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SCHEDULES

SCHEDULE 36

PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

Modifications etc. (not altering text)

- C1** Sch. 36 modified by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), art. 23D (as inserted (1.6.2009) by [S.I. 2009/1172, arts. 1, 3](#))
- C2** 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 2

PRE-COMMENCEMENT RIGHTS: LIFETIME ALLOWANCE CHARGE

Modifications etc. (not altering text)

- C3** 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**

“Primary protection”

- 7 (1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where—
- (a) the amount of the relevant pre-commencement pension rights of the individual exceeds £1,500,000 (the standard lifetime allowance for the tax year 2006-07), and
 - (b) notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
- (2) The lifetime allowance enhancement factor is the primary protection factor.
- (3) The primary protection factor is—

$$\frac{RR - SLA}{SLA}$$

where—

RR is the amount of the relevant pre-commencement pension rights of the individual, and

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SLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (4) Sub-paragraph (3) is subject to paragraph 11 (pension debit on or after 6th April 2006).
- (5) The amount of the relevant pre-commencement pension 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).

Modifications etc. (not altering text)

- C4** Sch. 36 para. 7 applied (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **29(1)**
- C5** 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—
 - (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.

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Modifications etc. (not altering text)

C6 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 ^{F1}...—
- (a) the value, or the aggregate of the values, calculated under paragraph 8, [^{F2}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 [^{F3}as increased, in a case where sub-paragraph (5A) applies, in accordance with sub-paragraph (5B)].

- (4) “The maximum permitted pension” means
- [^{F4}(a) in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section [^{F5}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) [^{F6}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 [^{F7}2006] the individual left the employment on that date, and
- [^{F8}(aa) in the case of an arrangement within sub-paragraph (4)(a), that the valuation assumptions apply (see section 277),]
- (b) [^{F9}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 the Board of Inland Revenue grounds for withdrawing the approval of the pension [^{F10}scheme] that fact would not give the Board such grounds.
- [^{F11}(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—

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- (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

- F1** 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](#)
- F2** 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\(1\)](#)
- F3** 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\(2\)](#)
- F4** Words in Sch. 36 para. 9(4) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(4\), 64\(1\)](#)
- F5** 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](#)
- F6** 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\(1\)](#)
- F7** 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\(1\)](#)
- F8** Sch. 36 para. 9(5)(aa) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 52\(5\)\(b\), 64\(1\)](#)
- F9** 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\(1\)](#)
- F10** 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\(1\)](#)
- F11** 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 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—

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- (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 makes provision for the operation of a lifetime allowance enhancement factor 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 paragraph 7(3)) is to be recalculated.
- (3) The recalculation involves reducing RR (see paragraph 7(3)) 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 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.
- [^{F12}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

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- 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.

Textual Amendments

F12 Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\)](#), [Sch. 23 para. 38](#)

- 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

F12 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—

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- (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.

Textual Amendments

F12 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—
- (a) was not an occupational pension scheme, or
 - (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;

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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 ^{F13}(2A) [^{F14}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 [^{F15}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—

- (a) as part of a retirement-benefit activities compliance exercise, or
- (b) to comply with the [^{F16}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 [^{F17}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.

^{F18}(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

F12 Sch. 36 paras. 11A-11D inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 38](#)

F13 Sch. 36 paras. 11D(2A)-(2C) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 15, 24\(3\)](#)

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- F14** 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))
- F15** 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))
- F16** 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))
- F17** 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))
- F18** 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 ^{F19}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),
 - ^{F20}(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 ^{F21}in permitted circumstances].
- ^{F22}(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

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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”),
- (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 [F23Part 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 [F24those Regulations]).]

(3) Where this paragraph applies in the case of an individual

- [F25(a) there is no liability to the lifetime allowance charge in respect of the individual, and
- (b) the payment of a lifetime allowance excess lump sum to the individual is not permitted by the lump sum rule (see section 166).]

(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 [F269(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 [F279(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—

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- (a) ^{F28}
 - (b) the sums or assets ^{F29} . . . are transferred so that sub-paragraph (8) applies in relation to them, and
 - (c) the aggregate of the amount of [^{F30}the] sums and the market value of [^{F30}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 ^{F31} . . . ^{F31} . . .
 - (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 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.
 - ^{F32}(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.]
- ^{F33}(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 [^{F34}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.]

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- (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 [^{F35}, 14 and 17A(1) and (2)]) apply in relation to the arrangement ^{F36} . . . to which the transfer is made, and
 - (b) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(b) [^{F37} or (d)], this paragraph (and paragraphs 13 [^{F38}, 15 and 17A(3)] [^{F39} to 17]) apply as if the arrangement to which the transfer is made were the same as that from which it is made, [^{F40} 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.]

[^{F41}(10) The Treasury may by order amend sub-paragraph (8) (and make other amendments consequential on any amendment of that sub-paragraph).]

Textual Amendments

- F19** 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\(2\)\(8\)](#)
- F20** Sch. 36 para. 12(2)(aa) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(3\)](#), 64(1)
- F21** Words in Sch. 36 para. 12(2)(c) substituted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(2\), 24\(3\)](#)
- F22** Sch. 36 para. 12(2A)-(2C) inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(3\), 24\(3\)](#)
- F23** 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))
- F24** 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))
- F25** Sch. 36 para. 12(3)(a)(b) substituted for words (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(4\)](#), 64(1)
- F26** Word in Sch. 36 para. 12(5) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(5\)](#), 64(1)
- F27** Word in Sch. 36 para. 12(6) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\), Sch. 10 paras. 53\(5\)](#), 64(1)
- F28** Sch. 36 para. 12(7)(a) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(4\)\(a\)](#), 24(3)
- F29** 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)
- F30** Words in Sch. 36 para. 12(7)(c) substituted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(4\)\(c\)](#), 24(3)
- F31** 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)
- F32** Sch. 36 para. 12(8)(c)(d) inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(6\)](#), 24(3)
- F33** Sch. 36 para. 12(8A)(8B) inserted (retrospectively) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 17\(7\)](#), 24(3)
- F34** 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)

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- F35** 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)
- F36** 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)
- F37** Words in Sch. 36 para. 12(9)(b) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(8\)\(b\)](#), 24(3)
- F38** 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)
- F39** Words in Sch. 36 para. 12(9)(b) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(8\)\(b\)](#), 24(3)
- F40** 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)
- F41** Sch. 36 para. 12(10) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(9\)](#), 24(3)

Modifications etc. (not altering text)

- C7** 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\(3\)](#)
- C8** Sch. 36 para. 12 modified (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, [30\(2\)](#)
- C9** Sch. 36 para. 12(2A)-(2C) applied (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 18 para. 14\(10\)](#)
- C10** 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\(9\)](#)
- C11** [Sch. 36 para. 12\(2A\)-\(2C\)](#) applied (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 4 para. 7](#)
- C12** Sch. 36 para. 12(7)-(8B) applied (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 18 para. 14\(9\)](#)
- C13** 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\(8\)](#)
- C14** [Sch. 36 para. 12\(7\)-\(8B\)](#) applied (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 4 para. 6](#)
- C15** 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 [^{F42}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 a benefit crystallisation event or 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

- F42** Words in Sch. 36 para. 13(a) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(7\)](#), 64(1)

- 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

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- (c) a contribution paid [^{F43}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.

^{F44}(2)

- ^{F45}(3) A contribution is not a relevant contribution for the purposes of paragraph 13(a) if—
- (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.

^{F46}(3A) [A variation of the terms of a policy made in order to comply with the [^{F47}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 [^{F48}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 [^{F49}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 [^{F50}those Regulations]), and

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- (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,
 - (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

- F43** Words in Sch. 36 para. 14(1)(c) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(9\), 64\(1\)](#)
- F44** Sch. 36 para. 14(2) omitted (retrospective to 6.4.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [s. 52\(9\)\(10\)](#)
- F45** 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](#)
- F46** Sch. 36 para. 14(3A)-(3D) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 18, 24\(3\)](#)
- F47** 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](#)))
- F48** 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](#)))
- F49** 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](#)))
- F50** 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)

- C16** Sch. 36 para. 14 applied (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 18 para. 14\(11\)](#)
- C17** 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\(10\)](#)
- C18** 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.

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- (2) If the relevant event is a permitted transfer which is not a benefit crystallisation event, 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 [^{F51}which are transferred], and
 - (b) the market value of any assets held for the purposes of, or representing accrued rights under, the arrangement [^{F51}which are transferred].
- (3) For the purposes of this paragraph (and [^{F52}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, [^{F53}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) [^{F54}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) [^{F55}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

- F51** Words in Sch. 36 para. 15(2) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 19\(2\), 24\(3\)](#)
- F52** 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\(2\)](#)
- F53** 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\(3\)](#)
- F54** 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\(4\)](#)
- F55** 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)

- C19** 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](#)

[^{F56}15A(1) 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.

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- (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.]

Textual Amendments

F56 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 ^{F57}whom—

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- (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 7.5% of the [^{F58}underpinned lifetime allowance when the first relevant event occurs; and “the underpinned lifetime allowance” is the greater of the current standard lifetime allowance and £1,800,000 (the standard lifetime allowance for the tax year 2011-12).]
- (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 [^{F59}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].
- [^{F60}(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.

Textual Amendments

- F57** Words in Sch. 36 para. 16(1) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(12\), 64\(1\)](#)

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- F58** Words in Sch. 36 para. 16(3) substituted (with effect in accordance with Sch. 18 Pt. 2 of the amending Act) by Finance Act 2011 (c. 11), Sch. 18 para. 9
- F59** Words in Sch. 36 para. 16(5) substituted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 53(13), 64(1)
- F60** 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).

- [^{F61}(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

- F61** Sch. 36 para. 17(6) inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 53(15), 64(1)

- [^{F62}17A(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—
- (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, [^{F63}or]

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- (b) sums or assets which are neither held for the purposes of, nor represent rights under, a pension scheme are so transferred, ^{F64} ...
- ^{F64}(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 ^{F65} ... 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

- F62** Sch. 36 para. 17A inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 53\(16\)](#), [64\(1\)](#)
- F63** 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\(a\)](#)
- F64** 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\(1\)](#)
- F65** 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)

- C20** [Sch. 36 para. 17A](#) applied (with modifications) (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 18 para. 14\(8\)](#)
- C21** [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\(7\)](#)
- C22** [Sch. 36 para. 17A](#) applied (with modifications) (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 4 para. 5](#)

Pre-commencement pension credits

- 18 (1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where 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.
- (2) The lifetime allowance enhancement factor is the pre-commencement pension credit factor.
- (3) The pre-commencement pension credit factor is—

$$\frac{\text{IAPC}}{\text{SLA}}$$

where—

IAPC 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 (4), and

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SLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (4) 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.
- (5) This paragraph does not apply in the case of an individual if paragraph 7 (primary protection) applies in relation to the individual.
- (6) This paragraph only applies if notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

Individuals permitted to take pension before normal minimum pension age

- 19 (1) This paragraph applies where a 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.
- (2) What would otherwise be the individual's lifetime allowance is to be reduced by the relevant percentage.
- (3) A 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 benefit crystallisation event occurs and the date on which the individual will reach normal minimum pension age.

- (5) Sub-paragraph (6) applies where, after the occurrence in relation to the individual of a benefit crystallisation event in relation to which this paragraph has had effect, another benefit crystallisation event occurs in relation to the individual ^{F66}....
- (6) If the amount crystallised on the previous benefit crystallisation event exceeded the available amount of the individual's lifetime allowance at the time of that benefit crystallisation event, section 219 (availability of individual's lifetime allowance) applies as if the amount crystallised were the available amount of the individual's lifetime allowance at that time.

Textual Amendments

F66 Words in Sch. 36 para. 19(5) repealed (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 54\(2\), 64\(1\)](#)

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Pre-commencement pensions

- 20 (1) This paragraph makes provision about an individual who, on 5th April 2006, has an actual (rather than a prospective) right to the payment of one or more relevant existing pensions.
- (2) Section 219 (availability of individual's lifetime allowance) applies as if, immediately before the first benefit crystallisation event occurring in relation to the individual—
- (a) a benefit crystallisation event had occurred in relation to the individual, and
 - (b) the amount crystallised was the value of the individual's pre-commencement pension rights immediately before the benefit crystallisation event.
- (3) The value of the individual's pre-commencement pension rights at any time is—

$$25 \times \text{ARP}$$

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.

[^{F67}(4) In the case of drawdown pension, ARP is—

- (a) [^{F68}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 [^{F69}applied at any time before 6 April 2015] , [^{F70}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.]
 - [^{F71}(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).

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Textual Amendments

- F67** 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)**
- F68** 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)**
- F69** 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)**
- F70** 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)**
- F71** 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)

- C23** 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**
- C24** 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)
- C25** Sch. 36 para. 20(4) applied (with modifications) (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), **Sch. 4 para. 10(3)**
- C26** Sch. 36 para. 20(4) applied (with modifications) (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), **Sch. 4 para. 10(7)**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 236ZA inserted by [S.I. 2024/357 art. 2\(2\)](#)