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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 21

Section 158

#### TAXABLE PROPERTY HELD BY INVESTMENT-REGULATED PENSION SCHEMES

- 1 In section 271 of TCGA 1992 (exemptions), after subsection (1A) insert—
- “(1B) But subsection (1A) does not prevent such a gain from being treated as a chargeable gain for the purposes of sections 185F to 185I of the Finance Act 2004 (scheme chargeable payments: gains from taxable property).”
- 2 Part 4 of FA 2004 (pension schemes) is amended as follows.
- 3 (1) Section 160 (payments by registered pension schemes) is amended as follows.
- (2) After subsection (7) insert—
- “(7A) Sections 185A to 185I contain provision about the receipt of income and gains from taxable property.”
- (3) In subsection (8), after “borrowing” insert “ and the receipt of income and gains from taxable property. ”
- 4 In section 173 (benefits), after subsection (7) insert—
- “(7A) This section does not apply if—
- (a) the pension scheme is an investment-regulated pension scheme, and
- (b) the asset consists of taxable property.”
- 5 After section 174 insert—
- “174A Taxable property held by investment-regulated pension schemes**
- (1) An investment-regulated pension scheme is to be treated as making an unauthorised payment to a member of the pension scheme if—
- (a) the pension scheme acquires an interest in taxable property, and
- (b) the interest is held by the pension scheme for the purposes of an arrangement under the pension scheme relating to the member.
- (2) An investment-regulated pension scheme is to be treated as making an unauthorised payment to a member of the pension scheme if—
- (a) an interest in taxable property is held by the pension scheme for the purposes of an arrangement under the pension scheme relating to the member, and
- (b) the property is improved.
- (3) An investment-regulated pension scheme is to be treated as making an unauthorised payment to a member of the pension scheme if—

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- (a) an interest in property which is not residential property is held by the pension scheme for the purposes of an arrangement under the pension scheme relating to the member, and
  - (b) the property is converted or adapted to become residential property.
- (4) Schedule 29A makes provision supplementing this section; and in that Schedule—
- (a) Part 1 defines “investment-regulated pension scheme”,
  - (b) Part 2 defines “taxable property” (and “residential property”),
  - (c) Part 3 explains what it means to acquire, and to hold, an interest in taxable property, and
  - (d) Part 4 contains provision for calculating the amounts of unauthorised payments treated as made by this section and explains when the unauthorised payments are treated as made.”

6 After section 185 insert—

*“Income and gains from taxable property*

**185A Income from taxable property**

- (1) An investment-regulated pension scheme is to be treated as having made a scheme chargeable payment if the pension scheme holds an interest in taxable property in a tax year.
- (2) The amount of the scheme chargeable payment depends on whether a person who holds the interest in the property directly receives profits arising from the interest in the tax year.
- (3) If a person who holds the interest in the property directly receives such profits in the tax year, the amount of the scheme chargeable payment is the greater of—
  - (a) an amount equal to the amount of the annual profits from the interest in the property (see section 185B(1)), and
  - (b) the amount of the deemed profits from the interest in the property for the year (see sections 185B(2) and 185C).
- (4) If no person who holds the interest in the property directly receives such profits in the tax year, the amount of the scheme chargeable payment is the amount of the deemed profits from the interest in the property for the year (see sections 185B(2) and 185C).
- (5) But where section 185D applies, the amount of the scheme chargeable payment is the amount found under subsection (3) or (4) as apportioned to the pension scheme in accordance with that section.
- (6) Section 185E makes provision for credits against income tax charged under section 239 (scheme sanction charge) in respect of a scheme chargeable payment treated as made by virtue of this section.

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### 185B Annual profits and deemed profits

- (1) For the purposes of section 185A(3) the amount of the annual profits from the interest in the property is the total amount of profits received from the interest in the tax year—
  - (a) by each person who holds the interest directly, and
  - (b) at a time when the property is scheme-held taxable property.
- (2) For the purposes of section 185A(3) and (4) the amount of the deemed profits from the interest in the property for the tax year is—

$$\frac{\text{DMV}}{10} \times \frac{\text{DTP}}{\text{DY}}$$

where—

DMV is the deemed market value of the interest in the property for the year (see section 185C),

DTP is the number of days in the year for which the property is scheme-held taxable property, and

DY is the number of days in the year.

- (3) In this Part “scheme-held taxable property” means property—
  - (a) which is taxable property, and
  - (b) an interest in which is held by the pension scheme.

### 185C Deemed market value

- (1) For the purposes of section 185B(2), where no person who holds the interest in the property directly during the tax year does so by virtue of a lease of residential property, the deemed market value of the interest for the year is—

$$(\text{MV} + \text{UP}) \times (1 + \text{RPI})$$

where—

MV is the opening market value (see subsection (2)),

UP is the total of any unauthorised payments treated as made by the pension scheme under section 174A in relation to the property in the tax year, other than any such payment treated as made by virtue of the property becoming scheme-held taxable property in the year, and

RPI is the figure expressed as a decimal which represents the percentage increase in the retail prices index between the first day in the tax year on which the property is scheme-held taxable property and the last such day (or, if there is no such increase, is nil).

- (2) In subsection (1) “the opening market value” means—

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- (a) if the property is not scheme-held taxable property immediately before the beginning of the tax year, the market value of the interest in the property immediately after the time during the year when the property first becomes scheme-held taxable property, and
  - (b) otherwise, the deemed market value of the interest for the previous tax year.
- (3) For the purposes of section 185B(2), where a person who holds the interest in the property directly during the tax year does so by virtue of a lease of residential property, the deemed market value of the interest for the year is the relevant rental value of the property calculated in accordance with paragraph 34 of Schedule 29A on the following assumptions—
- (a) that the lease was granted when the property first became scheme-held taxable property;
  - (b) that the term of the lease is 50 years;
  - (c) that a fully commercial rent is payable for the first five years of that term;
  - (d) that afterwards the rent is reviewed on an upwards-only basis.

#### **185D Apportionment to pension scheme**

- (1) This section applies where the pension scheme holds the interest in the property indirectly for the whole of the period in the tax year for which the property is scheme-held taxable property.
- (2) The amount that would otherwise be the amount of the scheme chargeable payment is to be apportioned to the pension scheme by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
  - (a) by the pension scheme,
  - (b) in connection with the acquisition of the interest in the property, and
  - (c) at the end of the last day in the tax year on which the property is scheme-held taxable property.
- (3) But where—
  - (a) the amount found in relation to the pension scheme on the day mentioned in paragraph (c) of subsection (2), differs from
  - (b) the amount that would be found in relation to the pension scheme under that subsection on another day in the tax year on which the property is scheme-held taxable property,

the amount to be apportioned to the pension scheme under this section is the average of the amounts produced by applying subsection (2) in relation to the pension scheme on each day in the tax year on which the property is scheme-held taxable property.

#### **185E Credit for tax paid**

- (1) This section applies where—
  - (a) the pension scheme holds the interest in the property indirectly in the tax year,

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- (b) a person who holds the interest directly receives profits arising from the interest at a time in the tax year when the property is scheme-held taxable property,
  - (c) tax is payable on those profits by that person (assuming them to be the highest part of the person's income for the tax year in which they are received), and
  - (d) that tax has been paid.
- (2) The amount determined under subsection (3) is to be allowed as a credit against any income tax charged under section 239 in respect of the scheme chargeable payment treated as made by virtue of the pension scheme holding the interest in the property in the tax year.
- (3) That amount is a proportion of the tax payable and paid determined by reference to the proportion of the amount that would otherwise be the amount of the scheme chargeable payment that is apportioned to the pension scheme under section 185D.
- (4) Where—
- (a) by virtue of this section an amount is allowed as a credit against income tax charged under section 239, and
  - (b) the amount of tax payable and paid by reference to which the amount of the credit was calculated is subsequently varied,
- the amount of the credit is to be varied accordingly, and any necessary adjustments are to be made to give effect to the variation (whether by making assessments or otherwise).

### **185F Gains from taxable property**

- (1) An investment-regulated pension scheme is to be treated as having made a scheme chargeable payment where—
- (a) in a tax year the pension scheme holds an interest in property which is taxable property or which has been taxable property at any time whilst the interest has been held by the pension scheme (a “taxable interest”),
  - (b) a gain is treated as accruing to the pension scheme in respect of the taxable interest in the tax year, and
  - (c) the total amount of gains treated as accruing to the pension scheme in respect of taxable interests in the tax year exceeds the total amount of losses treated as accruing to the pension scheme in respect of taxable interests in the tax year.
- (2) The amount of the scheme chargeable payment is an amount equal to the difference between—
- (a) the total amount of gains treated as accruing to the pension scheme in respect of taxable interests in the tax year, and
  - (b) the total amount of losses treated as accruing to the pension scheme in respect of taxable interests in the tax year,
- (but this is subject to section 185G(10)).
- (3) A gain or loss is treated as accruing to a pension scheme in respect of a taxable interest in a tax year if—

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- (a) by virtue of section 185G a chargeable gain or allowable loss is treated for the purposes of this section as accruing in the tax year to the person who holds the taxable interest directly, or
- (b) in the tax year the pension scheme or another vehicle ceases to hold all or part of an interest in a vehicle through which the pension scheme holds the taxable interest indirectly (see section 185H).

### **185G Disposal by person holding directly**

- (1) For the purposes of this section the person (“the transferor”) who holds the taxable interest directly is to be treated as holding an asset (a “taxable asset”) consisting of the interest.
- (2) For the purpose of determining—
  - (a) whether the transferor disposes of the taxable asset,
  - (b) when such a disposal takes place, and
  - (c) whether a chargeable gain or allowable loss is treated for the purposes of section 185F as accruing to the transferor on a disposal of the taxable asset in a tax year and, if so, the amount of the chargeable gain or allowable loss,

TCGA 1992 is to be treated as applying to the transferor and the taxable asset, but subject as follows.

- (3) TCGA 1992 is to be treated as applying as if—
  - (a) throughout the tax year the transferor were resident, ordinarily resident and domiciled in the United Kingdom,
  - (b) no allowable losses accrued to the transferor in any previous tax year,
  - (c) for the purposes of section 2A (taper relief) of that Act the transferor were not chargeable to corporation tax in respect of any chargeable gain accruing to the transferor from a disposal of the taxable asset and the taxable asset were at all relevant times a non-business asset,
  - (d) notice under section 16(2A) (losses) of that Act were given by the transferor in relation to the year in respect of any loss treated as accruing to the transferor in the year from a disposal of the taxable asset,
  - (e) section 45(1) (wasting assets) of that Act did not apply to a disposal of the taxable asset,
  - (f) for the purposes of section 53 (indexation allowance) of that Act the transferor were not chargeable to corporation tax in respect of any chargeable gain accruing to the transferor from a disposal of the taxable asset,
  - (g) section 171(1) (transfers within a group) of that Act did not apply to a disposal of the taxable asset (so that no election could be made in relation to such a disposal under section 171A (notional transfers within a group) of that Act), and
  - (h) sections 222 to 224 (relief on disposal of private residence) of that Act did not apply to a gain on a disposal of the taxable asset by virtue of section 225 (private residence occupied under terms of settlement) of that Act.

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- (4) Where the taxable asset became taxable property whilst held directly by the pension scheme, TCGA 1992 is to be treated as applying to a disposal of the asset as if—
  - (a) the asset had been acquired by the transferor at the time it became taxable property, and
  - (b) the amount deductible under section 38(1)(a) (consideration for acquisition of asset) of that Act in respect of the disposal were the amount of the unauthorised payment treated as made by the pension scheme at that time.
- (5) Subsections (6) to (8) apply where the pension scheme holds the taxable asset indirectly.
- (6) TCGA 1992 is to be treated as applying to a disposal of the asset as if the amount deductible under section 38(1) of that Act in respect of the disposal were—
  - (a) the total amount of unauthorised payments treated as made by the pension scheme in respect of the taxable asset up to the time of the disposal, less
  - (b) the amount found under paragraph (a) to the extent that it has already been taken into account in calculating the gains or losses accruing to the pension scheme in respect of the taxable asset by virtue of this section or section 185H.
- (7) The amount that would otherwise be the amount of the consideration for which the disposal is made (or treated as made) is to be scaled down by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
  - (a) by the pension scheme,
  - (b) in connection with the acquisition of the interest in the property which constitutes the taxable asset, and
  - (c) at the time of the disposal.
- (8) Subsection (6) is subject to section 42 of TCGA 1992 (part disposals); but in the application of that section in relation to the taxable asset the amount of the consideration for the disposal is to be taken to be that amount apart from subsection (7).
- (9) Where the taxable asset was not taxable property for the whole period beginning with—
  - (a) the time when the pension scheme acquired the asset, or
  - (b) if later, the time when the asset first became taxable property,and ending with the disposal, the amount that would otherwise be the amount of any chargeable gain or allowable loss treated as accruing on a disposal of the asset is to be reduced by reference to the proportion of the period for which the asset was not taxable property.
- (10) Where—
  - (a) the taxable asset is a wasting asset consisting of tangible moveable property, and
  - (b) by virtue of section 185F, a loss is treated as accruing to the pension scheme from a disposal of the asset in a tax year,

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the loss is only to be allowed as a deduction from any gains treated as accruing to the pension scheme by virtue of that section from other disposals in the year of taxable assets which are wasting assets consisting of tangible moveable property.

### **185H Disposal of interest in vehicle**

- (1) This section applies for the purposes of section 185F where the pension scheme or another vehicle ceases to hold all or part of an interest in a vehicle through which the pension scheme holds the taxable interest indirectly.
- (2) The pension scheme is to be treated as disposing of the interest in the vehicle through which the pension scheme holds the taxable interest indirectly.
- (3) The amount of the gain or loss treated as accruing to the pension scheme on the disposal of the interest in the vehicle is the difference between—
  - (a) the deemed consideration received for the disposal of the interest, and
  - (b) the deemed consideration given for the interest.
- (4) The deemed consideration received for the disposal of the interest in the vehicle is the difference between—
  - (a) the market value of the taxable interest at the time of the disposal, apportioned to the pension scheme in accordance with subsection (5) immediately before that time, and
  - (b) the market value of the taxable interest at the time of the disposal, apportioned to the pension scheme in accordance with subsection (5) immediately after that time.
- (5) An amount mentioned in subsection (4) is to be apportioned to the pension scheme by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
  - (a) by the pension scheme,
  - (b) in connection with the acquisition of the taxable interest, and
  - (c) at the time at which the amount is to be apportioned to the pension scheme in accordance with that subsection.
- (6) The deemed consideration given for the interest in the vehicle is—
  - (a) the total amount of unauthorised payments treated as made by the pension scheme in respect of the taxable interest up to the time of the disposal, less
  - (b) the amount found under paragraph (a) to the extent that it has already been taken into account in calculating the gains or losses accruing to the pension scheme in respect of the taxable interest by virtue of section 185G or this section.

### **185I Credit for tax paid**

- (1) This section applies where by virtue of section 185F a pension scheme is to be treated as making a scheme chargeable payment which is to any extent attributable—



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- (a) to a chargeable gain treated by virtue of section 185G as accruing to another person on a disposal of a taxable asset, or
  - (b) to a gain treated by virtue of section 185H as accruing to the pension scheme as a result of another person disposing of an interest in a vehicle through which the pension scheme holds a taxable interest indirectly.
- (2) Where—
  - (a) tax is payable in respect of the disposal by the person who makes the disposal, and
  - (b) that tax has been paid,the amount determined under subsection (3) or (4) (as appropriate) is to be allowed as a credit against any income tax charged under section 239 in respect of the scheme chargeable payment.
- (3) In a case within paragraph (a) of subsection (1), that amount is a proportion of the amount of tax paid and payable determined by reference to the proportion of the amount of consideration for the disposal that is apportioned under section 185G(7).
- (4) In a case within paragraph (b) of subsection (1), that amount is the amount of tax paid and payable apportioned to the pension scheme by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
  - (a) by the pension scheme,
  - (b) in connection with an acquisition of the taxable interest by the person disposing of the interest in the vehicle, and
  - (c) at the time of the disposal.
- (5) Where—
  - (a) by virtue of this section an amount is allowed as a credit against income tax charged under section 239, and
  - (b) the amount of tax payable and paid by reference to which the amount of the credit was calculated is subsequently varied,the amount of the credit is to be varied accordingly, and any necessary adjustments are to be made to give effect to the variation (whether by making assessments or otherwise).”
- 7 In section 186 (relief for income derived from scheme investments), after subsection (2) insert—

“(2A) The exemption provided by subsection (1) does not prevent the income from being charged to tax by virtue of section 185A.”
- 8 In section 239 (scheme sanction charge), after subsection (5) insert—

“(6) This section is subject to provision made by regulations under section 273ZA (income and gains from taxable property).”
- 9 In section 241(1) (scheme chargeable payments) insert at the end “, and
  - (c) a scheme chargeable payment which the pension scheme is to be treated as having made by section 185A (income from taxable property) or 185F (gains from taxable property).”
- 10 After section 273 insert—

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**“273ZA Income and gains from taxable property**

- (1) The Treasury may make regulations in relation to cases where—
  - (a) an investment-regulated pension scheme holds an interest in taxable property,
  - (b) the pension scheme is non-UK resident, and
  - (c) the property is not located in the United Kingdom.
- (2) The regulations may make provision for a member of the pension scheme for the purposes of whose arrangement the interest is held to be liable to the scheme sanction charge so far as relating to a scheme chargeable payment treated as made by the pension scheme—
  - (a) under section 185A (income from taxable property) by virtue of the pension scheme holding the interest in the property, or
  - (b) under section 185F (gains from taxable property) by virtue of a gain treated as accruing to the pension scheme in respect of the interest in the property.
- (3) The regulations may make provision—
  - (a) for the member to be liable to all of the scheme sanction charge arising by virtue of the scheme chargeable payment or to the charge to such extent as the regulations may provide,
  - (b) for the charge to be apportioned between members of the pension scheme where the interest in the property is held for the purposes of more than one arrangement under the pension scheme, and
  - (c) for the scheme administrator not to be liable to the scheme sanction charge or not to be liable to the charge to such extent as the regulations may provide.
- (4) The regulations may make provision for cases where—
  - (a) a member of a pension scheme would otherwise be liable to the scheme sanction charge arising by virtue of a scheme chargeable payment treated as made by the pension scheme under section 185F in a tax year,
  - (b) the member does not meet such conditions as to residence in the tax year as the regulations may prescribe,
  - (c) the member meets those conditions in a subsequent tax year, and
  - (d) such other conditions as the regulations may prescribe are met.
- (5) The regulations may make provision for the member—
  - (a) not to be liable to the scheme sanction charge in the tax year in which the scheme chargeable payment is treated as made, but
  - (b) to be liable in a subsequent tax year to such extent as the regulations may provide to the scheme sanction charge arising by virtue of the payment.
- (6) The regulations may—
  - (a) amend this Part (apart from this section),
  - (b) include provision having effect in relation to times before they are made,
  - (c) contain transitional provisions and savings, and

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(d) make different provision for different cases.

(7) For the purposes of this section a pension scheme is non-UK resident if it is established in a country or territory outside the United Kingdom.”

11 In section 278 (market value), after subsection (3) insert—

“(3A) For the purposes of this Part the market value of taxable property, or of an interest in taxable property, is to be determined in accordance with section 272 of TCGA 1992.

(3B) Subsection (3A) is subject to any provision made by regulations under paragraph 36(2) of Schedule 29A.”

12 In section 280(2) (index of defined expressions), in the table, insert the following entries at the appropriate places—

“acquiring an interest in property (for the purposes of the taxable property provisions)	paragraphs 12 and 27 to 29 of Schedule 29A”;
“building (for the purposes of the taxable property provisions)	paragraph 7(2) of Schedule 29A”;
“holding an interest in a person (for the purposes of the taxable property provisions)	paragraph 16(2) to (4) of Schedule 29A”;
“holding an interest in property (for the purposes of the taxable property provisions)	paragraph 13 of Schedule 29A”;
“holding directly an interest in a vehicle (for the purposes of the taxable property provisions)	paragraph 20(3) of Schedule 29A”;
“holding directly an interest in property (for the purposes of the taxable property provisions)	paragraphs 14 and 15 of Schedule 29A”;
“holding indirectly an interest in a vehicle (for the purposes of the taxable property provisions)	paragraph 20(4) of Schedule 29A”;
“holding indirectly an interest in property (for the purposes of the taxable property provisions)	paragraph 16(1) of Schedule 29A”;

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

“investment-regulated pension scheme (for the purposes of the taxable property provisions)”	paragraphs 1 to 3 of Schedule 29A”;
“residential property (for the purposes of the taxable property provisions)”	paragraphs 7(1), 8 and 9 of Schedule 29A”;
“scheme-held taxable property”	section 185B(3)”;
“sums and assets held for the purposes of an arrangement (for the purposes of the taxable property provisions)”	paragraph 5 of Schedule 29A”;
“taxable property (for the purposes of the taxable property provisions)”	paragraphs 6, 10 and 11 of Schedule 29A”;
“the taxable property provisions”	paragraph 1(3) of Schedule 29A”;
“vehicle (in the taxable property provisions)”	paragraph 20(2) of Schedule 29A”.

13

After Schedule 29 insert—

“SCHEDULE  
29A

Section 174A

TAXABLE PROPERTY HELD BY INVESTMENT-REGULATED PENSION SCHEMES

**PART 1**

INVESTMENT-REGULATED PENSION SCHEMES

*Schemes other than occupational pension schemes*

- 1 (1) For the purposes of the taxable property provisions a registered pension scheme which is not an occupational pension scheme is an investment-regulated pension scheme if one or more of its members meets the condition in sub-paragraph (2).
- (2) The condition is that either—
  - (a) the member, or
  - (b) a person related to the member,
 is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any of the sums and assets held for the purposes of an arrangement under the pension scheme relating to the member.
- (3) In this Part “the taxable property provisions” means—

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- (a) section 173(7A) (exception from benefit charge where taxable property held by investment-regulated pension scheme),
- (b) section 174A and this Schedule,
- (c) sections 185A to 185I (income and gains from taxable property),
- (d) section 273ZA (member liability for scheme sanction charge where pension scheme non-UK resident), and
- (e) paragraphs 37A to 37I of Schedule 36 (transitional provisions).

#### *Occupational pension schemes*

- 2 (1) For the purposes of the taxable property provisions a registered pension scheme which is an occupational pension scheme is an investment-regulated pension scheme if—
- (a) there are 50 or fewer members of the pension scheme, and one or more of those members meets the condition in sub-paragraph (2), or
  - (b) at least 10% of the members of the pension scheme meet that condition.
- (2) The condition is that either—
- (a) the member, or
  - (b) a person related to the member,
- is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any of the sums and assets held for the purposes of the pension scheme.

#### *Separate self-controlled section*

- 3 (1) This paragraph applies in the case of an arrangement under a registered pension scheme if—
- (a) the pension scheme is an occupational pension scheme,
  - (b) the pension scheme is not an investment-regulated pension scheme by virtue of paragraph 2, and
  - (c) one or more members of the pension scheme meet the condition in sub-paragraph (2).
- (2) The condition is that either—
- (a) the member, or
  - (b) a person related to the member,
- is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any sums or assets which are linked to an arrangement relating to the member.
- (3) For the purposes of sub-paragraph (2) sums or assets are linked to an arrangement relating to a member if—
- (a) they are held for the purposes of an arrangement under the pension scheme relating to the member, but
  - (b) they are not held for the purposes of the arrangement merely by virtue of a just and reasonable apportionment of the sums and assets held for the purposes of the pension scheme.

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- (4) Where this paragraph applies the arrangement is to be treated for the purposes of this Part as if it were an investment-regulated pension scheme.
- (5) The Treasury may by regulations—
  - (a) amend sub-paragraph (3), and
  - (b) provide for any of the provisions of this Part to apply to the arrangement with modifications.

#### *Related persons*

- 4 (1) For the purposes of this Part of this Schedule a person is related to a member of a pension scheme if—
  - (a) the person and the member are connected persons, or
  - (b) the person acts on behalf of the member or a person connected with the member.
- (2) Section 839 of ICTA (connected persons) applies for the purposes of sub-paragraph (1).

#### *Arrangements*

- 5 Where sums or assets held for the purposes of an investment-regulated pension scheme—
  - (a) are held otherwise than for the purposes of the administration or management of the pension scheme, and
  - (b) would not, apart from this paragraph, be treated as held for the purposes of any arrangement relating to a member under the pension scheme,

for the purposes of the taxable property provisions the sums or assets are to be treated as held for the purposes of the arrangements under the pension scheme by reference to the respective rights under the scheme of the members to which the arrangements relate.

## **PART 2**

### TAXABLE PROPERTY

#### *Taxable property*

- 6 For the purposes of the taxable property provisions property is taxable property if—
  - (a) it is residential property (see paragraphs 7 to 10), or
  - (b) it is tangible moveable property (but subject to paragraph 11).

#### *Residential property*

- 7 (1) Subject as follows, for the purposes of the taxable property provisions “residential property” means—
  - (a) a building that is used or suitable for use as a dwelling,

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- (b) any land consisting of, or forming part of, the garden or grounds of such a building (including a building on any such land) which is used or intended for use for a purpose connected with the enjoyment of the building,
        - (c) hotel or similar accommodation (but see paragraph 14(2)), or
        - (d) a beach hut,
  - in the United Kingdom or elsewhere.
  - (2) For the purposes of the taxable property provisions “building” includes—
    - (a) a structure, and
    - (b) part of a building or structure.
- 8 (1) For the purposes of the taxable property provisions a building used for any of the following purposes is not residential property—
- (a) a home or other institution providing residential accommodation for children;
  - (b) a hall of residence for students;
  - (c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder;
  - (d) a hospital or hospice;
  - (e) a prison or similar establishment.
- (2) Where—
- (a) a building is used for a purpose specified in sub-paragraph (1),
  - (b) a building which is not in use was, immediately before it ceased to be in use, used for such a purpose, or
  - (c) a building which has never been in use is more suitable for use for such a purpose than for use for any other purpose,
- no account is to be taken for the purposes of the taxable property provisions of its suitability for use as a dwelling.
- 9 (1) The Treasury may by order amend this Part of this Schedule to specify descriptions of buildings which are, or are not, to be treated as residential property.
- (2) An order under this paragraph which amends this Part of this Schedule in a way that results in buildings becoming treated as not being residential property may provide that the amendment has effect from a date earlier than that on which the order was made.
- 10 (1) Residential property is not taxable property in relation to a pension scheme if Condition A or B is met.
- (2) Condition A is met if the property is (or, if unoccupied, is to be) occupied by an employee who—
- (a) is neither a member of the pension scheme nor connected with such a member,
  - (b) is not connected with the employer, and
  - (c) is required as a condition of employment to occupy the property.
- (3) Condition B is met if the property is (or, if unoccupied, is to be)—

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- (a) occupied by a person who is neither a member of the pension scheme nor connected with such a member, and
  - (b) used in connection with business premises held as an investment of the pension scheme.
- (4) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.

*Tangible moveable property*

- 11 (1) The Treasury may by order provide that, for the purposes of the taxable property provisions, any specified description of tangible moveable property is treated as not being taxable property.
- (2) An order under this paragraph may include provision having effect in relation to times before it is made.

**PART 3**

ACQUISITION AND HOLDING OF TAXABLE PROPERTY

*Acquisition*

- 12 (1) For the purposes of the taxable property provisions an investment-regulated pension scheme acquires an interest in property if it comes to hold the interest.
- (2) Sub-paragraph (1) applies however the pension scheme comes to hold the interest, whether that is—
- (a) by act of the parties to a transaction,
  - (b) by order of a court or other authority,
  - (c) by or under any statutory provision, or
  - (d) by operation of law.
- (3) For instances of deemed acquisition, see paragraphs 27 to 29.

*Holding*

- 13 (1) For the purposes of the taxable property provisions an investment-regulated pension scheme holds an interest in property if the scheme holds the interest directly or indirectly.
- (2) In the taxable property provisions references to a person holding an interest in property include, in the case of—
- (a) an investment-regulated pension scheme,
  - (b) an arrangement under a pension scheme, or
  - (c) a trust which is not a pension scheme,
- references to the interest in the property being held for the purposes of the pension scheme, the arrangement or the trust.



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*Direct holding*

- 14 (1) For the purposes of the taxable property provisions a person holds an interest in property directly if the person (whether jointly, in common or alone)—
- (a) holds the property or any estate, interest, right or power in or over the property,
  - (b) has the right to use, or participate in arrangements relating to the use of, that property or a description of property to which that property belongs, or
  - (c) has the benefit of any obligation, restriction or condition affecting the value of any estate, interest, right or power in or over the property,
- under the law of any country or territory.
- (2) But a person does not hold an interest in residential property consisting of hotel accommodation directly unless—
- (a) the person holds part only of the hotel accommodation or any estate, interest, right or power in or over such a part and, as a result, any person has a right to use or occupy that or any other part of the hotel accommodation, or
  - (b) the person has a right to use, or participate in arrangements relating to the use of, part only of the hotel accommodation or a description of property to which that part belongs.
- (3) For the purposes of the taxable property provisions a person holds an interest in property directly if the person is entitled (whether jointly, in common or alone) to receive payments determined by reference to the value of or the income from the property.
- (4) Sub-paragraph (3) is subject to paragraph 15.

*Exception to direct holding*

- 15 (1) A person does not hold an interest in taxable property directly by virtue of paragraph 14(3) where Conditions A to C are met.
- (2) Condition A is that—
- (a) the person is entitled to receive the payments by virtue of a policy of life insurance, a contract for a life annuity or a capital redemption policy, and
  - (b) the policy or contract is issued by an insurance company.
- (3) Condition B is that the property—
- (a) does not constitute a linked asset, or
  - (b) has been appropriated by the insurance company to an internal linked fund.
- (4) Condition C is that—
- (a) where the person is an occupational pension scheme, the policy or contract, either by itself or taken together with one or more associated policies, does not entitle the pension scheme, either alone or together with one or more associated persons, to receive payments

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- representing 10% or more of the market value of or the income from the property,
- (b) where the person is a pension scheme other than an occupational pension scheme, the policy or contract, either by itself or taken together with one or more associated policies, does not entitle an arrangement under the pension scheme, either alone or together with one or more associated persons, to receive such payments, or
  - (c) otherwise, the policy or contract does not entitle the person to receive such payments.
- (5) But for the purposes of applying paragraph 14(3) for determining whether a pension scheme holds an interest in taxable property directly or indirectly, this paragraph does not apply if the purpose or one of the purposes for which the person holds rights under the policy or contract is to enable a member of the pension scheme or a person connected with such a member to occupy or use the property.
- (6) For the purposes of sub-paragraph (4) “associated policy” means a policy or contract which entitles an associated person to receive payments determined by reference to the value of or the income from the property.
- (7) For the definition of “associated person” see paragraph 30.
- (8) For the purposes of this paragraph—
- “capital redemption policy” means a contract made in the course of a capital redemption business, as defined in section 458(3) of ICTA;
  - “internal linked fund” has the meaning given by—
    - (a) the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under FISMA 2000, or
    - (b) rules made by the Authority under that Act and having effect for the time being in place of the Sourcebook; and
  - “linked asset” means an asset of the insurance company which is identified in its records as an asset by reference to the value of which benefits provided for under a policy or contract are to be determined.
- (9) For the purposes of this paragraph an annuity is a life annuity if it is—
- (a) granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life, and
  - (b) payable for a term ending at a time ascertainable only by reference to the end of a human life,
- and for this purpose it does not matter that the annuity may in some circumstances end before or after the life.

#### *Indirect holding*

- 16 (1) For the purposes of the taxable property provisions a person holds an interest in property indirectly if the person does not hold the interest directly but (whether jointly, in common or alone)—
- (a) holds an interest in a person who holds the interest in the property directly, or

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- (b) holds an interest in a person who holds the interest in the property indirectly by virtue of paragraph (a) or this paragraph.
  - (2) For the purposes of the taxable property provisions a person holds an interest in another person if—
    - (a) the person holds an interest, right or power in or over that other person, or
    - (b) the person lends money to that other person to fund the acquisition by that other person of an interest in taxable property.
  - (3) But sub-paragraph (2)(b) does not apply where—
    - (a) the loan is an authorised employer loan made by a pension scheme to or in respect of a sponsoring employer (see section 179),
    - (b) the interest in the property is acquired so that the property may be used for the purposes of a trade, profession or vocation carried on by the sponsoring employer or for the purposes of the sponsoring employer's administration or management, and
    - (c) after the acquisition, the property is not occupied or used by a member of the pension scheme or a person connected with such a member.
  - (4) In the taxable property provisions references to a person holding an interest in another person include, in the case of—
    - (a) an investment-regulated pension scheme,
    - (b) an arrangement under a pension scheme, or
    - (c) a trust which is not a pension scheme,references to the interest in the other person being held for the purposes of the pension scheme, the arrangement or the trust.
  - (5) Paragraphs 17 to 19 explain what it means for a person to hold an interest in another person by virtue of sub-paragraph (2)(a) in a case where that other person is a company, collective investment scheme or trust.
  - (6) The Treasury may by regulations—
    - (a) amend paragraphs 17 to 19, or
    - (b) amend this Part of this Schedule for the purposes of explaining what it means for a person to hold an interest, right or power in or over another person in other cases.
  - (7) This paragraph is subject to paragraphs 20 to 26.
- 17 (1) For the purposes of paragraph 16 a person holds an interest in a company if—
- (a) the person has, or is entitled to acquire, share capital or voting rights in the company,
  - (b) the person has, or is entitled to acquire, a right to receive or participate in distributions of the company,
  - (c) the person is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for the person's benefit, or
  - (d) the person, either alone or together with other persons, has control of the company.

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- (2) In sub-paragraph (1) references to a person being entitled to do anything apply where a person—
    - (a) is currently entitled to do it at a future date, or
    - (b) will at a future date be entitled to do it.
  - (3) In sub-paragraph (1) “control” has the meaning given by section 416 of ICTA.
- 18 (1) For the purposes of paragraph 16 a person holds an interest in a collective investment scheme if the person is a participant in the scheme.
- (2) In this Schedule—
    - (a) “collective investment scheme” has the meaning given by section 235 of FISMA 2000, and
    - (b) “participant”, in relation to such a scheme, has the meaning given by subsection (2) of that section.
- 19 (1) For the purposes of paragraph 16 a pension scheme holds an interest in a trust if Condition A or B is met.
- (2) Condition A is that—
    - (a) the pension scheme has a relevant interest in the trust,
    - (b) the pension scheme, a member of the pension scheme or a person connected with such a member has made a payment to the trust on or after the acquisition of the interest, and
    - (c) the payment is not one to which sub-paragraph (7) applies.
  - (3) Condition B is that—
    - (a) a member of the pension scheme or a person connected with such a member has a relevant interest in the trust,
    - (b) the pension scheme has made a payment to the trust on or after the acquisition of the interest, and
    - (c) the payment is not one to which sub-paragraph (7) applies.
  - (4) For the purposes of applying paragraph 16 for determining whether a pension scheme holds an interest in property indirectly, a person other than the pension scheme holds an interest in a trust if—
    - (a) the person has a relevant interest in the trust,
    - (b) the person has made a payment to the trust on or after the acquisition of the interest, and
    - (c) the payment is not one to which sub-paragraph (7) applies.
  - (5) For the purposes of this paragraph a person has a relevant interest in a trust if—
    - (a) any property which may at any time be comprised in the trust or any derived property is, or will or may become, payable to or applicable for the benefit of the person in any circumstances, or
    - (b) the person enjoys a benefit deriving directly or indirectly from any property which is comprised in the trust or any derived property.
  - (6) In sub-paragraph (5) “derived property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or income from, that property.

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- (7) This sub-paragraph applies to a payment if—
- (a) it is made as part of an arm's length transaction by which property or a benefit is to be provided in return for the payment, and
  - (b) it is made otherwise than for the purposes of enabling a member of the pension scheme or a person connected with such a member to occupy or use any property.
- (8) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.
- (9) This paragraph does not apply in relation to a unit trust scheme within the meaning of section 237(1) of FISMA 2000 (but see paragraph 18).

*Exceptions to indirect holding*

- 20 (1) A pension scheme does not hold an interest in property indirectly through a vehicle through which the pension scheme would otherwise hold the interest in the property indirectly where one of the following paragraphs applies in relation to the vehicle, and, in particular—
- (a) paragraph 21 makes provision in relation to holding through vehicles which carry on trading activities,
  - (b) paragraph 22 makes provision in relation to holding through Real Estate Investment Trusts,
  - (c) paragraphs 23 to 25 make provision in relation to holding through other kinds of vehicles, and
  - (d) paragraph 26 makes provision in relation to holding through a vehicle which holds the interest in the property directly by virtue of paragraph 14(3) (receipt of payments determined by reference to value of or income from property).
- (2) In the taxable property provisions “vehicle”, in relation to a pension scheme which holds an interest in taxable property indirectly, means a person through whom the pension scheme holds the interest in the property.
- (3) For the purposes of the taxable property provisions a person holds an interest in a vehicle directly if the person holds an interest of the kind mentioned in paragraph 16(2) in the vehicle.
- (4) For the purposes of the taxable property provisions a person holds an interest in a vehicle indirectly if the person does not hold the interest directly but—
- (a) holds an interest in a person who holds an interest in the vehicle directly, or
  - (b) holds an interest in a person who holds the interest in the vehicle indirectly by virtue of paragraph (a) or this paragraph.
- 21 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where—
- (a) the vehicle's main activity is the carrying on of a trade, profession or vocation,
  - (b) the pension scheme does not, whether alone or together with one or more associated persons, have control of the vehicle, and

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- (c) neither a member of the pension scheme nor a person connected with such a member is a controlling director of the vehicle or any other vehicle which holds an interest in the vehicle directly or indirectly.
- (2) But this paragraph does not apply if the purpose or one of the purposes for which the pension scheme holds the interest in the vehicle is to enable a member of the pension scheme or a person connected with such a member to occupy or use the property.
- (3) In sub-paragraph (1)—
  - (a) “control” has the same meaning as in section 416 of ICTA (reading references in that section to a company as references to the vehicle and references to associates as including associated persons), and
  - (b) “controlling director”, in relation to a vehicle, means a director to whom paragraph (b) of section 417(5) of that Act applies (reading the reference to associates in that paragraph as including associated persons).
- (4) For the purposes of this paragraph a pension scheme or an arrangement under a pension scheme has control of a vehicle if the pension scheme or the arrangement holds such interest as would, if the pension scheme or the arrangement were a person, mean that the person had control of the vehicle.
- (5) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.
- (6) For the definition of “associated person” see paragraph 30.
- 22 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where the vehicle is—
  - (a) a company to which Part 4 of the Finance Act 2006 (Real Estate Investment Trusts) applies, or
  - (b) a member of a group to which that Part applies.
- (2) But this paragraph does not apply if the purpose or one of the purposes for which the pension scheme holds the interest in the vehicle is to enable a member of the pension scheme or a person connected with such a member to occupy or use the property.
- (3) Section 839 of ICTA (connected persons) applies for the purposes of sub-paragraph (2).
- 23 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where—
  - (a) Conditions A to C are met in relation to the vehicle, and
  - (b) paragraph 24 applies to the pension scheme's interest in the vehicle.
- (2) Condition A is that—
  - (a) the total value of the assets held directly by the vehicle is at least £1 million, or
  - (b) the vehicle holds directly at least three assets which consist of an interest in residential property,
 and no asset held directly by the vehicle which consists of an interest in taxable property has a value which exceeds 40% of the total value of the assets held directly by the vehicle.

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- (3) Condition B is that, if the vehicle is a company—
    - (a) it is resident in the United Kingdom and is not a close company, or
    - (b) it is not resident in the United Kingdom and would not be a close company if it were resident in the United Kingdom.
  - (4) Condition C is that the vehicle does not have as its main purpose, or one of its main purposes, the direct or indirect holding of an animal or animals used for sporting purposes.
  - (5) For the purposes of sub-paragraph (2)—
    - (a) assets must be valued in accordance with generally accepted accounting practice,
    - (b) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically), and
    - (c) where generally accepted accounting practice offers a choice of valuation between cost basis and fair value, fair value must be used.
  - (6) The Treasury may by order—
    - (a) increase the amount for the time being specified in paragraph (a) of sub-paragraph (2), or
    - (b) increase the percentage for the time being specified in that sub-paragraph.
- 24 (1) For the purposes of paragraph 23 this paragraph applies to the interest held directly or indirectly by a pension scheme in a vehicle where—
  - (a) Condition A is met, and
  - (b) Condition B or C is met.
- (2) Condition A is that the pension scheme does not hold the interest in the vehicle for the purpose of enabling a member of the pension scheme or a person connected with such a member to occupy or use the property.
  - (3) Condition B is that—
    - (a) the pension scheme is an occupational pension scheme, and
    - (b) the pension scheme does not, either alone or together with one or more associated persons, directly or indirectly hold an interest in the vehicle to which sub-paragraph (5) applies.
  - (4) Condition C is that—
    - (a) the pension scheme is not an occupational pension scheme, and
    - (b) no arrangement under the pension scheme, either alone or together with one or more associated persons, directly or indirectly holds an interest in the vehicle to which sub-paragraph (5) applies.
  - (5) This sub-paragraph applies to the following interests—
    - (a) 10% or more of the share capital or issued share capital of the vehicle;
    - (b) 10% or more of the voting rights in the vehicle;
    - (c) a right to receive 10% or more of the income of the vehicle;
    - (d) such interest in the vehicle as gives an entitlement to 10% or more of the amounts distributed on a distribution in relation to the vehicle;

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- (e) such interest in the vehicle as gives an entitlement to 10% or more of the assets of the vehicle on a winding-up or in any other circumstances;
  - (f) such interest in the vehicle as gives rise to income or gains from a specific property.
- (6) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.
- (7) For the definition of “associated person” see paragraph 30.
- 25 (1) This paragraph contains provisions supplementary to paragraph 24.
- (2) Where—
  - (a) paragraph 23(1) does not apply in relation to a vehicle in which the pension scheme directly or indirectly holds an interest merely because Condition C in paragraph 24(4) is not met in relation to an arrangement under the pension scheme, and
  - (b) accordingly, the pension scheme holds an interest in property indirectly through the vehicle,

the interest in the property is to be treated as held through the vehicle for the purposes of another arrangement under the pension scheme only if that arrangement, either alone or together with one or more associated persons, directly or indirectly holds an interest in the vehicle to which paragraph 24(5) applies.
- (3) Sub-paragraph (4) applies for determining the percentage of an interest held by a person in a vehicle at a time when the person holds that interest indirectly.
- (4) That percentage is equal to the percentage of the total taxable amount that would be apportioned to the person under paragraphs 41 to 43—
  - (a) where the person is not the pension scheme, if the person were the pension scheme, and
  - (b) in any case, if the person were treated as making an unauthorised payment by virtue of the vehicle coming to hold the interest in the property directly at that time.
- (5) For the definition of “associated person” see paragraph 30.
- 26 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where—
  - (a) the vehicle holds the interest in the property directly by virtue of paragraph 14(3) merely because it does not meet Condition C in paragraph 15(4), and
  - (b) sub-paragraph (2) applies in relation to the pension scheme.
- (2) This sub-paragraph applies in relation to the pension scheme if—
  - (a) where the pension scheme is an occupational pension scheme, the pension scheme is not, either alone or together with one or more associated persons, deemed to be entitled to 10% or more of the market value of or the income from the property, or



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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- (b) where the pension scheme is not an occupational pension scheme, no arrangement under the pension scheme, either alone or together with one or more associated persons, is deemed to be so entitled.
- (3) For the purposes of this paragraph the percentage of the market value of or the income from the property to which a person is deemed to be entitled at any time is—

## IG × TTA

where—

IG is the percentage of the market value of or the income from the property to which the vehicle that holds the interest in the property directly is entitled at that time, and

TTA is the percentage of the total taxable amount that would be apportioned to the person at that time on the assumptions mentioned in sub-paragraph (4).

- (4) Those assumptions are—
- (a) if the person is not the pension scheme, that the person is the pension scheme, and
  - (b) in any case, that the person is treated as making an unauthorised payment by virtue of the vehicle coming to hold the interest in the property directly at that time.
- (5) For the definition of “associated person” see paragraph 30.

### *Deemed acquisition*

- 27 Where—
- (a) an investment-regulated pension scheme holds an interest in property which is not taxable property, and
  - (b) that property becomes taxable property otherwise than by reason of its conversion or adaptation as residential property,
- the pension scheme is treated for the purposes of the taxable property provisions as acquiring an interest in the property.
- 28 (1) Subject to paragraph 29, this paragraph applies where—
- (a) an investment-regulated pension scheme holds an interest in taxable property indirectly, and
  - (b) there is an increase in the extent of the interest held directly in a vehicle by the pension scheme or another vehicle.
- (2) The pension scheme is to be treated for the purposes of this Schedule as—
- (a) having disposed of the interest in the property immediately before the increase in the extent of the interest in the vehicle, and
  - (b) having re-acquired the interest immediately afterwards.
- (3) The extent of the interest held directly in a vehicle by a person is to be determined for the purposes of this paragraph and paragraph 29 in accordance with paragraphs 42 and 43.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- 29 (1) Where there is an increase in the extent of the interest held directly in the vehicle otherwise than by reason of the acquisition of a further interest in the vehicle, paragraph 28 does not apply unless the condition in sub-paragraph (2) is met.
- (2) The condition is that the event by which the extent of the interest held directly in the vehicle increases forms part of a scheme or arrangement the main purpose or one of the main purposes of which is—
- (a) to enable the amount of the unauthorised payment treated as arising on the original acquisition of the interest in the property by the pension scheme to be lower than it otherwise would have been, or
  - (b) to prevent an unauthorised payment from being treated as made on that original acquisition.
- (3) Unless that condition is met, the increase in the extent of the interest is also to be disregarded for the purposes of paragraphs 24 to 26.

*Associated persons*

- 30 (1) For the purposes of this Part of this Schedule “associated person”, in relation to a pension scheme, means—
- (a) any member of the pension scheme,
  - (b) any person connected with such a member,
  - (c) any arrangement (under that or another pension scheme) relating to a member of the pension scheme,
  - (d) any arrangement (under that or another pension scheme) relating to a person connected with such a member, and
  - (e) any associated pension scheme.
- (2) For the purposes of sub-paragraph (1) a pension scheme is associated with another pension scheme if members representing at least 10% by value of one pension scheme are members of the other pension scheme or connected with such members.
- (3) The percentage by value represented by a member of a pension scheme is—

$$\frac{AM}{AA} \times 100$$

where—

AM is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of an arrangement under the pension scheme relating to the member, and

AA is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme.

- (4) For the purposes of this Part of this Schedule “associated person”, in relation to an arrangement under a pension scheme, means—
- (a) the member of the pension scheme to which that arrangement relates,

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- (b) any person connected with such a member,
- (c) any arrangement (under that or another pension scheme) relating to a member of the pension scheme to which that arrangement relates, and
- (d) any arrangement (under that or another pension scheme) relating to a person connected with such a member.

## PART 4

### AMOUNT AND TIMING OF UNAUTHORISED PAYMENT

#### *Introduction*

- 31 (1) This Part of this Schedule has effect for determining—
- (a) the amount of an unauthorised payment treated as made to a member of an investment-regulated pension scheme by virtue of section 174A, and
  - (b) the time when such a payment is treated as made.
- (2) The amount is determined by—
- (a) finding the total taxable amount in relation to the unauthorised payment (see paragraphs 32 to 40),
  - (b) apportioning that amount to the pension scheme (see paragraphs 41 to 43),
  - (c) in a case to which paragraph 28 applies (acquisition etc of further interest in vehicle), making an adjustment under paragraph 44 to the amount mentioned in paragraph (b), and
  - (d) apportioning that amount to the member to whom the payment is treated as made in accordance with paragraph 45.

#### *Acquisition: basic rules*

- 32 (1) This paragraph applies to a case within subsection (1) of section 174A (acquisition of an interest in taxable property).
- (2) The unauthorised payment is treated as made when the interest in the property is acquired by the pension scheme.
- (3) If the interest in the property is acquired because the pension scheme or another person comes to hold the interest directly, the total taxable amount in relation to the unauthorised payment is—
- (a) the amount of consideration, in money or money's worth, given directly or indirectly for the interest, plus
  - (b) the amount of any fees and other costs incurred in connection with the acquisition.
- (4) Sub-paragraph (3) is subject to paragraphs 33 to 35.
- (5) If the interest in the property is acquired because the pension scheme or another person comes to hold an interest in a person who already holds the interest in the property directly or indirectly, the total taxable amount in relation to the unauthorised payment is—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- (a) the market value, at the date the interest in the person is acquired, of the interest in the property held by the person who holds it directly, or
  - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 if it were assigned to the person at that time.
- (6) If the interest in the property is treated as acquired by the pension scheme by virtue of paragraph 27 or 28, the total taxable amount in relation to the unauthorised payment is—
- (a) the market value, at the date the interest is treated as acquired, of the interest in the property held by the person who holds it directly, or
  - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 if it were assigned to the person at that time.
- (7) This paragraph is subject to paragraph 36.

*Acquisition: further provisions*

- 33 (1) This paragraph applies where—
- (a) an investment-regulated pension scheme acquires an interest in taxable property because it acquires a chargeable interest in the property within the meaning of section 48(1) of the Finance Act 2003,
  - (b) the interest is acquired because the pension scheme or another person comes to hold the interest directly, and
  - (c) the whole or part of the consideration for the interest is consideration other than rent.
- (2) The provisions of the Finance Act 2003 listed in sub-paragraph (3) apply for determining the amount of the consideration (or the part that is not rent) as they apply for determining the amount of chargeable consideration for a land transaction for the purposes of Part 4 of that Act.
- (3) Those provisions are—
- (a) paragraphs 2 to 8 and 9 to 16 of Schedule 4 (chargeable consideration);
  - (b) section 51 (contingent, uncertain or unascertained consideration);
  - (c) section 52 (annuities etc: chargeable consideration limited to twelve years' payments).
- (4) The Treasury may by regulations provide—
- (a) for those provisions to apply with modifications to cases to which this paragraph applies, and
  - (b) for any other provisions of Part 4 of the Finance Act 2003 to apply (with or without modifications) to such cases.
- 34 (1) This paragraph applies where—
- (a) an investment-regulated pension scheme acquires an interest in taxable property because it acquires a chargeable interest in the

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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)

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- property within the meaning of section 48(1) of the Finance Act 2003,
- (b) the interest is acquired because the pension scheme or another person comes to hold the interest directly, and
  - (c) the whole or part of the consideration for the acquisition is rent.
- (2) The amount of the consideration (or the part that is rent) is to be taken to be the relevant rental value of the property; and paragraphs 2(4)(a), 3 and 8 of Schedule 5 (rent) to the Finance Act 2003 apply for determining that value.
- (3) The following provisions of the Finance Act 2003 apply for the purposes of sub-paragraph (2) for determining the amount of rent payable as they apply for determining the amount of rent payable under a lease to which that Act applies—
- (a) paragraphs 2, 5 to 7A, 9 and 16 of Schedule 17A (further provisions relating to leases);
  - (b) (subject to the provisions mentioned in paragraph (a)) the provisions mentioned in paragraph 33(3).
- (4) The Treasury may by regulations provide—
- (a) for the provisions mentioned in sub-paragraph (2) or (3) to apply with modifications to cases to which this paragraph applies, and
  - (b) for any other provisions of Part 4 of the Finance Act 2003 to apply (with or without modifications) to such cases.
- (5) For the purposes of this paragraph where on an assignment of a lease the assignee assumes the obligation to pay rent, the assumption counts as consideration for the assignment.
- 35 (1) This paragraph applies where—
- (a) an investment-regulated pension scheme acquires an interest in taxable property because the pension scheme or another person comes to hold the interest directly,
  - (b) the interest is acquired for less than its market value, and
  - (c) immediately before the acquisition the interest was held by a registered pension scheme which was not an investment-regulated pension scheme.
- (2) This paragraph also applies where—
- (a) an investment-regulated pension scheme acquires an interest in taxable property because the pension scheme or another person comes to hold the interest directly,
  - (b) the interest is acquired for less than its market value, and
  - (c) tax relief is available under section 188 or 196 in respect of the transfer of the interest.
- (3) The amount of the consideration for the interest is treated as—
- (a) the market value, at the date the interest is acquired, of the interest in the property held by the person who holds it directly, or
  - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 if it were assigned to the person at that time.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- 36 (1) The Treasury may by regulations make provision with respect to—
- (a) what is to count as consideration for the acquisition of an interest in taxable property, and
  - (b) the determination of the amount of such consideration.
- (2) The Treasury may by regulations make provision with respect to the determination of the market value of an interest held in taxable property.
- (3) Regulations under this paragraph may, in particular, make provision for cases where an investment-regulated pension scheme acquires—
- (a) an interest in taxable property outside the United Kingdom,
  - (b) a licence to use or occupy taxable property, or
  - (c) an interest in taxable property which is tangible moveable property.
- (4) Regulations under this paragraph may—
- (a) amend this Part of this Schedule, and
  - (b) include provision having effect in relation to times before they are made.

*Post-acquisition unauthorised payments*

- 37 (1) The Treasury may by regulations make provision for an investment-regulated pension scheme which has acquired an interest in taxable property to be treated as making one or more further unauthorised payments where—
- (a) the amount of consideration for the acquisition was determined on the basis of a reasonable estimate, and the actual amount of the consideration turns out to be higher than the estimated amount,
  - (b) in the case of an interest which is a lease, there is a variation in the rent payable under the lease, or
  - (c) in such a case, the amount of consideration for the acquisition was determined on an assumption about the length of the term of the lease, and the lease continues after the end of the term.
- (2) Regulations under this paragraph may—
- (a) amend section 174A or this Schedule (apart from this paragraph), and
  - (b) include provision having effect in relation to times before they are made.
- (3) References in the taxable property provisions to unauthorised payments treated as made under section 174A include references to payments treated as made under regulations under this paragraph.

*Improvement of taxable property*

- 38 (1) This paragraph applies to a case within subsection (2) of section 174A (improvement of taxable property).
- (2) An unauthorised payment is treated as made when a payment is made in connection with the improvement works.
- (3) The total taxable amount in relation to the unauthorised payment is the amount of the payment mentioned in sub-paragraph (2).

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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*Conversion or adaptation as residential property*

- 39 (1) This paragraph applies to a case within subsection (3) of section 174A (conversion or adaptation as residential property).
- (2) The unauthorised payment is treated as made on the occurrence of whichever of the following first occurs after the property has become residential property—
- (a) the substantial completion of the works to convert or adapt the property;
  - (b) the interest in the property ceasing to be held by the pension scheme.
- (3) But if the property becomes residential property after the end of the period of three years beginning with the date on which the first payment was made in connection with the works to convert or adapt the property, the unauthorised payment is treated as made when the property becomes residential property.
- (4) If the works began before the end of the period of twelve months beginning with the acquisition of the interest in the property by the pension scheme, the total taxable amount in relation to the unauthorised payment is—
- (a) the amount of consideration for the interest, determined in accordance with paragraphs 32 to 36, plus
  - (b) the development costs (see sub-paragraph (7)).
- (5) If the works began after the end of that period, the total taxable amount in relation to the unauthorised payment is—
- (a) the relevant market value (see sub-paragraph (6)), plus
  - (b) the development costs (see sub-paragraph (7)).
- (6) In this paragraph “the relevant market value” means—
- (a) the market value, at the date the works began, of the interest in the property held by the person who holds it directly, or
  - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 if it were assigned to the person at that time.
- (7) In this paragraph “the development costs” means the total cost of the works to convert or adapt the property at the time when the unauthorised payment is treated as made.
- (8) Where, at the time the unauthorised payment is treated as made—
- (a) an amount will be payable for the works only if some uncertain future event occurs, or
  - (b) an amount will cease to be payable for the works if some uncertain future event occurs,
- the development costs are to be determined on the assumption that the amount will be payable or, as the case may be, will not cease to be payable.
- (9) Where, at that time, an amount payable for the works—
- (a) depends on uncertain future events, or
  - (b) cannot otherwise be ascertained,

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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that amount is to be determined for the purposes of sub-paragraph (7) on the basis of a reasonable estimate.

- 40 (1) This paragraph applies to a case within subsection (3) of section 174A (conversion or adaptation as residential property).
- (2) This paragraph applies if—
- (a) sub-paragraph (8) of paragraph 39 has effect when an unauthorised payment is treated as made under that paragraph,
  - (b) an amount estimated under that sub-paragraph later becomes ascertained, and
  - (c) the ascertained amount is more than the estimated amount.
- (3) An unauthorised payment is treated as made when the amount becomes ascertained.
- (4) The total taxable amount in relation to the unauthorised payment is the difference between the ascertained amount and the estimated amount.
- (5) References in the taxable property provisions to unauthorised payments treated as made under section 174A include references to payments treated as made under this paragraph.

*Apportionment to pension scheme*

- 41 (1) This paragraph applies for determining—
- (a) whether the amount of an unauthorised payment treated as made by an investment-regulated pension scheme under section 174A consists of the whole of the total taxable amount in relation to the payment, and
  - (b) if not, how much of the total taxable amount comprises the amount of the unauthorised payment.
- (2) The pension scheme is treated as making an unauthorised payment equal to the whole of the total taxable amount where Condition A, B or C is met.
- (3) Condition A is that the pension scheme directly holds the interest in the taxable property which gives rise to the unauthorised payment.
- (4) Condition B is that—
- (a) the pension scheme holds the interest in the property indirectly through one vehicle, and
  - (b) that vehicle is wholly owned by the pension scheme.
- (5) Condition C is that—
- (a) the pension scheme holds the interest in the property indirectly through more than one vehicle (a “chain” of vehicles), and
  - (b) each vehicle in the chain is wholly owned by another vehicle in the chain or by the pension scheme.
- (6) Where—
- (a) the pension scheme holds the interest in the property indirectly through one vehicle, and
  - (b) the vehicle is not wholly owned by the pension scheme,



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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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the amount of the unauthorised payment is a proportion of the total taxable amount determined by reference to the extent of the pension scheme's interest in the vehicle.

- (7) Where—
- (a) the pension scheme holds the interest in the property indirectly through one or more chains of vehicles, and
  - (b) one or more vehicles in such a chain is not wholly owned by another vehicle in the chain or by the pension scheme,
- the amount of the unauthorised payment is the amount or the total of all the amounts found under sub-paragraph (8) for each chain through which the pension scheme owns the interest in the property.
- (8) The amount is a proportion of the total taxable amount determined by reference to the extent of the interest held directly by the pension scheme or another vehicle in the chain in each vehicle in the chain—
- (a) starting with the vehicle which holds the interest in the property directly, and
  - (b) ending with the vehicle in which the pension scheme directly holds an interest.
- (9) For the purposes of this paragraph a vehicle is wholly owned by a person if no other person directly holds an interest in the vehicle.
- (10) This paragraph is subject to paragraph 44.
- 42 (1) References in this Schedule to the extent of an interest held directly by a person in a vehicle are references to the proportion of the interests of everyone who directly holds an interest in the vehicle which on a just and reasonable apportionment is represented by that interest.
- (2) Sub-paragraph (1) is subject to paragraph 43, which explains how to determine the extent of a person's interest in a vehicle for the purposes of the taxable property provisions where the vehicle is a company.
- (3) The Treasury may by regulations—
- (a) amend paragraph 43, or
  - (b) amend this Part of this Schedule for the purposes of explaining how to determine the extent of a person's interest in a vehicle in other cases.
- (4) Regulations under sub-paragraph (3) may include provision having effect in relation to times before they are made.
- 43 (1) For the purposes of this Schedule, and except in a case to which sub-paragraph (3) applies, the extent of a person's interest in a company is determined by reference to whichever of the following gives the person the greatest interest in the company—
- (a) the percentage of the share capital or issued share capital of the company owned by the person;
  - (b) the percentage of the voting rights in the company owned by the person;
  - (c) the percentage of all the income of the company to which the person has a right;

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- (d) the percentage of the amounts distributed on a distribution in relation to the company to which the person has a right;
  - (e) the percentage of the assets of the company to which the person has a right on a winding-up or in any other circumstances;
  - (f) where the person has a right to a percentage of a particular asset or description of assets of the company, or of the income or gains from such an asset or description (either generally or in particular circumstances), that percentage or the highest of all the percentages found under this paragraph.
- (2) For the purposes of sub-paragraph (1) a person is treated as owning or having a right to anything which the person will only acquire—
- (a) at some future date,
  - (b) if the person exercises a right to acquire it, or
  - (c) if some other uncertain future event occurs or does not occur.
- (3) Where—
- (a) a person has an interest in a company as a result of lending the company money to fund the acquisition of an interest in taxable property, and
  - (b) this sub-paragraph gives the person a greater interest in the company than any interest given by sub-paragraph (1),
- for the purposes of this Schedule the extent of the person's interest in the company is determined by the proportion that the value of the loan bears to the total value of the assets held directly by the company.
- (4) For the purposes of sub-paragraph (3)—
- (a) assets must be valued in accordance with generally accepted accounting practice,
  - (b) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically), and
  - (c) where generally accepted accounting practice offers a choice of valuation between cost basis and fair value, fair value must be used.

*Deemed acquisition: adjustment*

- 44 (1) This paragraph applies where an investment-regulated pension scheme is treated as acquiring an interest in taxable property by virtue of paragraph 28 (increase in extent of interest in vehicle).
- (2) The amount of the unauthorised payment treated as made by the pension scheme is—

## UP – UPB

Where—

UP is the amount that would have been the amount of the unauthorised payment apart from this paragraph; and

UPB is the amount that would have been the amount of any unauthorised payment treated as made by the pension scheme if it had acquired the interest

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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in the property immediately before the increase in the extent of the interest in the vehicle (assuming the total taxable amount in relation to the unauthorised payment to be that given under paragraph 32(5)).

*Apportionment to member*

- 45 (1) This paragraph has effect for determining—
- (a) whether the whole of an unauthorised payment treated as made by a pension scheme is to be treated as made to a member of the scheme, and
  - (b) if not, how much of the unauthorised payment is to be treated as made to the member.
- (2) If the interest in the taxable property which gives rise to the unauthorised payment is held by the pension scheme for the purposes of—
- (a) the arrangement under the pension scheme relating to the member, and
  - (b) at least one other arrangement under the pension scheme,
- the unauthorised payment is to be apportioned on a just and reasonable basis between all of the arrangements for the purposes of which the interest in the property is held.
- (3) Otherwise, the whole of the unauthorised payment is to be treated as made to the member.”
- 14 (1) Schedule 34 (non-UK schemes: application of certain charges) is amended as follows.
- (2) In paragraph 1 (member payment charges)—
- (a) in sub-paragraph (3)(a), after “charge” insert “ (except as imposed by virtue of section 174A (taxable property held by investment-regulated pension schemes)) ”, and
  - (b) in sub-paragraph (4), after “Part” insert “ (apart from the taxable property provisions) ”.
- (3) After paragraph 7 insert—

*“Unauthorised payment charge: taxable property*

- 7A (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision for a transfer member of a relevant non-UK scheme to be liable to the unauthorised payment charge in the same or similar circumstances to those in which—
- (a) a member of a registered pension scheme is liable to that charge by virtue of section 174A and Schedule 29A (taxable property held by investment-regulated pension scheme),
  - (b) the scheme administrator of such a scheme is liable to the scheme sanction charge by virtue of section 185A (income from taxable property) or 185F (gains from taxable property), or
  - (c) a member of such a scheme is liable to the scheme sanction charge by virtue of those provisions in consequence of provision made by regulations under section 273ZA.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- (2) The regulations may—
- (a) make provision for the application of any or all of the taxable property provisions in relation to a transfer member of a relevant non-UK scheme subject to any omissions, additions and other modifications contained in the regulations,
  - (b) include provision having effect in relation to times before they are made,
  - (c) contain transitional provisions and savings, and
  - (d) make different provision for different cases.”

15 In Schedule 36 (transitional provisions and savings), after paragraph 37 insert—

*“Pre-commencement holdings of taxable property*

- 37A (1) This paragraph applies in relation to an investment-regulated pension scheme if—
- (a) on 6th April 2006 the pension scheme holds an interest in taxable property which it acquired before that date, and
  - (b) immediately before that date the pension scheme was not prohibited from holding the interest in the property,
- and, in a case where immediately before that date the interest in the property was held directly by a person other than the pension scheme, if the pension scheme was not prohibited from holding the interest it held in that person at that time.
- (2) This paragraph also applies in relation to an investment-regulated pension scheme if—
- (a) before 6th April 2006 a contract to acquire an interest in property was entered into by the pension scheme or a person in whom the pension scheme directly or indirectly held an interest when the contract was entered into,
  - (b) the pension scheme does not acquire the interest in the property before that date,
  - (c) the property is taxable property on that date, and
  - (d) immediately before that date the pension scheme would not have been prohibited from holding the interest in the property,
- and, in a case where the contract to acquire the interest in the property was entered into by a person in whom the pension scheme directly or indirectly held an interest, if the pension scheme was not prohibited from holding the interest it held in that person immediately before that date.
- (3) The taxable property provisions (apart from this paragraph and paragraphs 37B to 37E) do not apply in relation to the pension scheme and the interest in the property.
- (4) For the purposes of this Schedule a pension scheme is to be treated as having been prohibited from holding an interest in property, or in a person, immediately before 6th April 2006 if approval could have been withdrawn under section 591B, 620(7) or 650 of ICTA on the basis of the holding of the interest at that time.
- (5) This paragraph is subject to paragraphs 37B to 37E.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- 37B (1) Paragraph 37A ceases to apply to an investment-regulated pension scheme and an interest in taxable property on the relevant date if Condition A, B or C is met.
- (2) Condition A is that there is a change in the occupation or use of the property such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the property at that time.
- (3) Condition B is that—
- (a) the taxable property is residential property on 6th April 2006, and
  - (b) improvement works on the property are begun on or after that date.
- (4) Condition C is that there is a change in the pension scheme's interest in—
- (a) any person who holds the interest in the property directly, or
  - (b) any person who has entered into a contract to acquire the interest in the property,
- such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the person at that time.
- (5) For the purposes of this paragraph the relevant date is—
- (a) where Condition A is met, the date on which the change in the occupation or use of the taxable property takes place,
  - (b) where Condition B is met, the date on which the improvement works are substantially completed, or
  - (c) where Condition C is met, the date on which the change in the pension scheme's interest in the person takes place,
- but where the pension scheme has not acquired the interest in the property by what would otherwise be the relevant date, the relevant date is the date on which it acquires the interest.
- (6) Where Condition A, B or C is met the pension scheme is to be treated for the purposes of the taxable property provisions as acquiring the interest in the property on the relevant date.
- (7) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of the acquisition is—
- (a) the market value on the relevant date of the interest in the property held by the person who holds it directly, or
  - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 of Schedule 29A if it were assigned to the person on that date.
- (8) Where—
- (a) the pension scheme holds the interest in the property directly, and
  - (b) the interest is not a lease at a rent,

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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for the purposes of section 185G (gains from taxable property: disposal by person holding directly) the pension scheme is to be treated as having acquired the interest for a consideration equal to its market value on 6th April 2006.

- (9) For the purposes of sub-paragraph (3)(b) improvement works are to be taken to have been begun before 6th April 2006 only if—
- (a) a binding contract for the works was entered into before that date, or
  - (b) a substantial amount of the works has been carried out before that date.
- (10) For the purposes of this Schedule “improvement works” means, in relation to a property, works which—
- (a) materially improve the property, and
  - (b) are not carried out wholly for the purposes of complying with a statutory requirement or a requirement imposed by a government department, a statutory body or a person holding a statutory office.
- (11) For the purposes of sub-paragraph (10)(a) a property is materially improved by works only if—
- (a) its market value on the date the works are substantially completed (“MVW”) exceeds what would have been its market value on that date if the works had not been carried out (“MV”), and
  - (b) the amount by which MVW exceeds MV is greater than 20% of MV.
- (12) For the purposes of sub-paragraph (10)(b)—
- “statutory body” means a body set up by or under an enactment (including an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament);
- “statutory office” means a body set up by or under such an enactment; and
- “statutory requirement” means a requirement imposed by provision made by or under such an enactment.
- (13) This paragraph is subject to paragraph 37D.
- 37C (1) This paragraph applies where—
- (a) on 6th April 2006 an investment-regulated pension scheme holds an interest in taxable property which it acquired before that date, and
  - (b) immediately before that date the pension scheme was prohibited from holding the interest.
- (2) This paragraph also applies where—
- (a) on 6th April 2006 an investment-regulated pension scheme holds an interest in taxable property indirectly which it acquired before that date, and

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- (b) immediately before that date the pension scheme was prohibited from holding the interest it held in the person that held the interest in the property directly at that time.
  - (3) The pension scheme is to be treated for the purposes of the taxable property provisions as acquiring the interest in the property on 6th April 2006.
  - (4) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of the acquisition is—
    - (a) the market value on 6th April 2006 of the interest in the property held by the person who holds it directly, or
    - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 of Schedule 29A if it were assigned to the person on that date.
  - (5) Where—
    - (a) the pension scheme holds the interest in the property directly, and
    - (b) the interest is not a lease at a rent,for the purposes of section 185G (gains from taxable property: disposal by person holding directly) the pension scheme is to be treated as having acquired the interest for a consideration equal to its market value on 6th April 2006.
- 37D (1) This paragraph applies where—
- (a) sub-paragraph (1) or (2) of paragraph 37A applies in relation to a pension scheme and an interest in property,
  - (b) immediately before 6th April 2006 the pension scheme was a self-invested personal pension scheme or a small self-administered scheme,
  - (c) on that date the pension scheme holds the interest in the property indirectly or (if sub-paragraph (2) of paragraph 37A applies in relation to the pension scheme and the interest in the property) the pension scheme will hold the interest indirectly once it has been acquired pursuant to the contract,
  - (d) the property is residential property on that date, and
  - (e) improvement works on the property were begun after 5th December 2005.
- (2) This paragraph also applies where—
- (a) sub-paragraph (1) or (2) of paragraph 37A applies in relation to a pension scheme and an interest in property,
  - (b) immediately before 6th April 2006 the pension scheme was a small self-administered scheme,
  - (c) on that date the pension scheme holds the interest in the property directly,
  - (d) the pension scheme acquired the interest before 5th August 1991,
  - (e) the property is residential property on 6th April 2006, and

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- (f) improvement works on the property were begun after 5th December 2005.
  - (3) If the works are completed on or after 6th April 2006, paragraph 37B applies in relation to the pension scheme and the interest in the property as if the works were begun on or after that date.
  - (4) If the works are completed before that date—
    - (a) paragraph 37A does not apply in relation to the pension scheme and the interest in the property, and
    - (b) unless the pension scheme has still to acquire the interest in the property on that date, sub-paragraphs (3) to (5) of paragraph 37C apply in relation to the pension scheme and the interest.
  - (5) For the purposes of this paragraph improvement works are to be taken to have been begun before 6th December 2005 only if—
    - (a) a binding contract for the works was entered into before that date, or
    - (b) a substantial amount of the works has been carried out before that date.
- 37E (1) This paragraph applies where—
- (a) paragraph 37A would otherwise apply in relation to a pension scheme and an interest in property,
  - (b) immediately before 6th April 2006 the pension scheme was a retirement benefits scheme approved under section 590 of ICTA, and
  - (c) the pension scheme was approved under that section after 5th December 2005.
- (2) Paragraph 37A does not apply in relation to the pension scheme and the interest in the property.
- (3) Unless the pension scheme has still to acquire the interest in the property on 6th April 2006, sub-paragraphs (3) to (5) of paragraph 37C apply in relation to the pension scheme and the interest.

*Post-commencement acquisitions of taxable property*

- 37F (1) This paragraph applies where on or after 6th April 2006 an investment-regulated pension scheme acquires an interest in taxable property consisting of tangible moveable property because a person in whom the pension scheme directly or indirectly holds an interest comes to hold the interest in the property directly.
- (2) The taxable property provisions (apart from this paragraph and paragraph 37G) do not apply in relation to the pension scheme and the interest in the property if the conditions in sub-paragraph (3) are met.
- (3) Those conditions are that—
- (a) on 6th April 2006 the pension scheme held the interest in the person by virtue of acquiring it before that date,
  - (b) immediately before that date the pension scheme was not prohibited from holding the interest in the person,



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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21. (See end of Document for details)*

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- (c) at no time during the period beginning with that date and ending immediately before the acquisition of the interest in the property has the pension scheme's interest in the person been such that, if it had held that interest in the person immediately before 6th April 2006, it would have been prohibited from holding that interest at that time, and
    - (d) the person acquires the interest in the property so that the property may be used for the purposes of a trade, profession or vocation carried on by the person or for the purposes of its administration or management.
  - (4) This paragraph is subject to paragraph 37G.
- 37G
  - (1) Where Condition A or B is met in relation to the pension scheme and an interest in property to which paragraph 37F has applied, the pension scheme is to be treated for the purposes of the taxable property provisions as acquiring the interest in the property on the date on which the Condition is met.
  - (2) Condition A is that there is a change in the pension scheme's interest in the person who holds the interest in the property directly such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the person at that time.
  - (3) Condition B is that the property ceases to be used for the purposes of—
    - (a) a trade, profession or vocation carried on by the person, or
    - (b) its administration or management.
  - (4) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of the acquisition is the market value on the relevant date of the interest in the property held by the person.
- 37H
  - (1) This paragraph applies where on or after 6th April 2006 an investment-regulated pension scheme acquires an interest in taxable property consisting of residential property because a person in whom the pension scheme directly or indirectly holds an interest comes to hold the interest in the property directly.
  - (2) The taxable property provisions (apart from this paragraph and paragraph 37I) do not apply in relation to the pension scheme and the interest in the property if the conditions in sub-paragraph (3) are met.
  - (3) Those conditions are that—
    - (a) on 6th April 2006 the pension scheme held the interest in the person by virtue of acquiring it before that date,
    - (b) immediately before that date the pension scheme was not prohibited from holding the interest in the person,
    - (c) immediately before that date the person had a business involving the holding and letting of residential property and held directly five or more assets consisting of interests in residential property for the purposes of that business,

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- (d) at no time during the period beginning with that date and ending immediately before the acquisition of the interest in the property has the pension scheme's interest in the person been such that, if it had held that interest in the person immediately before 6th April 2006, it would have been prohibited from holding that interest at that time,
  - (e) the person acquires the interest in the property for the purposes of its property rental business, and
  - (f) after the acquisition of the interest in the property, the property is not occupied or used by a member of the pension scheme or a person connected with such a member.
- (4) This paragraph is subject to paragraph 37I.
- (5) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.
- 37I (1) Where Condition A, B or C is met in relation to the pension scheme and an interest in property to which paragraph 37H has applied, the pension scheme is to be treated for the purposes of the taxable property provisions as acquiring, on the date on which the Condition is met, each interest in property—
- (a) which it holds on that date, and
  - (b) to which paragraph 37H has applied before that date.
- (2) Condition A is that there is a change in the pension scheme's interest in the person who holds the interest in the property directly such that, if the change had occurred immediately before 6th April 2006, the pension scheme would have been prohibited from holding the interest in the person at that time.
- (3) Condition B is that the property ceases to be used for the purposes of the person's property rental business.
- (4) Condition C is that the property is occupied or used by a member of the pension scheme or a person connected with such a member.
- (5) For the purposes of Schedule 29A the total taxable amount in relation to any unauthorised payment which the pension scheme is treated as having made by reason of an acquisition of an interest in property treated as made by virtue of this paragraph is—
- (a) the market value on the relevant date of the interest in the property held by the person who holds it directly, or
  - (b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 of Schedule 29A if it were assigned to the person on that date.”

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 21.