
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, Paragraph 38. (See end of Document for details)

SCHEDULES

SCHEDULE 23

PENSION SCHEMES ETC: MISCELLANEOUS

Transitional protection: taking account of death benefits

38 After paragraph 11 insert—

“11A(1) This paragraph applies where—

- (a) paragraph 7 makes provision for the operation of a lifetime allowance enhancement factor in relation to an individual immediately before the individual's death (and any calculation required by paragraph 11 does not mean that there is then no longer a primary protection factor),
- (b) a person is paid a defined benefits lump sum death benefit or an uncrystallised funds lump sum death benefit in respect of the individual, and
- (c) notice of intention to rely on this paragraph is given to an officer of Revenue and Customs by that person in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs.

(2) If the value of the individual's pre-commencement rights to death benefits (see paragraphs 11B to 11D) exceeds RR (as adjusted under paragraph 11, where that paragraph applies), the primary protection factor is to be recalculated.

(3) The re-calculation involves taking RR to be the value of the individual's pre-commencement rights to death benefits and arriving at a revised primary protection factor.

(4) The revised primary protection factor operates in relation to—

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

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.

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lump sum death benefit which could have been paid under a pension scheme in the case of which approval could have been withdrawn under section 591B, 620(7) or 650 of ICTA, any amount in excess of the permitted limit (see sub-paragraph (2)), and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

$$\frac{UTA - TA}{UTA}$$

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.

- 11D (1) Sub-paragraph (2) applies where any of the lump sum death benefits mentioned in sub-paragraph (2) of paragraph 11B would have been payable under a policy of life insurance held for the purposes of a pension scheme and on 5th April 2006 the pension scheme either—
- (a) was not an occupational pension scheme, or

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- (b) was an occupational pension scheme with fewer than 20 members.
- (2) The lump sum death benefit is only to be taken into account in arriving at the aggregate mentioned in that sub-paragraph if—
- (a) a sum was paid under the policy when the individual actually died, and
 - (b) the terms of the policy had not been varied significantly during the period beginning with 5th April 2006 and ending with the death; and any exercise of rights conferred by the policy is to be regarded for this purpose as a variation.
- (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.
- (5) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.”

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