

SCHEDULES

SCHEDULE 5

Sections 19 and 26.

OCCUPATIONAL PENSION SCHEMES

PART I

APPROVED SCHEMES : CONDITIONS AS RESPECTS BENEFITS

Employee's benefits

- 1 The benefits payable to the employee must consist only of benefits payable on or after retirement at a specified age not earlier than 60 or later than 70, or on earlier retirement through incapacity.

Overall limit on employee's benefits

- 2 (1) The aggregate value of the relevant benefits payable to an employee on or after retirement, after 40 or more years' service, expressed as an annual amount payable for his life after retirement, must not exceed two-thirds of his final remuneration.
- (2) The aggregate value of the relevant benefits payable to an employee on or after his retirement, after less than 40 years' service, so expressed, must not exceed the limit in sub-paragraph (1) above reduced by multiplying by the number of years' service and dividing by 40.

Limit on employee's lump sum benefits

- 3 The aggregate value of the relevant benefits payable to an employee on or after retirement, excluding any pension which is not commutable, must not exceed three-eighths of his final remuneration for each year of service up to a maximum of 40.

Death after retirement: widow's pension

- 4 The annual amount of any pension payable to the widow of an employee who dies after retirement must not exceed one-half of the employee's pension.

Death after retirement: other provisions

- 5 (1) Subject to the following provisions of this paragraph, and except in the case of an employee who dies before retirement, benefits payable otherwise than to the employee must consist only of a pension payable to the employee's widow which is not commutable.
- (2) Where the employee dies after retirement, but so that less than 5 years' pension has become payable to him, sub-paragraph (1) above shall not prevent the making of

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payments not exceeding in all the value of the pension for the remaining part of the 5 years.

- (3) An employee may surrender part of his pension to provide a pension for his widow of an amount not exceeding the reduced pension retained by the husband, and the limit in paragraph 4 above shall be applied without regard to any pension so surrendered.

Death before retirement

- 6 The aggregate value of benefits payable where the employee dies before retirement must not exceed twice his final remuneration.

Pensions

- 7 Pensions must not be capable of being assigned or, subject to paragraph 5(3) above, of being surrendered.

Meaning of "final remuneration"

- 8 In this Part of this Schedule "final remuneration" means the highest average annual remuneration of any 3 consecutive years in the last 10 years' service.

PART II

Charge of pensions under Schedule E

- 1 (1) Subject to sub-paragraph (2) below, all pensions paid under any scheme which is approved or is being considered for approval under the principal Chapter shall be charged to tax under Schedule E, and section 204 of the Taxes Act (pay-as-you-earn) shall apply accordingly.
- (2) As respects any scheme which is approved or is being considered for approval under the principal Chapter, the Board may direct that, until such date as the Board may specify, pensions under the scheme shall be charged to tax as annual payments under Case III of Schedule D, and tax shall be deductible under Part II of the Taxes Act accordingly.

Charge to tax on repayment of employee's contributions

- 2 (1) Where by way of repayment of, or of interest on, contributions made by an employee, any amount is paid—
- (a) in accordance with the rules of an exempt approved scheme, or
 - (b) in accordance with a statutory scheme to which section 22 of this Act applies,
- the administrator of the scheme shall be charged to income tax under Case VI of Schedule D on that amount, and—
- (i) the rate of the tax shall be one half of the standard rate of income tax for the year in which the amount is paid,
 - (ii) the tax shall be charged on the amount paid or, if the rules permit the administrator to deduct the tax before payment, on the amount before deduction of tax,

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- (iii) the amount so charged to tax shall not be treated as income for any other purpose of the Tax Acts.
- (2) This paragraph shall not apply where the employee's employment was carried on outside the United Kingdom.
- (3) Sub-paragraph (1)(b) above shall not apply to any payment made before the date appointed under section 22 of this Act.

Charge to tax: commutation of entire pension in special circumstances

- 3 (1) Where—
- (a) an approved scheme, or
 - (b) a statutory scheme to which section 22 of this Act applies,
- contains a rule allowing, in special circumstances, a payment in commutation of an employee's entire pension, and any pension is commuted, whether wholly or not, under the rule, tax shall be charged on the amount by which the sum receivable exceeds—
- (i) the largest sum which would have been receivable in commutation of any part of the pension if the rule had conformed with paragraph 3 of Part I of this Schedule, or
 - (ii) the largest sum which would have been receivable in commutation of any part of the pension under any other rule of the scheme authorising the commutation of part (but not the whole) of the pension, or which would have been so receivable but for the said circumstances,
- whichever gives the lesser amount chargeable to tax.
- (2) Where any amount is chargeable to tax under this paragraph, the administrator of the scheme shall be charged to income tax under Case VI of Schedule D on that amount, and—
 - (a) the rate of the tax shall be one half of the standard rate of income tax for the year in which the amount is paid,
 - (b) the tax shall be charged on the amount paid or, if the rules permit the administrator to deduct the tax before payment, on the amount before deduction of tax,
 - (c) the amount so charged to tax shall not be treated as income for any other purpose of the Tax Acts.
 - (3) This paragraph shall not apply where the employee's employment was carried on outside the United Kingdom.
 - (4) In applying paragraphs (i) and (ii) of sub-paragraph (1) above the same considerations shall be taken into account, including the provisions of any other relevant scheme, as would have been taken into account by the Board in applying section 19 of this Act.
 - (5) Sub-paragraph (1)(b) above shall not apply to any payment made before the date appointed under section 22 of this Act.

Charge to tax: repayments to employer

- 4 (1) Where any payment is made or becomes due to an employer out of funds which are or have been held for the purposes of an exempt approved scheme then:—

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- (a) if the scheme relates to a trade, profession or vocation carried on by the employer, the payment shall be treated for the purposes of the Tax Acts as a receipt of that trade, profession or vocation receivable when the payment falls due or on the last day on which the trade, profession or vocation is carried on by the employer, whichever is the earlier,
 - (b) if the scheme does not relate to such a trade, profession or vocation, the employer shall be charged to tax on the amount of the payment under Case VI of Schedule D.
- (2) This paragraph shall not apply to a payment which fell due before the scheme became an exempt approved scheme.

Charge to tax: unauthorised payments and payments after cessation of tax exemptions

- 5 (1) Where a payment is made to or for the benefit of an employee, otherwise than in payment of a pension, and—
- (a) it is made under an approved scheme, but is not expressly authorised by the rules of the scheme, or
 - (b) it is made wholly or partly out of funds in respect of which relief has been given under section 21 of this Act or under section 208 of the Taxes Act, but is made when the scheme has ceased to be an approved scheme, and is in excess of the amounts authorised by the rules of the scheme before it ceased to be an approved scheme,
- the employee (whether or not he is the recipient of the payment) shall be chargeable to tax on that amount (or on that amount so far as made out of funds in respect of which relief has been given) under Schedule E for the year of assessment in which the payment is made.
- (2) So far as any payment is made out of funds in respect of which relief has been given under section 21 of this Act or under section 208 of the Taxes Act, paragraphs 2 and 3 of this Part of this Schedule shall apply as if references to an exempt approved scheme included references to a scheme which has at any time been an exempt approved scheme.

Application for approval of a scheme

- 6 An application for the approval for the purposes of the principal Chapter of any retirement benefits scheme shall be made in writing by the administrator of the scheme to the Board before the end of the first year of assessment for which approval is required, and shall be supported by—
- (a) two copies of the instrument or other document constituting the scheme ; and
 - (b) two copies of the rules of the scheme and, except where the application is being sought on the setting up of the scheme, two copies of the accounts of the scheme for the last year for which such accounts have been made up; and
 - (c) such other information and particulars (including copies of any actuarial report or advice given to the administrator or employer in connection with the setting up of the scheme) as the Board may consider relevant.

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Information about payments under approved schemes

- 7 In the case of every approved scheme, the administrator of the scheme, and every employer who pays contributions under the scheme, shall, within thirty days from the date of a notice from the inspector requiring them so to do—
- (a) furnish to the inspector a return containing such particulars of contributions paid under the scheme as the notice may require ;
 - (b) prepare and deliver to the inspector a return containing particulars of all payments under the scheme, being—
 - (i) payments by way of return of contributions (including interest on contributions, if any),
 - (ii) payments by way of commutation of, or in lieu of, pensions, or other lump sum payments,
 - (iii) other payments made to an employer;
 - (c) furnish to the inspector a copy of the accounts of the scheme to the last date previous to the notice to which such accounts have been made up together with such other information and particulars (including copies of any actuarial report or advice given to the administrator or employer in connection with the conduct of the scheme in the period to which the accounts relate) as the inspector considers relevant.

Information about schemes, other than approved or statutory schemes

- 8 (1) This paragraph has effect as respects a retirement benefits scheme which is neither an approved scheme nor a statutory scheme.
- (2) It shall be the duty of every employer—
- (a) if there subsists in relation to any of his employees any such scheme, to deliver particulars of that scheme to the Board within three months beginning with the date on which the scheme first comes into operation in relation to any of his employees, or the date of the coming into force of this paragraph, whichever is the later, and
 - (b) when required to do so by notice given by the Board, to furnish within the time limited by the notice such particulars as the Board may require with regard to—
 - (i) any retirement benefits scheme relating to the employer ; or
 - (ii) the employees of his to whom any such scheme relates.
- (3) It shall be the duty of the administrator of any such scheme, when required to do so by notice given by the Board, to furnish within the time limited by the notice such particulars as the Board may require with regard to the scheme.
- (4) This paragraph shall come into force on the same date as section 23 of this Act.

Responsibility of administrator of a scheme

- 9 (1) If the administrator of a retirement benefits scheme defaults or cannot be traced or dies, the employer shall be responsible in his place for the discharge of all duties imposed on the administrator under the principal Chapter, with this Part of this Schedule, and shall be liable for any tax due from him in his capacity as administrator.
- (2) No liability incurred under the principal Chapter or this Part of this Schedule by the administrator of a scheme, or by an employer, shall be affected by the termination of

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the scheme or by it ceasing to be an approved scheme, or to be an exempt approved scheme.

- (3) References in this paragraph to the employer include, where the employer is resident outside the United Kingdom, references to any branch or agent of the employer in the United Kingdom, and in this sub-paragraph "branch or agent" has the meaning given by section 118(1) of the Management Act.

Regulations

- 10 The Board may by statutory instrument, subject to annulment in pursuance of a resolution of the Commons House of Parliament, make regulations generally for the purpose of carrying the principal Chapter and this Schedule into effect.

PART III

CONSEQUENTIAL AMENDMENTS

Tax treatment of life assurance business

- 11 (1) In section 323(4) of the Taxes Act (definition of pension annuity business) after paragraph (a) insert
- “(aa) any contract (including a contract of insurance) entered into for the purposes of, and made with the persons having the management of, an exempt approved scheme as defined in Chapter II of Part II of the Finance Act 1970, being a contract so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme”.
- (2) In relation to an exempt approved scheme the said paragraph (aa) shall apply, so long as the scheme is an exempt approved scheme, whether or not the premiums were paid, or any other part of the business was transacted, before the scheme became an approved scheme, and in the said section 323(4) the words " (at the time when the premium is payable)" shall cease to have effect.
- (3) Business formerly called " pension annuity business " shall in future be called pension business (because under sub-paragraph (1) above it includes some business unrelated to annuities), and in the following provisions of the Taxes Act (and in any other enactment) for " pension annuity business " substitute " pension business " .
- Section 312(1)(3)(4)
 Section 314 (throughout)
 Section 315(8)(b)
 Section 318(1)
 Section 323(4)
- (4) In section 323(2) of the Taxes Act at the end of the definition of " annuity business " add " ' general annuity business ' means any annuity business which is not pension business, and 'pension business ' shall be construed in accordance with subsections (3) and (4) below. "
- (5) For section 323(3) substitute

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“(3) Any division to be made between general annuity business, pension business and other life assurance business shall be made on the principle of—

- (a) referring to pension business any premiums falling within subsection (4) below, together with the incomings, outgoings and liabilities referable to those premiums, and the policies and contracts under which they are or have been paid,
- (b) allocating to general annuity business all other annuity business, and references to " pension fund " and " general annuity fund " shall be construed accordingly, whether or not any such funds are kept separate from the insurance company's life assurance fund.”

(6) In the Taxes Act—

- (a) in section 312(2)(a) after " policy-holders " insert " other than holders of policies referable to pension business ".
- (b) in section 312(2)(c) for the words " in connection with the granting of annuities on human life" substitute " from pension business or general annuity business ".
- (c) in section 314(1) and (3)(b) for " annuity fund " substitute " life assurance fund and separate annuity fund, if any ".
- (d) in section 316(1) and (3) and 320(1) and (2) for " (excluding the annuity fund, if any) " substitute " (excluding the pension fund and general annuity fund, if any) ".
- (e) in section 316(3) for " annuity business" (at end of the subsection) substitute " general annuity and pension business ".
- (f) in section 328(1)(b) for " annuity business " substitute " pension business and general annuity business ".

Other amendments of Taxes Act

12 (1) In section 188(1) of the Taxes Act (exemptions and reliefs in respect of tax under section 187), after paragraph (c) insert—

“(cc) a benefit provided in pursuance of any retirement benefits scheme where under section 23 of the Finance Act 1970 the employee (as defined for the purposes of that section) was chargeable to tax in respect of sums paid, or treated as paid, with a view to the provision of the benefit ”,;

and at the end of paragraph (d) add " or in section 24(1) of the Finance Act 1970 ".

(2) In section 211(5) of the Taxes Act (Parliamentary pension funds) for the words from " payable by a superannuation " to the end of the subsection substitute " payable by an exempt approved scheme as defined in Chapter II of Part II of the Finance Act 1970, and for the purposes of that Chapter (and the provisions to be construed as one with it) each such Fund shall be treated as an exempt approved scheme. "

(3) In section 283(4) of the Taxes Act (definition of close company) after paragraph (b) insert—

“(bb) if held on trust for an exempt approved scheme as defined in Chapter II of Part II of the Finance Act 1970, or”.

(4) In the proviso to section 303 (3) of the Taxes Act (meaning of " associate ") after paragraph (i) insert—

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“(iA) if the trust relates exclusively to an exempt approved scheme as defined in Chapter II of Part II of the Finance Act 1970, or”.

- (5) In the proviso to section 422(4), and in the proviso to section 423(1) of the Taxes Act (modification of pre-war provisions for tax free payments) at the end add " or by virtue of paragraph 1 of Part II of Schedule 5 to the Finance Act 1970 ".
- (6) At the end of paragraph 4(c) of Schedule 8 to the Taxes Act (payments on retirement or removal from office : top-slicing relief) add " or in pursuance of any exempt approved scheme as defined in Chapter II of Part II of the Finance Act 1970 ".
- (7) The repeal of Chapter II of Part I(of the Taxes Act by this Act shall not affect the following provisions of the Taxes Act (which apply definitions in section 224(1) in the said Chapter II), or any other enactment applying those definitions.
 - Section 186(10)(c).
 - Section 226(9).
 - The proviso to paragraph 4 of Schedule 8.

Amendment of Taxes Management Act 1970

- 13 In section 98 of the Management Act (penalties) in column 1 of the Table insert a reference at the appropriate place to paragraph 7 and sub-paragraph (2)(b) and (3) of paragraph 8 of Part II of this Schedule and in column 2 of the Table to sub-paragraph (2)(a) of the said paragraph 8.

Estate duty

- 14 In paragraph 10(c) of Part II of Schedule 17 to the Finance Act 1969 (estate duty: relief for certain superannuation funds) the reference to the schemes or funds there described shall include a reference to any exempt approved scheme or statutory scheme as defined in Chapter II of Part II of this Act.