

*Status: Point in time view as at 12/02/2019.*

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## SCHEDULES

### SCHEDULE 17

Section 66

#### ANNUAL ALLOWANCE CHARGE

#### PART 1

##### AMENDMENTS

- 1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.
- 2 In section 172D(4)(b) (limit on increase in benefits), for “236” substitute “ 236A ”.
- 3 (1) Section 227 (annual allowance charge) is amended as follows.
  - (2) Omit subsections (2) and (3).
  - (3) In subsection (4), for “rate of 40%” substitute “ appropriate rate ”.
  - (4) After that subsection insert—
    - “(4A) The appropriate rate is—
      - (a) the basic rate in relation to so much (if any) of the excess as, when added to the individual's reduced net income for the tax year, does not exceed the basic rate limit for the tax year,
      - (b) the higher rate in relation to so much (if any) of the excess as, when so added, exceeds the basic rate limit for the tax year but does not exceed the higher rate limit for the tax year, and
      - (c) the additional rate in relation to so much (if any) of the excess as, when so added, exceeds the higher rate limit for the tax year.
    - (4B) The individual's reduced net income for the tax year is the amount after taking Step 3 in section 23 of ITA 2007 in the case of the individual for the tax year.
    - (4C) Where the basic rate limit or the higher rate limit for the tax year is (in accordance with section 192 of this Act or section 414 of ITA 2007) increased in the case of the individual, the references to the limit in subsection (4A) are to the limit as so increased.”
  - (5) Omit subsections (5A) and (5B).
  - (6) In subsection (6), after the entry relating to sections 230 to 237 (before the “and”) insert— “ sections 237A to 237F (persons liable to charge), ”.- 4 For section 228 substitute—

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**“228 Annual allowance**

- (1) The annual allowance for the tax year 2011-12 and, subject to subsection (2), each subsequent tax year is £50,000.
- (2) The Treasury may by order provide that the annual allowance for any tax year subsequent to the tax year 2011-12 is such amount as is specified in the order.”

5 After that section insert—

**“228A Carry forward of unused annual allowance**

- (1) This section applies if the individual has unused annual allowance available for the tax year (“the current tax year”).
- (2) The annual allowance for the current tax year in the case of the individual is to be treated as increased by the amount of the unused annual allowance available for the current tax year.
- (3) The individual has unused annual allowance available for the current tax year if—
  - (a) the amount of the annual allowance (before any increase under this section) for the immediately preceding tax year exceeded the total pension input amount in the case of the individual for that tax year, or
  - (b) the amount of the annual allowance (before any such increase) for either or both of the two tax years immediately preceding that immediately preceding tax year exceeded the total pension input amount in the case of the individual for the tax year concerned and the excess (or, where there is an excess for both of those tax years, the excess for both tax years) has not been used up,
 or both.
- (4) Subsection (3)—
  - (a) does not apply in relation to a tax year preceding the current tax year unless the individual was a member of a registered pension scheme at some time during that tax year, but
  - (b) subject to that, applies in relation to such a tax year even if the total pension input amount in the case of the individual for that tax year was nil (in which case the excess within paragraph (a) or (b) of that subsection is the whole amount of the annual allowance before any increase under this section).
- (5) The amount of the unused annual allowance available for the current tax year is the aggregate of—
  - (a) any excess within subsection (3)(a), and
  - (b) so much of any excess within subsection (3)(b) as has not been used up.
- (6) An amount of an excess within subsection (3)(b) for a tax year has been “used up” if—
  - (a) for a tax year falling between that tax year and the current tax year (an “intervening tax year”), the total pension input amount in the

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- case of the individual exceeded the annual allowance (apart from any increase under this section), and
- (b) the amount of the excess had effect by virtue of this section to reduce (or eliminate) the annual allowance charge for the intervening tax year in the case of the individual.
- (7) In calculating for the purposes of subsection (6) the amount of which of the excesses for different tax years had effect to reduce or eliminate the annual allowance charge for an intervening tax year, an amount of the excess for an earlier tax year is to be taken to have done so before that for a later tax year.”
- 6 (1) Section 229 (total pension input amount) is amended as follows.
- (2) In subsection (2)(c), for “236” substitute “ 236A ”.
- (3) In subsection (3), for paragraph (a) substitute—
- “(a) satisfies the severe ill-health condition, or”.
- (4) After that subsection insert—
- “(4) For the purposes of subsection (3)(a) the individual satisfies the severe ill-health condition if the individual—
- (a) becomes entitled to all the benefits to which the individual is entitled under the arrangement in consequence of the scheme administrator having received evidence from a registered medical practitioner that the individual is suffering from ill-health which makes the individual unlikely to be able (otherwise than to an insignificant extent) to undertake gainful work (in any capacity) before reaching pensionable age,
- (b) becomes entitled to a serious ill-health lump sum under the arrangement, or
- (c) is a member of the armed forces of the Crown who becomes entitled under the arrangement to a benefit on which no liability to income tax arises by virtue of section 641(1) of ITEPA 2003.”
- 7 (1) Section 230 (cash balance arrangements) is amended as follows.
- (2) In subsection (4), for “beginning of the pension input period” substitute “ end of the immediately preceding pension input period (or is nil if the pension input period is the first pension input period of the arrangement) ”.
- (3) After subsection (5) insert—
- “(5A) If, during the pension input period, minimum payments are made under—
- (a) section 8 of the Pension Schemes Act 1993, or
- (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993,
- in relation to the individual in connection with the arrangement, their amount is to be subtracted from what would otherwise be the pension input amount in the case of the individual in respect of the arrangement.
- (5B) The pension input amount in respect of the arrangement is nil if—
- (a) the individual is a deferred member of the pension scheme under which it is an arrangement (or would be if it were the only arrangement under the pension scheme relating to the individual) throughout the pension input period or is (or would be) such a

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deferred member for part of the pension input period and a pensioner member for the rest of it, and

- (b) the value of the relevant rights of the individual does not increase during the pension input period by more than the relevant percentage.

(5C) In this section—

“guaranteed minimum pension” has the meaning given by—

- (a) section 8(2) of the Pension Schemes Act 1993, or  
(b) section 4(2) of the Pension Schemes (Northern Ireland) Act 1993;

“predecessor arrangement”, in relation to an arrangement, means another arrangement (under the same or another registered pension scheme) from which some or all of the sums or assets held for the purposes of the arrangement directly or indirectly derive;

“predecessor registered pension scheme”, in relation to a pension scheme, means another registered pension scheme from which some or all of the sums or assets held for the purposes of the arrangement under the pension scheme directly or indirectly derive;

“the relevant percentage”—

- (a) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an annual rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 14 October 2010, that percentage, and  
(b) otherwise, the percentage by which the consumer prices index for a month falling within the pension input period and nominated by the scheme administrator is higher than it was for the same month in the previous period of 12 months (or nil per cent if it is not higher);

“the relevant rights of the individual” means rights of the individual under the arrangement, other than any rights to a guaranteed minimum pension;

“specified”, in relation to an annual rate, means specified as a percentage figure or as a percentage produced by movement in an index (or a combination of the two) but does not include a percentage produced by the exercise of a discretion by any person.”

- 8 In section 231 (cash balance arrangements: uprating of opening value), for subsection (3) substitute—

“(3) The appropriate percentage is the percentage (if any) by which the consumer prices index for the September before the start of the tax year is higher than it was for the previous September.”

- 9 (1) Section 232 (cash balance arrangements: adjustments of closing value) is amended as follows.

- (2) In subsection (2), for “the debit” substitute “ the reduction ”.  
(3) In subsection (3), for “the credit” substitute “ the increase ”.  
(4) In subsection (4)—

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- (a) for “Subsection (5) applies if” substitute “ If”,
- (b) for “virtue of a transfer of any sum or asset” substitute “ reason of a transfer relating to the individual of any sums or assets ”,
- (c) omit “other”, and
- (d) insert at the end (not as part of paragraph (b)) “ the amount of the reduction is to be added. ”

(5) Omit subsection (5).

(6) In subsection (6)—

- (a) for “Subsection (7) applies if” substitute “ If”,
- (b) for “virtue of a transfer” substitute “ reason of a transfer relating to the individual ”, and
- (c) insert at the end “ , the amount of the increase is to be subtracted. ”

(7) Omit subsection (7).

(8) For subsection (8) substitute—

“(8) If, during the pension input period, the rights of the individual under the arrangement have been reduced by any surrender made, or similar action taken, pursuant to an option available to the individual under the arrangement, the amount of the reduction is to be added.

(8A) If, during the pension input period—

- (a) benefit crystallisation event 1, 2 or 4 occurs in relation to the individual and the arrangement,
- (b) benefit crystallisation event 3 occurs in relation to the individual and the arrangement otherwise than by reason of a provision contained in, or made under, any enactment,
- (c) benefit crystallisation event 6 occurs or, but for paragraph 15A of Schedule 32, would occur in relation to the individual and the arrangement by virtue of the individual becoming entitled to a pension commencement lump sum or a lifetime allowance excess lump sum, or
- (d) there is an allocation of rights of the individual under the arrangement (not falling within paragraph (a)),

the relevant amount is to be added.

(8B) In subsection (8A) “the relevant amount” is—

- (a) in the case of benefit crystallisation event 2, what the annual rate of the pension would be on the valuation assumptions,
- (b) in the case of benefit crystallisation event 3, the increase in the annual rate of the pension,
- (c) in the case of benefit crystallisation event 6, the amount of the lump sum, and
- (d) in any other case, the amount of the reduction in the amount of the rights available for the provision of benefits to or in respect of the individual occurring by reason of the benefit crystallisation event or allocation.

(8C) If, during the pension input period, an adjustment to the individual's rights under the arrangement is made in consequence of the scheme administrator

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satisfying a liability under section 237B in respect of the individual, if and to the extent that the adjustment is reflected in the closing amount the amount of the adjustment is to be added to the closing amount.

(8D) But no amount is to be added under subsection (8C) by reason of an adjustment made in consequence of the scheme administrator satisfying a liability under section 237B in a case where subsection (6) of that section applied.”

(9) Omit subsection (9).

10 (1) Section 234 (defined benefits arrangements) is amended as follows.

(2) In subsection (4)—

- (a) for “10” substitute “ 16 ”,
- (b) in the definition of PB, for “beginning of the pension input period” substitute “ end of the immediately preceding pension input period (or is nil if the pension input period is the first pension input period of the arrangement) ”, and
- (c) in the definition of LSB, for “that time” substitute “ the end of the immediately preceding pension input period (or is nil if the pension input period is the first pension input period of the arrangement) ”.

(3) In subsection (5), for “10” substitute “ 16 ”.

(4) After that subsection insert—

“(5A) If, during the pension input period, minimum payments are made under—

- (a) section 8 of the Pension Schemes Act 1993, or
- (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993,

in relation to the individual in connection with the arrangement, their amount is to be subtracted from what would otherwise be the pension input amount in the case of the individual in respect of the arrangement.

(5B) The pension input amount in respect of the arrangement is nil if—

- (a) the individual is a deferred member of the pension scheme under which it is an arrangement (or would be if it were the only arrangement under the pension scheme relating to the individual) throughout the pension input period or is (or would be) such a deferred member for part of the pension input period and a pensioner member for the rest of it, and
- (b) the value of the relevant rights of the individual does not increase during the pension input period by more than the relevant percentage.

(5C) In this section—

“guaranteed minimum pension” has the meaning given by—

- (a) section 8(2) of the Pension Schemes Act 1993, or
- (b) section 4(2) of the Pension Schemes (Northern Ireland) Act 1993;

“predecessor arrangement”, in relation to an arrangement, means another arrangement (under the same or another registered pension scheme) from which some or all of the sums or assets held for the purposes of the arrangement directly or indirectly derive;

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“predecessor registered pension scheme”, in relation to a pension scheme, means another registered pension scheme from which some or all of the sums or assets held for the purposes of the arrangement under the pension scheme directly or indirectly derive;

“the relevant percentage”—

- (a) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an annual rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 14 October 2010, that percentage, and
- (b) otherwise, the percentage by which the consumer prices index for a month falling within the pension input period and nominated by the scheme administrator is higher than it was for the same month in the previous period of 12 months (or nil per cent if it is not higher);

“the relevant rights of the individual” means rights of the individual under the arrangement, other than any rights to a guaranteed minimum pension;

“specified”, in relation to an annual rate, means specified as a percentage figure or as a percentage produced by movement in an index (or a combination of the two) but does not include a percentage produced by the exercise of a discretion by any person.”

- (5) In subsection (6), for “and section 236 (adjustments of closing value)” substitute “, section 236 (adjustments of closing value) and section 236A (post-entitlement enhancements) ”.
- 11 (1) Section 235 (defined benefits arrangements: uprating of opening value) is amended as follows.
- (2) In subsection (1), omit “in a case where rights do not accrue to the individual under the arrangement during the pension input period”.
  - (3) For subsection (3) substitute—

“(3) The appropriate percentage is the percentage (if any) by which the consumer prices index for the September before the start of the tax year is higher than it was for the previous September.”
- 12 (1) Section 236 (defined benefits arrangements: adjustments of closing value) is amended as follows.
- (2) In subsection (1), for “the closing value of the individual's rights as calculated” substitute “ PE and LSE ”.
  - (3) In subsection (2)—
    - (a) for “rights of the individual under the arrangement have” substitute “ annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has ”,
    - (b) for “the debit” substitute “ the reduction ”, and
    - (c) insert at the end “ to PE or LSE ”.
  - (4) In subsection (3)—

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- (a) for “rights of the individual under the arrangement have” substitute “ annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has ”,
- (b) for “the credit” substitute “ the increase ”, and
- (c) insert at the end “ from PE or LSE ”.

(5) For subsections (4) to (7) substitute—

“(4) If, during the pension input period, the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been reduced by reason of a transfer relating to the individual of any sums or assets held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under, any pension scheme that is—

- (a) a registered pension scheme, or
- (b) a qualifying recognised overseas pension scheme,

the amount of the reduction is to be added to PE or LSE.

(5) If, during the pension input period, the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been increased by reason of a transfer relating to the individual of any sums or assets held for the purposes of, or representing accrued rights under, any pension scheme so as to become held for the purposes of, or to represent rights under, the arrangement, the amount of the increase is to be subtracted from PE or LSE.”

(6) For subsection (8) substitute—

“(8) If, during the pension input period, the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been reduced by any surrender made in return for any other entitlement, any allocation made, or any similar action taken, pursuant to an option available to the individual under the arrangement, the amount of the reduction (to the extent that it is not reflected in an amount added under subsection (8A)) is to be added to PE or LSE.

(8A) If, during the pension input period—

- (a) benefit crystallisation event 2 occurs in relation to the individual and the arrangement,
- (b) benefit crystallisation event 3 occurs in relation to the individual and the arrangement otherwise than by reason of a provision contained in, or made under, any enactment, or
- (c) benefit crystallisation event 6 occurs in relation to the individual and the arrangement by virtue of the individual becoming entitled to a pension commencement lump sum or a lifetime allowance excess lump sum,

the relevant amount is to be added to PE or LSE.

(8B) In subsection (8A) “the relevant amount” is—

- (a) in the case of benefit crystallisation event 2, the annual rate of the pension to which the individual became entitled,
- (b) in the case of benefit crystallisation event 3, the increase in the annual rate of the pension, and



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(c) in the case of benefit crystallisation event 6, the amount of the lump sum.

(8C) If, during the pension input period, an adjustment to the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been made in consequence of the scheme administrator satisfying a liability under section 237B in respect of the individual, if and to the extent that the adjustment is reflected in PE or LSE the amount of the adjustment is to be added to PE or LSE.

(8D) But no amount is to be added under subsection (8C) by reason of an adjustment made in consequence of the scheme administrator satisfying a liability under section 237B in a case where subsection (6) of that section applied.”

(7) Omit subsection (9).

13 After section 236 insert—

#### “236A Post-entitlement enhancements

- (1) This section applies in relation to the arrangement if, during the pension input period (“the affected pension input period”), the individual enters into a scheme for the making of an avoidance-inspired post-entitlement enhancement.
- (2) A “post-entitlement enhancement” is an increase in the annual rate of a scheme pension under the arrangement, at a time after the member has become entitled to the scheme pension.
- (3) A post-entitlement enhancement is “avoidance-inspired” if the main purpose, or one of the main purposes, of the individual in entering into the scheme was to avoid or reduce a liability to the annual allowance charge.
- (4) This Part has effect in relation to the arrangement and the individual, as respects the affected pension input period and all subsequent pension input periods, as if—
  - (a) section 234 were modified in accordance with subsection (5), and
  - (b) sections 235 and 236 were omitted.
- (5) The modifications of section 234 are that—
  - (a) in subsection (4), for the words after “the arrangement is” there are substituted “ such amount as, applying normal actuarial practice, is the expected cost of giving effect to the individual's rights under the arrangement at the end of the immediately preceding pension input period (or is nil if the pension input period is the first pension input period of the arrangement). ”,
  - (b) in subsection (5), for the words after “the arrangement is” there are substituted “ such amount as, applying normal actuarial practice, is the expected cost of giving effect to the individual's rights under the arrangement at the end of the pension input period. ”, and
  - (c) subsection (6) is omitted.

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(6) In this section “scheme” includes any arrangements, agreement, understanding, transaction or series of transactions (whether or not legally enforceable).”

14 In subsection (5) of section 237 (hybrid arrangements), for “236” substitute “ 236A”.

15 After that section insert—

#### **“237A Liability of individual**

- (1) The individual is liable to the annual allowance charge.
- (2) The individual is liable to the annual allowance charge whether or not—
  - (a) the individual, and
  - (b) the scheme administrator of the pension scheme or pension schemes concerned,
 are resident, ordinarily resident or domiciled in the United Kingdom.

#### **237B Liability of scheme administrator**

- (1) This section applies if—
  - (a) the amount of the individual's liability to the annual allowance charge for a tax year exceeds £2,000, and
  - (b) the pension scheme input amount in the case of the individual in relation to a registered pension scheme for the tax year exceeds the amount of the annual allowance specified in section 228(1) for the tax year.
- (2) The pension scheme input amount in the case of the individual in relation to a pension scheme for a tax year is the aggregate of the pension input amounts for the tax year in respect of arrangements relating to the individual under the pension scheme.
- (3) The individual may give a notice to the scheme administrator of the pension scheme specifying that the individual and the scheme administrator are to be jointly and severally liable in respect of so much of the annual allowance charge arising in the case of the individual as—
  - (a) does not exceed the amount of the annual allowance charge which would be chargeable on the excess mentioned in subsection (1)(b) if it were charged at the relevant rate, and
  - (b) is specified in the notice,
 (“the joint liability amount”).
- (4) In subsection (3)(a) “the relevant rate” means—
  - (a) in relation to so much of the excess as does not exceed the amount (if any) on which tax is chargeable in the case of the individual for the tax year at the additional rate by virtue of paragraph (c) of subsection (4A) of section 227, the additional rate,
  - (b) in relation to so much of the excess as is not within paragraph (a) and does not exceed the amount (if any) on which tax is so chargeable at the higher rate by virtue of paragraph (b) of that subsection, the higher rate, and

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- (c) in relation to any remaining part of the excess, the basic rate.
- (5) The notice—
- (a) must be given not later than 31 July in the year following that in which the tax year ends (but subject to subsection (6)),
  - (b) must be made in such manner and form, and contain such particulars, as may be prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs, and
  - (c) may be amended by giving the scheme administrator notice in accordance with provision made by regulations made by the Commissioners for Her Majesty's Revenue and Customs but may not be revoked.
- (6) In a case in which the individual becomes actually entitled to all of the individual's benefits under the pension scheme in the tax year or benefit crystallisation event 5, 5A or 5B occurs in the tax year in relation to the individual and the pension scheme, the notice must be given before the date on which the individual becomes so entitled or the benefit crystallisation event occurs.
- (7) On receipt by the scheme administrator of the notice the scheme administrator and the individual become jointly and severally liable to pay the joint liability amount, but subject to sections 237C and 237D and to any amendment made to the notice in accordance with regulations under subsection (5)(c).
- (8) The scheme administrator is liable under subsection (7) whether or not—
- (a) the individual, and
  - (b) the scheme administrator,
- are resident, ordinarily resident or domiciled in the United Kingdom.
- (9) Where (but for this subsection) a notice could be given to a scheme administrator of a pension scheme but, before it is given, there is a transfer of all of the sums or assets—
- (a) held for the purposes of, or
  - (b) representing accrued rights under,
- the pension scheme so as to become held for the purposes of, or to represent rights under, another registered pension scheme, the notice may not be given to that scheme administrator but may instead be given to the scheme administrator of that other pension scheme.
- (10) The Treasury may by regulations make provision modifying the operation of this section in other cases in which there is a transfer of any of the sums or assets—
- (a) held for the purposes of, or
  - (b) representing accrued rights under,
- the pension scheme so as to become held for the purposes of, or to represent rights under, another registered pension scheme.
- (11) The Treasury may by order amend paragraph (a) of subsection (1) so as to increase the sum for the time being specified in that paragraph.

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### **237C Exceptions**

- (1) The scheme administrator of a pension scheme does not become liable under section 237B if the time when the scheme administrator would become liable is during an assessment period in relation to the pension scheme; and if an assessment period in relation to a pension scheme begins at a time when the scheme administrator is already so liable (but has not satisfied the liability), the liability ceases when the assessment period begins.

References to an assessment period are to be construed in accordance with sections 132 and 159 of the Pensions Act 2004 and articles 116 and 143 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)).

- (2) The scheme administrator of a pension scheme is not liable under section 237B in respect of any amount if there is no power to make a consequential adjustment to the entitlement of the individual concerned to benefits under the pension scheme in respect of the amount because of section 237E(2) (inalienability of guaranteed minimum pension etc).
- (3) The Treasury may by regulations prescribe other circumstances in which a scheme administrator of a pension scheme does not become, or ceases to be, liable under section 237B.

### **237D Discharge of scheme administrator's liability**

- (1) If the scheme administrator of a pension scheme is liable under section 237B, the scheme administrator may apply to an officer of Revenue and Customs for the discharge of the scheme administrator's liability on either of the following grounds.
- (2) The grounds are—
  - (a) that paying the amount to which the scheme administrator is liable would be to the substantial detriment of the interests of the members of the pension scheme, and
  - (b) that in all the circumstances of the case it would not be just and reasonable for the scheme administrator to be liable to that amount.
- (3) On receiving an application under subsection (1), an officer of Revenue and Customs must decide whether to discharge the scheme administrator's liability.
- (4) An officer of Revenue and Customs must notify the scheme administrator of the decision on the application.
- (5) The discharge of the scheme administrator's liability does not affect the liability of any other person in respect of the same amount.
- (6) The Treasury may by regulations amend this section so as to alter the grounds on which an application under subsection (1) may be made.
- (7) Regulations made by the Commissioners for Her Majesty's Revenue and Customs may make provision supplementing this section; and the regulations may in particular make provision as to the time limits for the making of an application.

*Status: Point in time view as at 12/02/2019.*

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### **237E Consequential benefit adjustments to be reasonable etc**

- (1) Where the scheme administrator of a pension scheme satisfies a liability under section 237B in respect of the individual, consequential adjustment must be made to the entitlement of the individual to benefits under the pension scheme on a basis that is just and reasonable having regard to normal actuarial practice.
- (2) Any power to make such consequential adjustment is subject to section 159 of the Pension Schemes Act 1993 or section 155 of the Pension Schemes (Northern Ireland) Act 1993 (inalienability of guaranteed minimum pension etc).

### **237F Power to modify rules**

The Commissioners for Her Majesty's Revenue and Customs may by regulations make any modification of the rules of registered pension schemes that appear appropriate to facilitate the operation of sections 237A to 237E.”

- 16 (1) Section 238 (pension input period) is amended as follows.
- (2) In subsection (1)(a), for the words after “ending with” substitute “—
- (i) a nominated date falling before the anniversary of the relevant commencement date, or
  - (ii) if there is not such a nominated date, the first 5 April after the relevant commencement date (or, if the relevant commencement date is itself 5 April, that date), and”
- (3) After subsection (4) insert—
- “(4A) A date nominated for the purposes of subsection (3) must not be a date before that on which the nomination is made.”
- (4) In subsection (6)—
- (a) omit “the earlier of”,
  - (b) for “and” substitute “ or ”, and
  - (c) insert at the beginning of paragraph (b) “ if there is not such a nominated date, ”.
- (5) In subsection (7), for “to be treated as having ended when” substitute “ that in which ”.
- 17 After that section insert—

### **“238A Power to make orders about charge**

- (1) The Treasury may by order make provision about the annual allowance charge.
- (2) The provision may include modifications of any of sections 227 to 238.
- (3) The provision may include provision consequential on, or supplementary or incidental to, the provision made by those sections and transitional provisions (including provision making modifications of enactments).

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- (4) “Modifications” includes amendments.”
- 18 In section 254 (accounting for tax by scheme administrators), after subsection (7) insert—
- “(7A) Where a scheme administrator is liable under section 237B in respect of the annual allowance charge for a tax year, for the purposes of subsection (2) the tax is to be taken to be charged on the scheme administrator in the period ending with 31 December in the year following that in which that tax year ended (or such earlier period as the scheme administrator may elect in a return for that earlier period).
- (7B) But if the notice which gave rise to the liability is amended in accordance with regulations under section 237B(5)(c), any additional tax to which the scheme administrator becomes liable is to be taken for the purposes of subsection (2) to be charged in the later of the period in which it is taken to be charged by virtue of subsection (7A) and the period in which the scheme administrator receives notice of the amendment.”
- 19 In section 255(1) (assessments), after paragraph (c) insert—
- “(ca) liability to the annual allowance charge by virtue of section 237B,”.
- 20 In section 269(1)(a) (appeal against discharge of liability), after “under” insert “section 237D (discharge of scheme administrator's liability to annual allowance charge),”.
- 21 In section 279(1) (other definitions), insert at the appropriate places—
- ““consumer prices index” means—
- (a) the general index for consumer prices published by the Statistics Board, or
- (b) if that index is not published for a relevant month, any substituted index or index figures published by the Statistics Board,” and
- ““pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 or paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995.”.
- 22 In section 280(2) (general index), insert at the appropriate places—
- |                        |                      |
|------------------------|----------------------|
| “consumer prices index | section 279(1)”, and |
| “pensionable age       | section 279(1)”.     |
- 23 In section 282(1A) (orders and regulations subject to Commons-only draft affirmative procedure)—
- (a) for “227(5A),” substitute “ 237B(11), ”, and
- (b) after “242(5)” insert “ , no order may be made under section 228(2) which specifies an amount for any tax year less than the annual allowance for the immediately preceding tax year and no order may be made under section 238A which increases any person's liability to tax ”.
- 24 (1) Schedule 34 (currently-relieved non-UK pension schemes etc) is amended as follows.

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- (2) In paragraph 8(1), after “a currently-relieved non-UK pension scheme” insert “ and its scheme manager ”.
- (3) After paragraph 9 insert—
- “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.
- 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).”
- (4) In paragraph 12(1), after “a currently-relieved non-UK pension scheme” insert “ and its scheme manager ”.
- 25 In Schedule 36 (transitional provision etc), omit paragraph 49 (disapplication of annual allowance charge for individuals with enhanced protection) and the heading before it.
- 26 (1) In FA 2009—
- (a) in Schedule 2, omit paragraph 15, and
  - (b) in Schedule 35, omit paragraph 22.
- (2) In the Registered Pension Schemes (Standard Lifetime and Annual Allowances) Order 2010 (S.I. 2010/922), omit article 3.

## PART 2

### COMMENCEMENT AND TRANSITIONAL PROVISION

- 27 (1) The amendments made by Part 1 have effect for the tax year 2011-12 and subsequent tax years.
- (2) Apart from the amendments made by paragraph 16(2) and (4), such of the amendments as apply in relation to pension input periods have effect in relation to pension input periods ending in the tax year 2011-12 but beginning earlier (as well as those beginning in that tax year).

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- 28 (1) This paragraph applies where—
- (a) the pension input period in respect of any arrangement relating to the individual which ends in the tax year 2011-12 begins before 14 October 2010 (a “straddling pension input period”), and
  - (b) the total pension input amount in the case of the individual for that tax year exceeds £50,000.
- (2) The following provisions apply for arriving at the amount in respect of which the annual allowance charge is charged for that tax year (instead of the charge being in respect of the amount by which the total pension input amount exceeds the amount of the annual allowance).
- (3) Treat each straddling pension input period as if it were 2 separate pension input periods—
- (a) one beginning when the straddling pension input period begins and ending with 13 October 2010 (a “pre-announcement period”), and
  - (b) the other beginning with 14 October 2010 and ending when the straddling pension input period ends (a “post-announcement period”).
- And treat any pension input period in respect of any arrangement relating to the individual which ends in the tax year 2011-12 which is not a straddling pension input period as if it were a post-announcement period.
- (4) Arrive at the pension input amount in respect of each post-announcement period (as if it were a pension input period ending in the tax year 2011-12) and aggregate those amounts.
- (5) Deduct £50,000 from that aggregate.
- The result (or, if a negative amount, nil) is the post-announcement periods total.
- (6) Arrive at the pension input amount in respect of each pre-announcement period (as if it were a pension input period ending in the tax year 2011-12) and aggregate those amounts.
- In the case of a defined benefits arrangement, subsections (4) and (5) of section 234 of FA 2004 are to apply for the purposes of this calculation as if the references to “16” were to “10”.
- (7) Deduct from that aggregate the difference between £255,000 and the lesser of—
- (a) £50,000, and
  - (b) the aggregate arrived at under sub-paragraph (4).
- The result (or, if a negative amount, nil) is the pre-announcement periods total.
- (8) Aggregate the post-announcement periods total and the pre-announcement periods total.
- (9) Deduct any amount by which (apart from this paragraph) the annual allowance in the case of the individual for the tax year would have been increased by virtue of section 228A of FA 2004 or, if less, by so much of any such amount as equals that aggregate.
- (10) Any result is the amount in respect of which the annual allowance charge is charged for the tax year 2011-12.



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- 29 Where paragraph 28 applies in the case of the individual, section 228A of FA 2004 has effect in the case of the individual for tax years subsequent to the tax year 2011-12—
- (a) as if the references in subsections (3)(a) and (b) of that section to the amount of the annual allowance for that tax year were to £50,000, and
  - (b) as if any amount deducted under sub-paragraph (9) of that paragraph had been “used-up” within the meaning of that section.
- 30 (1) This paragraph has effect in relation to the application of section 228A of FA 2004 for the tax years 2011-12, 2012-13 and 2013-14.
- (2) The assumptions in sub-paragraph (3) are to be made in determining—
- (a) whether the amount of the annual allowance for the tax years 2008-09, 2009-10 and 2010-11 exceeded the total pension input amount in the case of the individual for the tax year, and
  - (b) whether any excess of the annual allowance over the total pension input amount in the case of the individual for any of those tax years has been used up.
- (3) The assumptions are—
- (a) that the annual allowance for each of the tax years 2008-09, 2009-10 and 2010-11 was £50,000, and
  - (b) that the provisions of Part 4 of FA 2004 apply in relation to pension input periods in respect of arrangements relating to the individual that end in any of those tax years subject to the amendments made by this Schedule (including that inserting section 228A).
- 31 In determining under section 233 of FA 2004 the pension input amount in respect of an arrangement relating to an individual for a pension input period of the arrangement that ends in the tax year 2009-10, 2010-11 or 2011-12, there is to be deducted from what would otherwise be the pension input amount so much of any contributions refund lump sum (within the meaning of paragraph 15 of Schedule 35 to FA 2009) paid to the individual (or the personal representatives of the individual) as is attributable to contributions paid under the arrangement in the pension input period.
- 32 Section 237B has effect in relation to the tax year 2011-12 as if the reference in subsection (5)(a) of that section to 31 July in the year following that in which the tax year ends were to 31 December 2013.
- 33 Section 254(7A) has effect in relation to the tax year 2011-12 as if the reference in that provision to 31 December in the year following that in which the tax year ends were to 31 March 2014.
- 34 Expressions used in this Part of this Schedule and Part 4 of FA 2004 have the same meaning in this Part of this Schedule as in that Part of that Act.

**Status:**

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**Changes to legislation:**

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