

SCHEDULES

SCHEDULE 44

TRUSTS WITH VULNERABLE BENEFICIARY

Finance Act 2005

- 14 FA 2005 is amended as follows.
- 15 (1) Section 34 (disabled persons) is amended as follows.
- (2) In subsection (2), for paragraph (b) substitute—
- “**(b)** either—
- (i) that the disabled person is entitled to all the income (if there is any) arising from any of the property, or
 - (ii) if any such income is applied for the benefit of a beneficiary, it is applied for the benefit of the disabled person.”
- (3) For subsection (3) substitute—
- “(3) The trusts on which property is held are not to be treated as failing to secure that the conditions in subsection (2) are met by reason only of—
- (a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the disabled person amounts (whether consisting of income or capital, or both) not exceeding the annual limit,
 - (b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
 - (c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
 - (d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
 - (e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1) (a) of that section, or
 - (f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).
- (3B) For the purposes of this section, the “annual limit” for a tax year is whichever is the lower of the following amounts—
- (a) £3,000, and
 - (b) 3% of the amount that is the maximum value of the settled property during the tax year in question.
- (3C) The Treasury may by order made by statutory instrument—

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- (a) specify circumstances in which subsection (3)(a) is, or is not, to apply in relation to a trust, and
 - (b) amend the definition of “the annual limit” in subsection (3B).
- (3D) An order under subsection (3C) may—
- (a) make different provision for different cases, and
 - (b) contain transitional and saving provision.
- (3E) A statutory instrument containing an order under subsection (3C) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”
- 16 (1) Section 35 (relevant minors) is amended as follows.
- (2) For subsection (3)(c)(ii) substitute—
- “(ii) if any such income is applied for the benefit of a beneficiary, it is applied for the benefit of the relevant minor.”
- (3) For subsection (4) substitute—
- “(4) Trusts to which subsection (2) applies are not to be treated as failing to secure that the conditions in subsection (3) are met by reason only of—
- (a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the relevant minor amounts (whether consisting of income or capital, or both) not exceeding the annual limit,
 - (b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
 - (c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
 - (d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
 - (e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1) (a) of that section, or
 - (f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).
- (4B) For the purposes of this section, the “annual limit” for a tax year is whichever is the lower of the following amounts—
- (a) £3,000, and
 - (b) 3% of the amount that is the maximum value of the settled property during the tax year in question.
- (4C) The Treasury may by order made by statutory instrument—
- (a) specify circumstances in which subsection (4)(a) is, or is not, to apply in relation to a trust, and
 - (b) amend the definition of “the annual limit” in subsection (4B).
- (4D) An order under subsection (4C) may—
- (a) make different provision for different cases, and

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(b) contain transitional and saving provision.

(4E) A statutory instrument containing an order under subsection (4C) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”

17 For section 38 substitute—

“38 Meaning of “disabled person”

In this Chapter “disabled person” has the meaning given by Schedule 1A.”

18 The amendments made by paragraphs 15 to 17 have effect for the tax year 2013-14 and subsequent tax years.

19 After Schedule 1 insert—

“SCHEDULE
1A

Section 38

MEANING OF “DISABLED PERSON”

“Disabled person”

1 “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 or her property or managing his or her affairs,
- (b) a person in receipt of attendance allowance,
- (c) a person in receipt of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate,
- (d) a person in receipt of personal independence payment by virtue of entitlement to the daily living component,
- (e) a person in receipt of an increased disablement pension,
- (f) a person in receipt of constant attendance allowance, or
- (g) a person in receipt of armed forces independence payment.

Attendance allowance

2 A person is to be treated as a disabled person under paragraph 1(b) if he or she satisfies HMRC that he or she would be entitled to receive attendance allowance but for—

- (a) the conditions as to residence and presence prescribed under section 64(1) of SSCBA 1992 or section 64(1) of SSCB(NI)A 1992,
- (b) provision made by regulations under section 67(1) or (2) of SSCBA 1992 or section 67(1) or (2) of SSCB(NI)A 1992 (non-satisfaction of conditions for attendance allowance where person is undergoing treatment for renal failure in hospital or is provided with certain accommodation), or
- (c) section 113(1) of SSCBA 1992 or section 113(1) of SSCB(NI)A 1992 or provision made by regulations under section 113(2) of SSCBA 1992 or section 113(2) of SSCB(NI)A 1992 (general provisions as to disqualification and suspension).

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Disability living allowance

- 3 A person is to be treated as a disabled person under paragraph 1(c) if he or she satisfies HMRC that he or she would be entitled to receive a disability living allowance by virtue of entitlement to the care component at the highest or middle rate but for—
- (a) the conditions as to residence and presence prescribed under section 71(6) of SSCBA 1992 or section 71(6) of SSCB(NI)A 1992,
 - (b) provision made by regulations under section 72(8) of SSCBA 1992 or section 72(8) of SSCB(NI)A 1992 (no payment of disability allowance for persons for whom certain accommodation is provided), or
 - (c) section 113(1) of SSCBA 1992 or section 113(1) of SSCB(NI)A 1992 or provision made by regulations under section 113(2) of SSCBA 1992 or section 113(2) of SSCB(NI)A 1992 (general provisions as to disqualification and suspension).

Personal independence payment

- 4 A person is to be treated as a disabled person under paragraph 1(d) if he or she satisfies HMRC that he or she would be entitled to receive personal independence payment by virtue of entitlement to the daily living component but for—
- (a) the conditions as to residence and presence prescribed under section 77(3) of WRA 2012 or the corresponding provision having effect in Northern Ireland,
 - (b) provision made by regulations under section 85 of WRA 2012 (exclusion of certain care home residents) or the corresponding provision having effect in Northern Ireland,
 - (c) provision made by regulations under section 86 of WRA 2012 (exclusion of certain hospital in-patients) or the corresponding provision having effect in Northern Ireland, or
 - (d) section 87 of WRA 2012 (exclusion of prisoners and detainees) or the corresponding provision having effect in Northern Ireland.

Increased disablement pension

- 5 A person is to be treated as a disabled person under paragraph 1(e) if he or she satisfies HMRC that he or she would be entitled to receive an increased disablement pension but for—
- (a) conditions as to residence and presence that have effect in relation to increased disablement pension by virtue of regulations under section 104(3) of SSCBA 1992 or section 104(3) of SSCB(NI)A 1992 (application of attendance allowance provisions),
 - (b) provision made under section 67(1) or (2) of SSCBA 1992 or section 67(1) or (2) of SSCB(NI)A 1992 (non-satisfaction of conditions for attendance allowance where person is undergoing treatment for renal failure in hospital or is provided with certain accommodation) that has effect in relation to increased disablement pension by virtue of such regulations, or

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- (c) section 113(1) of SSCBA 1992 or section 113(1) of SSCB(NI)A 1992 or provision made by regulations under section 113(2) of SSCBA 1992 or section 113(2) of SSCB(NI)A 1992 (general provisions as to disqualification and suspension).

Constant attendance allowance

- 6 A person is to be treated as a disabled person under paragraph 1(f) if he or she satisfies HMRC that he or she would be entitled to receive constant attendance allowance but for—
- (a) article 61 (residence outside United Kingdom) or article 64 (maintenance in hospital or institution) of the Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686), or
 - (b) article 53 (maintenance in hospital or institution) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606).

Armed forces independence payment

- 7 A person is to be treated as a disabled person under paragraph 1(g) if he or she satisfies HMRC that he or she would be entitled to receive armed forces independence payment but for article 42 of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) (cessation of payment on admission to Royal Hospital, Chelsea).

Interpretation

- 8 In this Schedule—
- “armed forces independence payment” means armed forces independence payment under a scheme established under section 1 of the Armed Forces (Pensions and Compensation) Act 2004,
 - “attendance allowance” means an allowance under section 64 of SSCBA 1992 or section 64 of SSCB(NI)A 1992,
 - “constant attendance allowance” means an allowance under—
 - (a) article 14 of the Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686), or
 - (b) article 8 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606),
 - “disability living allowance” means a disability living allowance under section 71 of SSCBA 1992 or section 71 of SSCB(NI)A 1992,
 - “HMRC” means Her Majesty's Revenue and Customs,
 - “increased disablement pension” means an increase of disablement pension under—
 - (a) section 104 of SSCBA 1992, or
 - (b) section 104 of SSCB(NI)A 1992,
 - “personal independence payment” means personal independence payment under—
 - (a) WRA 2012, or
 - (b) the corresponding provision having effect in Northern Ireland,

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“SSCBA 1992” means the Social Security Contributions and Benefits Act 1992,

“SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992,

“WRA 2012” means the Welfare Reform Act 2012.”

Changes to legislation:

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Finance Act 2005.