - (b) where the transaction to which paragraph 18 applies is the grant or creation of a chargeable interest, the chargeable interest out of which that interest is granted or created.
- 22 (1) Where this paragraph applies, the partnership share attributable to the partner is determined as follows:—

*Step One*

Find the partner's actual partnership share on the relevant date.

In a case falling within paragraph 21(2)(a), the relevant date—

- (a) if the partner was a partner on 19th October 2003, is that date;
- (b) if the partner became a partner after that date, is the date on which he became a partner.

In a case falling within paragraph 21(2)(b), the relevant date—

- (a) if the partner was a partner on the effective date of the transfer of the relevant chargeable interest to the partnership, is that date;
- (b) if the partner became a partner after that date, is the date on which he became a partner.

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### *Step Two*

Add to that partnership share any increases in the partner's partnership share which—

- (a) occur in the period starting on the day after the relevant date and ending immediately before the transaction to which paragraph 18 applies, and
- (b) count for this purpose.

The result is the increased partnership share.

An increase counts for the purpose of paragraph (b) only if—

- (i) where the transfer which resulted in the increase took place on or before the date on which the Finance Act 2004 was passed, the instrument by which the transfer was effected has been duly stamped with *ad valorem* stamp duty under the enactments relating to stamp duty;
- (ii) where the transfer which resulted in the increase took place after that date, any tax payable in respect of the transfer has been duly paid under this Part.

### *Step Three*

Deduct from the increased partnership share any decreases in the partner's partnership share which occur in the period starting on the day after the relevant date and ending immediately before the transaction to which paragraph 18 applies.

The result is the partnership share attributable to the partner.

- (2) If the effect of applying Step Three would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.
- (3) In a case falling within paragraph 21(2)(a), if the partner ceased to be a partner before 19th October 2003, the partnership share attributable to the partner is zero.
- (4) In a case falling within paragraph 21(2)(b), if the partner ceased to be a partner before the effective date of the transfer of the relevant chargeable interest to the partnership, the partnership share attributable to the partner is zero.
- (5) Paragraph 21(4) (relevant chargeable interest) applies for the purposes of this paragraph.

## **Transfer of chargeable interest from a partnership to a partnership**

- 23 (1) This paragraph applies where—
- (a) there is a transfer of a chargeable interest from a partnership to a partnership, and
  - (b) the transfer is both—
    - (i) a transaction to which paragraph 10 applies, and
    - (ii) a transaction to which paragraph 18 applies.

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- (2) Where none of the chargeable consideration for the transaction is rent—
  - (a) paragraphs 10(2) to (5) and 18(2) to (5) do not apply;
  - (b) the chargeable consideration for the transaction shall be taken to be what it would have been if paragraph 10(2) to (5) had applied or, if greater, what it would have been if paragraph 18(2) to (5) had applied.
- (3) Where the whole or part of the chargeable consideration for the transaction is rent—
  - (a) paragraphs 11 and 19 do not apply;
  - (b) the chargeable consideration for the transaction shall be taken to be what it would have been if paragraph 11 had applied or, if greater, what it would have been if paragraph 19 had applied.

**Transfer of chargeable interest from a partnership consisting wholly of bodies corporate**

- 24
- (1) This paragraph applies where—
    - (a) there is a transaction to which paragraph 18 applies;
    - (b) immediately before the transaction all the partners are bodies corporate;
    - (c) the sum of the lower proportions is 75 or more.
  - (2) Paragraphs 18, 19 and 23 have effect with these modifications.
  - (3) In paragraph 18, for sub-paragraphs (2) to (5) substitute—
 

“(2) The chargeable consideration for the transaction shall be taken to be equal to the market value of the interest transferred.”.
  - (4) In paragraph 18(6), for “sub-paragraphs (2) to (5)” substitute “ sub-paragraph (2) ”.
  - (5) In paragraph 19, omit sub-paragraphs (3) and (6) to (8).
  - (6) In paragraph 19, for sub-paragraph (4) substitute—
 

“(4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
  - (7) In paragraph 19, for sub-paragraph (5)(b) substitute—
 

“(b) that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
  - (8) In paragraph 23(2)—
    - (a) for “paragraphs 10(2) to (5) and 18(2) to (5)” substitute “ paragraphs 10(2) and 18(2) ”;
    - (b) for “paragraph 10(2) to (5)” substitute “ paragraph 10(2) ”;
    - (c) for “paragraph 18(2) to (5)” substitute “ paragraph 18(2) ”.
  - (9) Paragraph 20 provides for determining the sum of the lower proportions.



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### Application of exemptions and reliefs

- 25 (1) Where paragraph 10, 14, 17 or 18 applies, paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply.
- (2) But (subject to paragraphs 26 to 28) this Part of this Schedule has effect subject to any other provision affording exemption or relief from stamp duty land tax.

### Application of disadvantaged areas relief

- 26 (1) Schedule 6 (disadvantaged areas relief) applies to the transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 with these modifications.
- (2) For paragraph 3 substitute—
- “3 (1) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15 if every chargeable interest comprising the relevant partnership property is a chargeable interest in relation to land that is wholly situated in a disadvantaged area.
- (2) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15 if the subject matter of the land transfer is a chargeable interest in relation to land that is wholly situated in a disadvantaged area.”.
- (3) In paragraph 5, for sub-paragraphs (2) to (4) substitute—
- “(2) If the relevant consideration does not exceed £150,000 the transaction is exempt from charge.”.
- (4) For paragraph 6 substitute—
- “6 (1) This paragraph applies where the land is partly non-residential property and partly residential property.
- (2) The non-residential proportion of the chargeable consideration for the transaction does not count as chargeable consideration.
- (3) The non-residential proportion is the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is non-residential property.
- (4) If the relevant consideration does not exceed £150,000, none of the residential proportion of the chargeable consideration counts as chargeable consideration.
- (5) The residential proportion is the proportion of the market value of the relevant property that, on a just and reasonable

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apportionment, is attributable to land that is residential property.”.

(5) For paragraph 7 substitute—

“7 (1) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15 if—

- (a) some (but not all) of the chargeable interests comprising the relevant partnership property are chargeable interests in relation to land that is wholly situated in a disadvantaged area, or
- (b) any chargeable interest comprised in the relevant partnership property is a chargeable interest in relation to land that is partly situated in a disadvantaged area and partly situated outside such an area.

(2) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15 if the subject matter of the land transfer is a chargeable interest in relation to land that is partly situated in a disadvantaged area and partly situated outside such an area.

(3) In this Part—

- (a) references to the disadvantaged-area proportion are to the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land situated in a disadvantaged area;
- (b) references to the advantaged-area proportion are to the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is situated outside a disadvantaged area.”.

(6) In paragraph 8, for “consideration attributable to the land situated in the disadvantaged area” substitute “ disadvantaged-area proportion of the chargeable consideration ”.

(7) In paragraph 9, for sub-paragraphs (2) to (4) substitute—

“(2) If the relevant consideration does not exceed £150,000 none of the disadvantaged-area proportion of the chargeable consideration counts as chargeable consideration.”.

(8) For paragraph 10 substitute—

“10 (1) This paragraph applies where the land situated in a disadvantaged area is partly non-residential property and partly residential property.

(2) The non-residential proportion of the disadvantaged-area proportion of the chargeable consideration for the transaction does not count as chargeable consideration.

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- (3) The non-residential proportion is the proportion of the disadvantaged-area proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is not residential property.
- (4) If the relevant consideration does not exceed £150,000, none of the residential proportion of the disadvantaged-area proportion of the chargeable consideration counts as chargeable consideration.
- (5) The residential proportion is the proportion of the disadvantaged-area proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is residential property.”.
- (9) After paragraph 11 (1) insert—
- “(1A) In this Schedule—
- “the land transfer” means the transaction that is the land transfer for the purposes of paragraph 17 of Schedule 15;
- “the relevant partnership property” has the meaning given by paragraph 14(5) of Schedule 15;
- “the relevant property”—
- (a) in the case of a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15, means the relevant partnership property;
- (b) in the case of a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15, means the subject matter of the land transfer.
- (1B) There is a transfer of an interest in a partnership for the purposes of this Schedule if there is such a transfer for the purposes of Part 3 of Schedule 15 (see paragraph 36 of that Schedule).”.
- (10) Omit paragraphs 11(2) and 12.

### **Application of group relief**

- 27 (1) Part 1 of Schedule 7 (group relief) applies to—
- (a) a transaction to which paragraph 10 applies, and
- (b) a transaction that is a chargeable transaction by virtue of paragraph 17,
- with these modifications.
- (2) In paragraph 3(1)(a), for “the purchaser” substitute “ a partner who was a partner at the effective date of the relevant transaction (“the relevant partner”) ”.
- (3) In paragraph 3(1), for paragraph (b) substitute—

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- “(b) at the time the relevant partner ceases to be a member of the same group as the vendor (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—
  - (i) was acquired by or on behalf of the partnership under the relevant transaction, or
  - (ii) is derived from a chargeable interest so acquired,
 and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”.
- (4) In paragraph 3(3), for the words from “the transferee company” to the end substitute “ or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership. ”.
- (5) In paragraph 3(4), omit the definition of “relevant associated company”.
- (6) In paragraphs 4 to 6, for “the purchaser” (wherever appearing) substitute “ the relevant partner ”.

#### **Application of charities relief**

- 28 (1) Schedule 8 (charities relief) applies to the transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 with these modifications.
- (2) In paragraph 1(1), for “A land transaction is exempt from charge if the purchaser is a charity” substitute “ A transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 of Schedule 15 is exempt from charge if the transferee is a charity ”.
- (3) In paragraph 1(2)—
  - (a) for “the purchaser must intend to hold the subject-matter of the transaction” substitute “ every chargeable interest held as partnership property immediately after the transfer must be held ”.
  - (b) in paragraphs (a) and (b) for “the purchaser” substitute “ the transferee ”.
- (4) In paragraph 1(3) for “the purchaser” substitute “ the transferee ”.
- (5) In paragraph 2(1), for paragraph (b) substitute—
  - “(b) at the time of the disqualifying event the partnership property includes a chargeable interest—
    - (i) that was held as partnership property immediately after the relevant transaction, or
    - (ii) that is derived from an interest held as partnership property at that time.”.
- (6) In paragraph 2(3)(a), for “the purchaser” substitute “ the transferee ”.

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- (7) In paragraph 2(3), for paragraph (b) substitute—
- “(b) any chargeable interest held as partnership property immediately after the relevant transaction, or any interest or right derived from it, being used or held otherwise than for qualifying charitable purposes.”.
- (8) For paragraph 2(4) substitute—
- “(4) In sub-paragraphs (1) and (2) an “appropriate proportion” means an appropriate proportion having regard to—
- (a) the chargeable interests held as partnership property immediately after the relevant transaction and the chargeable interests held as partnership property at the time of the disqualifying event, and
- (b) the extent to which any chargeable interest held as partnership property at that time becomes used or held for purposes other than qualifying charitable purposes.”.
- (9) After paragraph 2 insert—

*“Interpretation*

- 3 (1) There is a transfer of an interest in a partnership for the purposes of this Schedule if there is such a transfer for the purposes of Part 3 of Schedule 15 (see paragraph 36 of that Schedule).
- (2) Paragraph 34 (1) of Schedule 15 (meaning of references to partnership property) applies for the purposes of this Schedule as it applies for the purposes of Part 3 of that Schedule.”.

**Acquisition of interest in partnership not chargeable except as specially provided**

- 29 Except as provided by—
- (a) paragraph 10 (transfer of chargeable interest to a partnership), or
- (b) paragraph 14 (transfer of partnership interest: consideration given and chargeable interest held), or
- (c) paragraph 17 (transfer of partnership interest pursuant to earlier arrangements),

the acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land.

**Transactions that are not notifiable**

- 30 (1) A transaction which is a chargeable transaction by virtue of paragraph 14 or 17 (transfer of partnership interest) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the zero rate threshold.
- (2) The consideration for a transaction exceeds the zero rate threshold if either or both of the following conditions are met—

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- (a) the relevant consideration for the purposes of section 55 (amount of tax chargeable: general) is such that the rate of tax chargeable under that section is 1% or higher;
- (b) the relevant rental value for the purposes of Schedule 5 (amount of tax chargeable: rent) is such that the rate of tax chargeable under that Schedule is 1% or higher.

### **Stamp duty on transfers of partnership interests: continued application**

- 31 (1) Nothing in section 125 (abolition of stamp duty except in relation to stock or marketable securities), or in Part 2 of Schedule 20 (amendments and repeals consequential on that section), affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected.
- (2) In Part 1 of Schedule 20 (provisions supplementing section 125) references to stock or marketable securities shall be read as including any property that is the subject-matter of a transaction by which an interest in a partnership is transferred.
- (3) In their application in relation to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect subject to paragraphs 32 and 33.

### **Stamp duty on transfers of partnership interests: modification**

- 32 (1) This paragraph applies where—
- (a) stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) is chargeable on an instrument effecting a transfer of an interest in a partnership, and
  - (b) the relevant partnership property includes a chargeable interest.
- (2) The “relevant partnership property”, in relation to a transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer.
- (3) The consideration for the transaction shall (subject to sub-paragraph (8)) be taken to be equal to the actual consideration for the transaction less the excluded amount.
- (4) The excluded amount is a proportion of the net market value of the relevant partnership property immediately after the transfer.
- (5) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.
- (6) The net market value of a chargeable interest at a particular date is—

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## MV – SL

where—

MV is the market value of the chargeable interest at that date, and

SL is the amount outstanding at that date on any loan secured solely on the chargeable interest.

- (7) If, in relation to a chargeable interest, SL is greater than MV, the net market value of the chargeable interest shall be taken to be nil.
- (8) If the excluded amount is greater than the actual consideration for the transaction, the consideration for the transaction shall be taken to be nil.
- (9) Where this paragraph applies in relation to an instrument, the instrument shall not be regarded as duly stamped unless it has been stamped in accordance with section 12 of the Stamp Act 1891.
- 33 (1) This paragraph applies where—
- (a) stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) is chargeable on an instrument effecting a transfer of an interest in a partnership, and
  - (b) the relevant partnership property includes stock or marketable securities.
- (2) The relevant partnership property, in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer.
- (3) The stamp duty chargeable on the instrument shall not exceed the stamp duty that would be chargeable if—
- (a) the instrument were an instrument effecting a transfer of the stock and marketable securities comprised in the relevant partnership property, and
  - (b) the consideration for the transfer were equal to the net market value of that stock and those securities immediately after the transfer, less the excluded amount.
- (4) The excluded amount is a proportion of the net market value of that stock and those securities immediately after the transfer.
- (5) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.
- (6) The net market value of stock or securities at a particular date is—

## MV – SL

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where—

MV is the market value of the stock or securities at that date, and

SL is the amount outstanding at that date on any loan secured solely on the stock or securities.

- (7) If, in relation to any stock or securities, SL is greater than MV, the net market value of the stock or securities shall be taken to be nil.
- (8) Where this paragraph applies in relation to an instrument, the instrument shall not be regarded as duly stamped unless it has been stamped in accordance with section 12 of the Stamp Act 1891.
- (9) This paragraph shall be construed as one with the Stamp Act 1891.

**Interpretation: partnership property and partnership share**

- 34 (1) Any reference in this Part of this Schedule to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business.
- (2) Any reference in this Part of this Schedule to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profits of the partnership.

**Interpretation: transfer of chargeable interest to a partnership**

- 35 For the purposes of this Part of this Schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.

**Interpretation: transfer of interest in a partnership**

- 36 For the purposes of this Part of this Schedule, there is a transfer of an interest in a partnership where arrangements are entered into under which—
  - (a) a partner transfers the whole or part of his interest as partner to another person (who may be an existing partner), or
  - (b) a person becomes a partner and an existing partner reduces his interest in the partnership or ceases to be a partner.

**Interpretation: transfer of chargeable interest from a partnership**

- 37 For the purposes of this Part of this Schedule, there is a transfer of a chargeable interest from a partnership in any case where—
  - (a) a chargeable interest that was partnership property ceases to be partnership property, or
  - (b) a chargeable interest is granted or created out of partnership property and the interest is not partnership property.



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### **Interpretation: market value of leases**

- 38 (1) This paragraph applies in relation to a lease for the purposes of this Part of this Schedule if—
- (a) the grant of the lease is or was a transaction to which paragraph 10 applies or applied (or a transaction to which paragraph 10 would have applied if that paragraph had been in force at the time of the grant), or
  - (b) the grant of the lease is a transaction to which paragraph 18 applies.
- (2) In determining the market value of the lease, an obligation of the tenant under the lease is to be taken into account if (but only if)—
- (a) it is an obligation such as is mentioned in paragraph 10 (1) of Schedule 17A, or
  - (b) it is an obligation to make a payment to a person.

### **Interpretation: connected persons**

- 39 (1) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this Part of this Schedule.
- (2) As applied by sub-paragraph (1), that section has effect with the omission of subsection (4) (partners connected with each other).

### **Interpretation: arrangements**

- 40 In this Part of this Schedule “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”.
- 2 The following amendments are consequential on the amendment made by paragraph 1—
- (a) in section 104(2) of the Finance Act 2003 (c. 14) (partnerships), for the words following “Part 3” substitute “ makes special provision for certain transactions ”;
  - (b) in section 125(8) of that Act (continued application of stamp duty in relation to certain partnership transactions), for “paragraph 13(2) and (3)” substitute “ paragraph 31 ”;
  - (c) in paragraph 5 of Schedule 15 to that Act (partnerships: introduction to Part 2 of Schedule 15), for the words following “Part 3 of this Schedule” substitute “ (transactions to which special provisions apply) ”.
- 3 (1) The preceding provisions of this Schedule have effect in relation to any partnership transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is after the day on which this Act is passed.
- (2) “Partnership transaction” means a transaction mentioned in paragraph 9 (1) of Schedule 15 to the Finance Act 2003 (as substituted by paragraph 1 of this Schedule).

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## SCHEDULE 42

Section 326

## REPEALS

## PART 1

## EXCISE DUTIES

## (1) HYDROCARBON OIL ETC DUTIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Hydrocarbon Oil Duties Act 1979 (c. 5)	In section 6AA(2), the word “or” preceding paragraph (b). In section 20AAB(3), “or (2)”. Schedule 2A.
1 The repeal in section 6AA(2) of the Hydrocarbon Oil Duties Act 1979 has effect in accordance with section 11(2) of this Act.	
2 The other repeals have effect in accordance with section 9(4) of this Act.	

## (2) GENERAL BETTING DUTY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Betting and Gaming Duties Act 1981 (c. 63)	In section 7B(2)(b), the words “the bet is made otherwise than by means of a totalisator and”. In section 12(4), the definition of “sponsored pool betting”. In Schedule 1, in paragraph 10(1), the words “, or that facilities for sponsored pool betting on those events are being or are to be provided.”.

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These repeals have effect in accordance with section 15(10) of this Act.

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## PART 2

## INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

## (1) TRANSFER PRICING

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 494— (a) in subsection (2), paragraph (d) and the word “and” preceding it, and the third sentence; (b) subsection (2B). In Schedule 24, paragraph 20.

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These repeals have effect in accordance with section 37 of this Act.

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	In Schedule 28AA— (a) in paragraph 5, in sub-paragraph (1), the words “(but subject to sub-paragraph (2) below)” and sub-paragraphs (2) to (6); (b) in paragraph 11, sub-paragraph (2), in sub-paragraph (3), paragraph (e) and the word “and” preceding it and, in sub-paragraph (4), the words “(2) or”.
Finance Act 1998 (c. 36)	In Schedule 17, paragraph 24.
Finance Act 2002 (c. 23)	In Schedule 29, in paragraph 92(3), paragraph (c) and the word “and” preceding it.
Finance Act 2003 (c. 14)	In Schedule 33, paragraph 13(10).

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These repeals have effect in accordance with section 37 of this Act.

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## (2) THIN CAPITALISATION

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<b>Short title and chapter</b>	<b>Extent of repeal</b>
Income and Corporation Taxes Act 1988 (c. 1)	Section 74(1)(n). In section 209— (a) in subsection (2), paragraph (da) and, in paragraph (e), the words “or (da)”; (b) in subsection (3), the words “, (da)”; (c) in subsection (3A)(a), the words “, (da)”; (d) subsections (8A) to (8F). In section 212— (a) in subsection (1)(b), the words “paragraph (da) of section 209(2) or”; (b) in subsection (3), the words “Without prejudice to subsection (4) below,” and the words from “and does not apply” to the end of the subsection; (c) subsection (4). Section 710(3)(a). In section 730A(5), the words “and (da)”
Finance Act 1995 (c. 4)	Section 87(1), (3), (4) and (5).
Finance Act 1996 (c. 8)	In Schedule 9, in paragraph 11A— (a) sub-paragraphs (2)(a) and (3)(a) ; (b) in sub-paragraph (3)(b), the words “in a case falling within paragraph (b) of that sub-paragraph,”; (c) in sub-paragraph (5)(b), the words “the terms would have been the same, except that”.

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These repeals have effect in accordance with section 37 of this Act.

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(3) EXPENSES: COMPANIES WITH INVESTMENT BUSINESS AND INSURANCE COMPANIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 77(1), the words from “and the incidental costs” onwards.
Finance Act 1989 (c. 26)	In section 85(2), the word “or” at the end of paragraph (a) and paragraphs (c) to (d). Section 86(5), (5A) and (7).
Finance Act 1990 (c. 29)	Section 44. In Schedule 7, paragraph 1.
Finance Act 1991 (c. 31)	Section 47. In Schedule 7, paragraph 13(1).
Finance Act 1995 (c. 4)	In Schedule 8, paragraphs 7 and 23(3).
Finance Act 1996 (c. 8)	Section 164(1), (2) and (6). In Schedule 11, in paragraph 4(3), the word “net”. In Schedule 14, paragraph 8. In Schedule 31, paragraph 3 (1) and (2).
Finance Act 1997 (c. 16)	Section 67(4)(a).
Finance (No. 2) Act 1997 (c. 58)	In Schedule 3, paragraph 1. In Schedule 6, paragraph 2.
Finance Act 1998 (c. 36)	In Schedule 3, paragraph 9. In Schedule 7, in paragraph 1 the words “86(2) definition of “deductible”, ”.
Finance Act 2000 (c. 17)	In Schedule 27, paragraph 7.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraphs 15 and 70.
Finance Act 2001 (c. 9)	In Schedule 23, paragraph 2.
Finance Act 2003 (c. 14)	In Schedule 33, paragraphs 6(6), 8 (1) and 12(1).

These repeals have effect in accordance with section 42 of this Act.

(4) LOAN RELATIONSHIPS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1996 (c. 8)	In Schedule 9— (a) paragraph 18(3A); (b) in paragraph 20(1), paragraph (c) and the word “and” preceding it; (c) paragraph 20(2).

These repeals have effect in accordance with Schedule 8 to this Act.

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## (5) DERIVATIVE CONTRACTS

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2002 (c. 23)	In Schedule 26, in paragraph 33(4)(b), the words “issued by the Financial Services Authority”.

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This repeal has effect in accordance with Schedule 9 to this Act.

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## (6) AMENDMENT OF ENACTMENTS THAT OPERATE BY REFERENCE TO ACCOUNTING PRACTICE

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 730A(6), paragraph (b) (but not the word “and” following it). Section 730BB(12).
Finance Act 1996 (c. 8)	In section 84— (a) in subsection (1) the words “in accordance with an authorised accounting method”; (b) subsections (2) and (4A). Section 84A(4) to (7). Section 88(2)(b) and (3)(b). Section 88A(5). Section 90. Sections 92 to 94 Section 96(3). In section 103(1)— (a) the definition of “authorised accounting method”, “authorised accruals basis of accounting” and “authorised mark to market basis of accounting”; (b) the definition of “statutory accounts”. Section 103(5). In Schedule 9— (a) paragraph 5 (1) to (2A); (b) in paragraph 5A(9), the words “by virtue of paragraph 5(2) above”; (c) in paragraph 5A(15), the words “under paragraph 5(1)”; (d) in paragraph 6(2), the words “in accordance with that accounting method”;

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1 These repeals have effect in accordance with section 52(3) of this Act.

2 The repeals of section 92 of the Finance Act 1996, section 65(7) of the Finance Act 1999 and sections 72 and 73 of, and paragraph 5 of Schedule 23 to, the Finance Act 2002 have effect subject to the provisions of paragraph 9(2) and (3) of Schedule 10 to this Act.

3 The repeals of sections 93, 93A and 93B of the Finance Act 1996 and sections 75 to 77 of, and paragraph 18 of Schedule 27 to, the Finance Act 2002 have effect subject to the provisions of paragraph 11(2) and (3) of Schedule 10 to this Act.

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	(e) in paragraph 6C(2), the words “by virtue of paragraph 5(2) above”;
	(f) in paragraph 9(2), the word “or” at the end of paragraph (b) ;
	(g) paragraph 10A(5);
	(h) in paragraph 12(2A), paragraph (b) and the word “and” preceding it;
	(i) in paragraph 13(1), the words “given by the authorised accounting method used”;
	(j) in paragraph 14(1), the words “given by an authorised accounting method”;
	(k) in paragraph 16(2), the words “, notwithstanding the provisions of any authorised accounting method.”;
	(l) paragraph 19(10).
	In Schedule 10, in paragraphs 2A (1) and 2B (1), the words “, notwithstanding section 84(2)(b) of this Act”.
Finance Act 1997 (c. 16)	Section 83 (1) to (5).
Finance Act 1999 (c. 16)	Section 65(7).
Capital Allowances Act 2001 (c. 1)	In Schedule 2, paragraphs 88 and 89.
Finance Act 2002 (c. 23)	Sections 72 to 77. In section 103(4)—
	(a) in paragraph (b), the words “93(2),”;
	(b) in paragraph (d), the words “sections 84(2)(b) and 85(2)(a),”.
	In Schedule 23, paragraphs 4, 5 and 8.
	In Schedule 24, paragraphs 1 to 6.
	In Schedule 25, paragraphs 4 to 6, 10 and 12.
	In Schedule 26—
	(a) in paragraph 15(1), the words “in accordance with an authorised accounting method and”;
	(b) paragraph 15(2), (3) and (6);
	(c) paragraph 16(4) to (7);
	(d) paragraph 22 (1) to (4);
	(e) in paragraph 22(5), paragraph (b) and the word “and” preceding it;
	(f) paragraph 22A(5);
	(g) in paragraph 23(2) and (3), the words “given by the authorised accounting method used”;
	<hr/>
	1 These repeals have effect in accordance with section 52(3) of this Act.
	2 The repeals of section 92 of the Finance Act 1996, section 65(7) of the Finance Act 1999 and sections 72 and 73 of, and paragraph 5 of Schedule 23 to, the Finance Act 2002 have effect subject to the provisions of paragraph 9(2) and (3) of Schedule 10 to this Act.
	3 The repeals of sections 93, 93A and 93B of the Finance Act 1996 and sections 75 to 77 of, and paragraph 18 of Schedule 27 to, the Finance Act 2002 have effect subject to the provisions of paragraph 11(2) and (3) of Schedule 10 to this Act.

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- (h) in paragraph 25(1), the words “given by an authorised accounting method”;
- (i) in paragraph 31A(2), the words “, notwithstanding the provisions of any authorised accounting method.”;
- (j) in paragraphs 32 (1) and 33 (1), the words “, notwithstanding paragraph 15”;
- (k) paragraph 52;
- (l) in paragraph 54 (1) the definitions of “authorised accounting method”, “authorised accruals basis of accounting” and “authorised mark to market basis of accounting” and of “statutory accounts”.

In Schedule 27, paragraph 18.

Finance Act 2003 (c. 14)

In Schedule 27, paragraph 3.

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- 1 These repeals have effect in accordance with section 52(3) of this Act.
  - 2 The repeals of section 92 of the Finance Act 1996, section 65(7) of the Finance Act 1999 and sections 72 and 73 of, and paragraph 5 of Schedule 23 to, the Finance Act 2002 have effect subject to the provisions of paragraph 9(2) and (3) of Schedule 10 to this Act.
  - 3 The repeals of sections 93, 93A and 93B of the Finance Act 1996 and sections 75 to 77 of, and paragraph 18 of Schedule 27 to, the Finance Act 2002 have effect subject to the provisions of paragraph 11(2) and (3) of Schedule 10 to this Act.
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#### (7) CONSTRUCTION INDUSTRY SCHEME

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 98, in the Table— <ul style="list-style-type: none"><li>(a) in the first column, the entry relating to section 561(8) of the Income and Corporation Taxes Act 1988;</li><li>(b) in the second column, the entry relating to regulations under section 566(1), (2) or (2A) of that Act.</li></ul>
Income and Corporation Taxes Act 1988 (c. 1)	In Part 13, Chapter 4.
Companies Act 1989 (c. 40)	Section 139(5). In Schedule 10, paragraph 38(3).
Finance Act 1994 (c. 9)	In Schedule 17, paragraph 5.
Finance Act 1995 (c. 4)	Section 139. Schedule 27.
Finance Act 1996 (c. 8)	Section 72(3). Section 178.
Finance Act 1997 (c. 16)	Section 54(5).
Finance Act 1998 (c. 36)	Section 55(2).

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These repeals have effect in accordance with section 77 of this Act.

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	Section 57. Schedule 8.
Government of Wales Act 1998 (c. 38)	In Schedule 16, paragraph 58.
Finance Act 1999 (c. 16)	Section 53.
Finance Act 2002 (c. 23)	In section 40— (a) subsection (1), (b) subsection (3), and (c) in subsection (4), the second sentence.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 6, paragraphs 58, 59, 60 and 61.
Finance Act 2003 (c. 14)	Section 147(1).

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These repeals have effect in accordance with section 77 of this Act.

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#### (8) EXEMPTION FOR LOANED COMPUTERS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 320(4) and (5).

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This repeal has effect in accordance with section 79(4) of this Act.

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#### (9) VANS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 114(2), the word “and” following paragraph (b). In section 171, in subsection (2), the words “or van” and, in subsection (3), the words “or a van”. In Part 2 of Schedule 1, in the entry relating to the age of a car or van (in Chapter 6 of Part 3) and in the entry relating to the date of first registration (in relation to a car or van) (in Chapter 6 of Part 3), the words “or van”. In Part 3 of Schedule 7, paragraph 24.

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The repeals in section 171 of, and Schedule 1 to, the Income Tax (Earnings and Pensions) Act 2003 have effect for the year 2007-08 and subsequent years of assessment and the other repeals have effect for the year 2005-06 and subsequent years of assessment.

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(10) INCOME TAX RELIEF WHERE NATIONAL  
INSURANCE CONTRIBUTIONS MET BY EMPLOYEE

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 119A(8).
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 480(7). In section 484(7), the definition of “the Contributions and Benefits Act” and the word “and” preceding it.
Finance Act 2003 (c. 14)	In Schedule 23, in paragraphs 21(4) and 22C(4), the words “increased by any amounts deducted under sections 481 and 482 of that Act”.

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- 1 These repeals come into force in accordance with section 85(2) of this Act.
- 2 The repeal of section 119A(8) of the Taxation of Chargeable Gains Act 1992 has effect subject to paragraph 6(4) of Schedule 16 to this Act.
- 3 The repeals in paragraphs 21(4) and 22C(4) of Schedule 23 to the Finance Act 2003 have effect subject to paragraph 5(6) of Schedule 16 to this Act.

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(11) EMPLOYMENT-RELATED SECURITIES AND OPTIONS: OTHER PROVISIONS

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 421G. Section 429(5). Section 443(5). Section 446R(5). Section 449(4). In section 519(1), the word “and” at the end of paragraph (a). In section 524(1), the word “and” at the end of paragraph (a). Section 701(2)(c)(ii).
Finance Act 2003 (c. 14)	In Schedule 21, paragraph 18(4).

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- 1 The repeals in sections 429, 443, 446R and 449 of the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with section 86(8) of this Act.
- 2 The remaining repeals have effect in accordance with section 88(11) of this Act.

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(12) MINOR AMENDMENTS OF OR CONNECTED WITH  
THE INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
	1 The repeals of paragraph 5(1ZA) of Schedule 20 to the Finance Act 2000, paragraph 5(1A) of Schedule 22 to the Finance Act 2001 and paragraph 245 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with paragraph 7(3) of Schedule 17 to this Act.
	2 The repeal of paragraph 166(3) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 has effect in accordance with paragraph 5(2) of Schedule 17 to this Act.

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Finance Act 2000 (c. 17)	In Schedule 20, paragraph 5(1ZA).
Finance Act 2001 (c. 9)	In Schedule 22, paragraph 5(1A).
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 577(3). In section 677(1), in Part 2 of Table B, the entry relating to compensation payments where child support reduced because of a change in legislation. In Schedule 6— (a) paragraph 166(3); (b) paragraph 245.

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- The repeals of paragraph 5(1ZA) of Schedule 20 to the Finance Act 2000, paragraph 5(1A) of Schedule 22 to the Finance Act 2001 and paragraph 245 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with paragraph 7(3) of Schedule 17 to this Act.
- The repeal of paragraph 166(3) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 has effect in accordance with paragraph 5(2) of Schedule 17 to this Act.

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### (13) ENTERPRISE INCENTIVES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 289(1)(a), the words “wholly in cash”. In section 289A(8)(b), the words “it is shown that”. In section 293(4A), the words “which is in administration or receivership”. Section 303A(6)(a). In section 308— (a) in subsection (1)(a), the words from “and, except” to “relevant period”, (b) subsection (2)(a) to (c), (c) in subsection (3)(a), the words “it is shown that”, (d) subsection (3)(b) and the word “and” immediately preceding it,

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- The repeal in section 303A of the Taxes Act 1988 has effect in accordance with paragraph 8(2) of Schedule 18 to this Act.
- The repeals in Schedule 28B to the Taxes Act 1988, and in section 73 of the Finance Act 1998, have effect in accordance with paragraph 16 of Schedule 19 to this Act.
- The repeals of section 151A(3) of, in paragraph 2(4) of Schedule 5B to, and of Schedule 5C to, the Taxation of Chargeable Gains Act 1992, and the repeals in the Finance Act 1995, have effect in accordance with paragraph 7 of Schedule 19 to this Act.
- The repeal in paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 18(2) of Schedule 18 to this Act.
- The repeals in the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with section 96 of this Act.
- The remaining repeals have effect in relation to shares issued on or after 17th March 2004.

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- (e) in subsection (4), the words “within the relevant period” and “it is shown that”,
  - (f) subsection (5).
- In Schedule 28B—
- (a) in paragraph 3(3), the words from “and for the purposes” to the end,
  - (b) paragraph 6(5),
  - (c) paragraph 10(3)(a) to (c),
  - (d) in paragraph 10(4), the words “it is shown”, the first “that” in paragraph (a) and the word “that” in paragraph (b),
  - (e) in paragraph 10(5), the words “it is shown that”,
  - (f) paragraph 10(6),
  - (g) in paragraph 11(4), the words “it is shown”, the first “that” in paragraph (a) and the word “that” in paragraph (b).
- Taxation of Chargeable Gains Act 1992 (c. 12)
- Section 151A(3).  
In Schedule 5B—
- (a) in paragraph 1(2)(a), the words “wholly in cash”,
  - (b) in paragraph 2(4), the words “or Schedule 5C”,
  - (c) paragraph 14A(6)(a).
- Schedule 5C.
- Finance Act 1995 (c. 4)
- Section 72(4).  
Schedule 16.
- Finance Act 1998 (c. 36)
- In section 73—
- (a) subsection (2),
  - (b) in subsection (3), the words from “and after paragraph (b)” to the end,
  - (c) in subsection (4), the words from “and after” to the end.
- In Schedule 13—
- (a) paragraph 1(1)(a),
  - (b) paragraph 21.

- 
- 1 The repeal in section 303A of the Taxes Act 1988 has effect in accordance with paragraph 8(2) of Schedule 18 to this Act.
  - 2 The repeals in Schedule 28B to the Taxes Act 1988, and in section 73 of the Finance Act 1998, have effect in accordance with paragraph 16 of Schedule 19 to this Act.
  - 3 The repeals of section 151A(3) of, in paragraph 2(4) of Schedule 5B to, and of Schedule 5C to, the Taxation of Chargeable Gains Act 1992, and the repeals in the Finance Act 1995, have effect in accordance with paragraph 7 of Schedule 19 to this Act.
  - 4 The repeal in paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 18(2) of Schedule 18 to this Act.
  - 5 The repeals in the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with section 96 of this Act.
  - 6 The remaining repeals have effect in relation to shares issued on or after 17th March 2004.
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Finance Act 2000 (c. 17)	In Schedule 15— (a) paragraph 21(2)(a) to (c), (b) in paragraph 24(1), the words “which is in administration or receivership”.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 5, paragraph 11(2)(a) to (c) and (3).

- 
- 1 The repeal in section 303A of the Taxes Act 1988 has effect in accordance with paragraph 8(2) of Schedule 18 to this Act.
  - 2 The repeals in Schedule 28B to the Taxes Act 1988, and in section 73 of the Finance Act 1998, have effect in accordance with paragraph 16 of Schedule 19 to this Act.
  - 3 The repeals of section 151A(3) of, in paragraph 2(4) of Schedule 5B to, and of Schedule 5C to, the Taxation of Chargeable Gains Act 1992, and the repeals in the Finance Act 1995, have effect in accordance with paragraph 7 of Schedule 19 to this Act.
  - 4 The repeal in paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 18(2) of Schedule 18 to this Act.
  - 5 The repeals in the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with section 96 of this Act.
  - 6 The remaining repeals have effect in relation to shares issued on or after 17th March 2004.
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#### (14) CHARGEABLE GAINS: GIFTS RELIEF ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 260(6A) and (6B). In section 281(3)(c), the words “nor dealt in on the Unlisted Securities Market”.
Finance Act 1995 (c. 4)	Section 72(6). In Schedule 13, paragraph 4(2).

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- 1 The repeals in section 260 of the Taxation of Chargeable Gains Act 1992 and in the Finance Act 1995 have effect in accordance with paragraph 10(8) of Schedule 21 to this Act.
- 2 The repeal in section 281 of the Taxation of Chargeable Gains Act 1992 has effect in relation to disposals on or after the passing of this Act.

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#### (15) CHARGEABLE GAINS: PRIVATE RESIDENCE RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 223(4)(a), the words “or those provisions as applied by section 225”.

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This repeal has effect in accordance with paragraph 7(2) of Schedule 22 to this Act.

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## (16) MANUFACTURED DIVIDENDS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In Schedule 23A, in paragraph 2A— (a) in sub-paragraph (1A), paragraph (a), paragraph (c) and the word “or” before it and the words following paragraph (c) ; (b) in sub-paragraph (1B), paragraph (c) and the word “or” before it; (c) in sub-paragraph (4), in paragraph (a), the words “or corporation tax” and in paragraph (b), the words “or, as the case may be, total profits”.
Finance Act 2002 (c. 23)	Section 108(2).
<hr/>	
1 The repeal of paragraph 2A(1A)(a) of Schedule 23A to the Taxes Act 1988 has effect in accordance with paragraph 2(7) of Schedule 24 to this Act.	
2 The other repeals in paragraph 2A(1A) of Schedule 23A to the Taxes Act 1988 and the repeals in paragraph 2A(1B) of that Schedule have effect in accordance with paragraph 2(11) of Schedule 24 to this Act.	
3 The repeal of section 108(2) of the Finance Act 2002 has effect in accordance with paragraph 2(7) and (9) of Schedule 24 to this Act.	

## (17) LIFE POLICIES ETC.: RESTRICTION OF CORRESPONDING DEFICIENCY RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2001 (c. 9)	In Schedule 28, paragraph 13.
<hr/>	
This repeal has effect in accordance with section 140(4) to (6) of this Act.	

## (18) OFFSHORE FUNDS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 759 (1) and (1A). In section 760— (a) in subsection (3), paragraphs (b) to (d) and the word “or” preceding paragraph (b) ; (b) subsections (4) to (7). In Schedule 27— (a) paragraph 10; (b) in paragraph 11 (1) and (4), the words “section 760(3) and”; (c) paragraphs 12 and 13;
<hr/>	
1 These repeals have effect in accordance with section 145(2) of this Act.	
2 The repeal of paragraph 3 of Schedule 10 to the Finance Act 1996 has effect subject to paragraph 1(3) and (4) of Schedule 26 to this Act.	
3 The repeal of paragraph 35 of Schedule 26 to the Finance Act 2002 has effect subject to paragraph 2(3) and (4) of Schedule 26 to this Act.	

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	(d) in paragraph 16(1), the words “by a trustee or officer thereof”.
Taxation of Chargeable Gains Act 1992 (c. 12)	In Schedule 10, paragraph 14(46).
Finance Act 1995 (c. 4)	Section 134 (1) to (3) and (8).
Finance Act 1996 (c. 8)	In Schedule 10, paragraph 3.
Finance Act 2002 (c. 23)	In Schedule 26, paragraph 35.

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- 1 These repeals have effect in accordance with section 145(2) of this Act.
  - 2 The repeal of paragraph 3 of Schedule 10 to the Finance Act 1996 has effect subject to paragraph 1(3) and (4) of Schedule 26 to this Act.
  - 3 The repeal of paragraph 35 of Schedule 26 to the Finance Act 2002 has effect subject to paragraph 2(3) and (4) of Schedule 26 to this Act.
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(19) MEANING OF “OFFSHORE INSTALLATION”

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 298(5), the definition of “oil rig”. In paragraph 5 (1) of Schedule 28B, the definition of “oil rig”.
Finance Act 2000 (c. 17)	In paragraph 28(6) of Schedule 15, the definition of “oil rig”. In Schedule 22, paragraph 20(5).
Capital Allowances Act 2001 (c. 2)	Section 94(2)(b) and (3). Section 153(3).
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 305(6), the definition of “offshore installation”. In paragraph 18(8) of Schedule 5, the definition of “oil rig”.

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- 1 The repeal in section 298 of the Taxes Act 1988 has effect in accordance with paragraph 4(5) and (6) of Schedule 27 to this Act.
  - 2 The repeal in Schedule 28B to the Taxes Act 1988 has effect in accordance with paragraph 5(5) and (6) of Schedule 27 to this Act.
  - 3 The repeal in Schedule 15 to the Finance Act 2000 has effect in accordance with paragraph 6(5) and (6) of Schedule 27 to this Act.
  - 4 The repeal in Schedule 22 to the Finance Act 2000 has effect in accordance with paragraph 7(2) of Schedule 27 to this Act.
  - 5 The repeals in the Capital Allowances Act 2001 have effect in accordance with paragraph 11 (1) of Schedule 27 to this Act.
  - 6 The repeal in section 305 of the Income Tax (Earnings and Pensions) Act 2003 has effect in accordance with paragraph 16 of Schedule 27 to this Act.
  - 7 The repeal in Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 has effect in accordance with paragraph 17(6) and (7) of Schedule 27 to this Act.
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### PART 3

#### PENSION SCHEMES ETC

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 98, in the Table, in the first and second columns, the entries relating to regulations under section 602, 605, 612, 639 and 651A of the Income and Corporation Taxes Act 1988 and the entries relating to section 605 of that Act. In section 100(6)(a), the word “or” in the second place.
Inheritance Tax Act 1984 (c. 51)	Section 12(3) and (4). In section 58(2), the words “part of or” and the words “fund or” (in both places). Section 151 (1) and (1A).
Finance (No.2) Act 1987 (c. 51)	Section 98.
Income and Corporation Taxes Act 1988 (c. 1)	In section 21A(2), the entry relating to section 76 of the Finance Act 1989. In section 336(1A)(b), sub-paragraph (iii) and the word “or” before it. Section 349B(3)(l) and (m). Section 438(8). In section 466(2), the definition of “pension business”. Section 512(2). Sections 590 to 594. Sections 598 to 599A. Sections 601 to 612. In section 613(4), the word “respective” and paragraphs (b) to (d). Sections 618 to 626. Section 628. Sections 630 to 640A. Section 641A. Sections 643 to 646D. Sections 648B to 651A. Sections 653 to 655. Section 658A. In section 659A(1), the words “592(2), 608(2)(a),”, the words “, 620(6) and 643(2)” and the words following paragraph (b). Sections 659B to 659D. In section 659E(2), the entries relating to sections 592(2), 608(2)(a), 620(6) and 643(2) of the Income and Corporation Taxes Act 1988. Schedules 22, 23 and 23ZA.

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These repeals have effect on 6th April 2006 (but subject to Schedule 36 to this Act).

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	In Schedule 29, in the Table in paragraph 32, the entries relating to sections 12(2), 151 and 152 of the Inheritance Tax Act 1984.
Finance Act 1988 (c. 39)	Sections 54 to 56. In Schedule 3, paragraph 18. In Schedule 13, paragraph 6.
Finance Act 1989 (c. 26)	Sections 75 to 77. Section 170(4)(a) and (b). Schedule 6. Schedule 7. In Schedule 12, paragraphs 15 and 16.
Finance Act 1991 (c. 31)	Sections 34 to 36.
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 99A(4)(c). In section 271— (a) in subsection (1), paragraphs (d), (g), (h) and (j) and the second sentence, (b) subsection (2), (c) in subsection (7), the words after “chargeable gains;”, and (d) in subsection (10), the words after “options contracts”. In Schedule 1, paragraph 2(8). In Schedule 10, paragraph 14(21).
Finance Act 1993 (c. 34)	Section 106. Section 107(4) to (7). Section 112.
Pension Schemes Act 1993 (c. 48)	In Schedule 8, paragraph 20.
Pension Schemes (Northern Ireland) Act 1993 (c. 49)	In Schedule 7, paragraph 22.
Finance Act 1994 (c. 9)	Sections 103 to 107.
Finance Act 1995 (c. 4)	Sections 58 to 61. In Schedule 8, paragraph 4(3). Schedule 11.
Pensions Act 1995 (c. 26)	In Schedule 5, paragraph 12.
Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))	In Schedule 3, paragraph 8.
Finance Act 1996 (c. 8)	Section 172. In Schedule 21, paragraph 17. In Schedule 39, paragraph 2.
Finance Act 1998 (c. 36)	Section 92. Sections 94 to 97. Section 98(1). Schedule 15.

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These repeals have effect on 6th April 2006 (but subject to Schedule 36 to this Act).

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Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2)	In Schedule 1, paragraphs 3 and 4.
Finance Act 1999 (c. 16)	Section 52. In Schedule 5, paragraphs 4 and 5 and, in paragraph 6(2), the words “and 654”. In Schedule 10, paragraphs 1 to 10 and 12 to 18.
Welfare Reform and Pensions Act 1999 (c. 30)	In Schedule 12, paragraph 13.
Finance Act 2000 (c. 17)	Section 61. In Schedule 8, paragraph 83(2). Schedule 13.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraphs 53 and 54.
Finance Act 2001 (c. 9)	Section 74.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 56(8). Section 224. In section 327(4), the entry relating to section 619 of the Income and Corporation Taxes Act 1988. In Part 6, Chapter 1. Section 407(3). Section 408(2). Section 492(2). In section 566(4), the entry relating to section 623. In Part 9, Chapters 6, 7, 8, 9, 13 and 16. Section 683(4). In Part 2 of Schedule 1, the entries relating to the following expressions: “administrator (in Chapter 2 of Part 6)”, “approved (in Chapter 8 of Part 9)”, “approved (in relation to retirement benefits scheme) (in Chapter 6 of Part 9)”, “approved retirement benefits scheme (in Chapter 6 of Part 9)”, “director (in Chapter 1 of Part 6)”, “employee (in Chapter 1 of Part 6)”, “employee (in Chapter 2 of Part 6)”, “employee (in Chapter 6 of Part 9)”, “employer (in Chapter 1 of Part 6)”, “employment (in Chapter 1 of Part 6)”, “exempt approved scheme (in Chapter 13 of Part 9)”, “ex-spouse (in Chapter 2 of Part 6)”, “ex-spouse (in Chapter 6 of Part 9)”, “former approved superannuation fund (in Chapter 7 of Part 9)”, “income withdrawal (in Chapter 8 of Part 9)”, “non-approved retirement benefits scheme (in Chapter 1 of Part 6)”, “non-approved retirement benefits scheme (in Chapter 2 of Part 6)”, “personal

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These repeals have effect on 6th April 2006 (but subject to Schedule 36 to this Act).

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**Changes to legislation:** Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

	<p>pension arrangements (in chapter 8 of Part 9)”, “personal pension scheme (in Chapter 8 of Part 9)”, “provision of benefits in respect of an employee (in Chapter 1 of Part 6)”, “provision of relevant benefits (in Chapter 2 of Part 6)”, “relative (in Chapter 2 of Part 6)”, “relevant benefits (in Chapter 1 of Part 6)”, “relevant benefits (in Chapter 2 of Part 6)”, “relevant statutory scheme (in Chapter 13 of Part 9)”, “retirement annuity contract (in Chapter 9 of Part 9)”, and “retirement benefits scheme (in Chapter 6 of Part 9)”. In Schedule 6, paragraphs 72, 73, 79, 80 (1) to (5), 82, 89, 90, 92 to 95, 97, 98, 99, 125(3) and 161. In Schedule 7, paragraph 41.</p>
Finance Act 2003 (c. 14)	<p>In section 153(2)(a), the words “606(13),”. Section 174. In Schedule 24, in paragraph 2(1), the word “or” at the end of paragraph (a). In Schedule 27, paragraph 1(2).</p>
Finance Act 2004 (c. 12)	<p>In Schedule 17, paragraphs 2 and 10(4).</p>

These repeals have effect on 6th April 2006 (but subject to Schedule 36 to this Act).

## PART 4

### OTHER TAXES

#### (1) INHERITANCE TAX

<i>Short title and chapter</i>	<i>Extent of repeal</i>
[ <sup>F824</sup> Senior Courts Act 1981] (c. 54)	Section 109(3).
Inheritance Tax Act 1984 (c. 51)	Section 256(1)(c) and (2).

<sup>1</sup> The repeal in section 109 of the [<sup>F824</sup>Senior Courts Act 1981] has effect in accordance with section 294 (4) of this Act.

<sup>2</sup> The repeals in section 256 of the Inheritance Tax Act 1984 come into force with the passing of this Act.

#### Textual Amendments

**F824** Words in Act substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 11 para. 1(2)**; S.I. 2009/1604, art. 2(d)

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## (2) STAMP DUTY LAND TAX

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2003 (c. 14)	<p>In section 43(3), the word “and” preceding paragraph (c).</p> <p>In section 45(1), the word “and” preceding paragraph (b).</p> <p>In section 47(3), the words from “and section 58” to the end.</p> <p>In section 77(2)(a) and (b), the word “contractual”.</p> <p>In section 80(2), the words “or chargeable”.</p> <p>In section 119(2), the word “and” at the end of the entry for section 44(4).</p> <p>In Schedule 4—</p> <ul style="list-style-type: none"><li>(a) in paragraph 5(6), the words from “and section 58” to the end;</li><li>(b) paragraphs 13 to 15.</li></ul> <p>In Schedule 5—</p> <ul style="list-style-type: none"><li>(a) in paragraph 3, the words “(see paragraphs 4 and 5)” and “(see paragraphs 6 and 7)”;</li><li>(b) paragraphs 4 to 7, 10 and 11.</li></ul> <p>In Schedule 10—</p> <ul style="list-style-type: none"><li>(a) paragraph 33(2) and (3);</li><li>(b) in paragraph 34(2), the words “by notice in writing given to the Inland Revenue”;</li><li>(c) paragraph 34(3).</li></ul> <p>In Schedule 19, paragraph 6(1).</p>
Finance Act 2004 (c. 12)	<p>In Schedule 39, paragraphs 6 and 11.</p>

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- 1 The repeals in Schedule 10 to the Finance Act 2003 come into force with the passing of this Act.
- 2 The repeals in sections 43, 45 and 119 of that Act have effect in accordance with paragraph 13 of Schedule 39 to this Act.
- 3 The other repeals have effect in accordance with paragraph 26 of that Schedule.

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## PART 5

### MISCELLANEOUS MATTERS

#### ENDING OF SHIPBUILDERS RELIEF

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1966 (c. 18)	Section 2.

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This repeal has effect in accordance with section 323 of this Act.

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**Changes to legislation:**

Finance Act 2004 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- s. 59(5) words omitted by [2012 c. 7 Sch. 14 para. 94](#)
- s. 97(1) words inserted by [S.I. 2005/2899 art. 2](#) (Effect superseded. S. 97 was repealed on 6.4.2005 by 2005 c. 5, Sch. 1 para. 631)
- s. 155(6)(a) words substituted by [2007 c. 3 Sch. 1 para. 466](#) (S. 155 was repealed (retrospectively) on 6.4.2007 by 2007 c. 11 Sch. 20 para. 3)
- s. 155(6)(b) words substituted by [2007 c. 3 Sch. 1 para. 466](#) (S. 155 was repealed (retrospectively) on 6.4.2007 by 2007 c. 11 Sch. 20 para. 3)
- s. 202(5) omitted by [2013 c. 29 s. 52\(6\)](#)
- Sch. 10 para. 2 repealed by [2005 c. 22 Sch. 11 Pt. 2\(6\)](#) (This amendment not applied to legislation.gov.uk. The amendment falls by virtue of the repeal of Sch. 6 para. 9 (1.4.2009, with effect in accordance with s. 1329(1) of the amending Act) by 2009 c. 4, s. 1329(1), Sch. 1 para. 673(b), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2, Pt. 8 para. 64))
- Sch. 10 para. 48 repealed by [2005 c. 22 Sch. 11 Pt. 2\(6\)](#) (This amendment not applied to legislation.gov.uk. The amendment falls by virtue of the repeal of Sch. 6 para. 9 (1.4.2009, with effect in accordance with s. 1329(1) of the amending Act) by 2009 c. 4, s. 1329(1), Sch. 1 para. 673(b), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2, Pt. 8 para. 64))
- Sch. 18 para. 1(8) repealed by [2007 c. 11 Sch. 27 Pt. 2\(16\)](#) (Effect superseded. Sch.18 para 1(8) has already been repealed on 6/4/2007 by 2007 c.3, Sch. 3 Pt. 2.)
- Sch. 26 para. 1(1) omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 2(1) omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 4 omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 5 omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 6(3)-(6) omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 7-9 omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 14(2) omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 14(3) omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 14(5)(b) omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 14(7) omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 15 omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 26 para. 16(1) omitted by [2008 c. 9 s. 41\(7\)\(g\)](#)
- Sch. 27 para. 4 repealed in part by [2007 c. 3 Sch. 3 Pt. 2](#) (Effect superseded. Sch. 27 para. 4 was repealed by 2007 c. 3, Sch. 3 Pt. 1)
- Sch. 27 para. 4 words substituted by [2007 c. 3 Sch. 1 para. 483](#) (Effect superseded. Sch. 27 para. 4 was repealed by 2007 c. 3, Sch. 3 Pt. 1)
- Sch. 32 para. 10(b) word inserted by [2005 c. 7 Sch. 10 para. 44](#) (Amending provision repealed on the day it came into force)
- Sch. 35 para. 9 repealed by [2012 c. 14 Sch. 39 para. 28\(1\)](#)
- Sch. 35 para. 10 repealed by [2012 c. 14 Sch. 39 para. 28\(1\)](#)
- Sch. 36 para. 22(7)(b) words substituted by [2005 c. 7 Sch. 10 para. 54\(6\)\(b\)](#) (Effect superseded by 2006 c. 25, Sch. 23 para. 43(2))
- Sch. 36 para. 15(7) words substituted by [2007 c. 11 Sch. 20 para. 19\(3\)](#) (This amendment not applied to legislation.gov.uk. The words to be substituted do not appear in the text of the provision.)