

*Status: Point in time view as at 06/04/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, SCHEDULE 23. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 23

Section 161

#### PENSION SCHEMES ETC: MISCELLANEOUS

##### *Introduction*

1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.

##### *Meaning of “pension credit member” etc: person dying before discharge of liability*

2 In section 151(5) (pension credit members), insert at the end “ ; and, if a person dies having become entitled to pension credits but without having rights attributable to them, the person is to be treated as having acquired, immediately before death, the rights by virtue of which the liability in respect of the pension credits is subsequently discharged. ”

##### *Unauthorised payments: former members and sponsoring employers etc*

3 (1) Section 160 (payments by registered pension schemes) is amended as follows.

(2) In subsection (1), before “member” insert “ person who is or has been a ”.

(3) In subsection (2)—

(a) in paragraphs (a) and (b), before “member” insert “ person who is or has been a ”, and

(b) in paragraph (b), for “section 172, 173 or 174” substitute “ this Part ”.

(4) In subsections (3) and (4)(a) and (b), before “sponsoring” insert “ person who is or has been a ”.

4 (1) Section 161 (meaning of “payment” etc) is amended as follows.

(2) In subsection (5)—

(a) before “member”, in the first, third and last places, insert “ person who is or has been a ”, and

(b) for “a member at the date of the member's” substitute “ such a person at the date of the person's ”.

(3) In subsections (6) and (7)—

(a) before “member”, in the first and last places, insert “ person who is or has been a ”, and

(b) for “a member at the date of the member's” substitute “ such a person at the date of the person's ”.

5 In section 162(3) and (4) (meaning of “loan”)—

(a) before “member”, in the first, second and last places, insert “ person who is or has been a ”, and

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- (b) for “a member or sponsoring employer of the pension scheme” substitute “such a person”.
- 6 In section 164 (authorised member payments)—
- (a) before “member” insert “ person who is or has been a ”,
  - (b) in paragraph (a), after “benefit rules” insert “ to be paid to or in respect of a member ”, and
  - (c) in paragraph (b), after “benefit rule” insert “ to be paid to or in respect of a member ”.
- 7 In section 171(1) and (4) (scheme administration member payments), before “member” insert “ person who is or has been a ”.
- 8 (1) Section 173 (benefits) is amended as follows.
- (2) In subsection (1)—
    - (a) before “member”, in the first place, insert “ person who is or has been a ”,
    - (b) for “member”, in the second place, substitute “ person ”, and
    - (c) for “member’s” substitute “ person’s ”.
  - (3) In subsection (3)—
    - (a) for “member”, in the first place, substitute “ person ”, and
    - (b) for “member’s” substitute “ person’s ”.
  - (4) In subsection (4)—
    - (a) before “member”, in the first place, insert “ person who is or has been a ”, and
    - (b) for “member’s”, in each place, substitute “ person’s ”.
  - (5) In subsection (7)(b)—
    - (a) for “member’s”, in both places, substitute “ person’s ”, and
    - (b) for “member”, in the first place, substitute “ person ”.
  - (6) In subsection (9)(a), before “member” insert “ person who is or has been a ”.
- 9 (1) Section 174 (value shifting) is amended as follows.
- (2) In subsection (1)—
    - (a) before “member”, in the first place, insert “ person who is or has been a ”, and
    - (b) for “member”, in each other place, substitute “ person ”.
  - (3) In subsection (2)—
    - (a) for “member’s” substitute “ person’s ”, and
    - (b) for “member”, in both places, substitute “ person ”.
- 10 In section 175 (authorised employer payments), before “sponsoring” insert “ person who is or has been a ”.
- 11 In section 179(1), (5) and (6) (authorised employer loan), before “sponsoring” insert “ person who is or has been a ”.
- 12 In section 180(1) and (4) (scheme administration employer payments), before “sponsoring” insert “ person who is or has been a ”.
- 13 In section 181(1) (value shifting)—
- (a) before “sponsoring employer”, in the first place, insert “ person who is or has been a ”, and

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- (b) for “sponsoring employer”, in each other place, substitute “ person ”.
- 14 In section 208(2) (unauthorised payments charge)—
- (a) in paragraph (a), for the words after “member payment” substitute “ made to or in respect of a person before the person's death, is the person, ”,
- (b) in paragraph (b), for “after the member's” substitute “ in respect of a person after the person's ”, and
- (c) in paragraph (c), for “sponsoring employer” substitute “ person ”.
- 15 In section 209(3) (unauthorised payments surcharge)—
- (a) in paragraph (a), for the words after “member payment” substitute “ made to or in respect of a person before the person's death, is the person, ”,
- (b) in paragraph (b), for “after the member's” substitute “ in respect of a person after the person's ”, and
- (c) in paragraph (c), for “sponsoring employer” substitute “ person ”.
- 16 (1) Section 210 (surchargeable unauthorised member payments) is amended as follows.
- (2) In subsection (1), for “in respect of an arrangement relating to a member under” substitute “ to or in respect of a person who is or has been a member of ”.
- (3) In subsections (2), (4), (5) and (8), for “in respect of the arrangement” substitute “ to or in respect of the person ”.
- (4) In subsection (9), in the definition of “VR”, for the words after “equal to the” substitute “ aggregate of the value of the member's rights under arrangements relating to the member under the pension scheme when the unauthorised payment is made (or, if the unauthorised member payment is made after the member has died or has otherwise ceased to be a member of the pension scheme, at the date when the member died or otherwise ceased to be a member). ”
- (5) In subsection (10), for “the arrangement on that” substitute “ an arrangement on any ”.
- 17 In section 211(1) (valuation of crystallised rights), for “the arrangement”, in the first place, substitute “ an arrangement ”.
- 18 In section 212(3) (valuation of uncrystallised rights), for “the arrangement”, in the first place, substitute “ an arrangement ”.
- 19 (1) Section 213 (surchargeable unauthorised employer payments) is amended as follows.
- (2) In subsection (1), before “sponsoring” insert “ person who is or has been a ”.
- (3) In subsections (2), (4), (5) and (8), for “employer” substitute “ person ”.

*“Bridging” pensions*

- 20 (1) Paragraph 2 of Schedule 28 (scheme pension) is amended as follows.
- (2) In sub-paragraph (4), for paragraph (c) substitute—
- “(c) a reduction in the rate of the pension, taking effect at a time not earlier than when the member reaches the age of 60 and not later than when the member reaches the age of 65, which does not exceed the relevant state retirement pension rate at that time (or the pension ceasing to be payable at such a time if at that time that rate is greater than the rate of the pension),”.

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- (3) For sub-paragraph (5) substitute—
- “(5) For the purposes of sub-paragraph (4)(c) “the relevant state retirement pension rate” at any time—
- (a) where no employment of the member to which the pension scheme relates is or has been other than contracted-out employment by reference to the pension scheme, is 125% of the rate of the basic pension at that time or such higher percentage of that rate as the Treasury may by regulations prescribe,
  - (b) where no such employment of the member is or has been contracted-out employment by reference to the pension scheme, is 250% of the rate of the basic pension at that time or such higher percentage of that rate as the Treasury may by regulations prescribe, and
  - (c) otherwise, is such percentage of the rate of the basic pension at that time falling between the percentages for the time being specified under or by virtue of paragraphs (a) and (b) as the Treasury by regulations prescribe;
- and regulations under paragraph (c) may prescribe different percentages for different cases.
- (5A) For the purposes of sub-paragraph (5)—
- (a) for the meaning of “contracted-out employment” see section 8(1) of the Pension Schemes Act 1993 or section 4(1) of the Pension Schemes (Northern Ireland) Act 1993, and
  - (b) “the basic pension” means the basic pension specified in section 44 of SSCBA 1992 or section 44 of SSCB(NI)A 1992.”
- (4) In sub-paragraph (8), for “(4)(e) and (h)” substitute “ (4)(e) or (h) or (5) ”.
- 21 In paragraph 1(4)(a) of Schedule 29 (pension commencement lump sum: excluded lump sum), for “when the member becomes entitled to state retirement pension” substitute “ at a time not earlier than when the member reaches the age of 60 and not later than when the member reaches the age of 65 ”.

*Pension commencement lump sum: scheme pensions under money purchase arrangements*

- 22 (1) Paragraph 3 of Schedule 29 (pension commencement lump sum: applicable amount) is amended as follows.
- (2) In sub-paragraph (6), after “pension” insert “ under a defined benefits arrangement ”.
  - (3) After sub-paragraph (7) insert—
    - “(7A) Where the member becomes entitled to a scheme pension under a money purchase arrangement, the applicable amount is one third of the scheme pension purchase price.
    - (7B) “The scheme pension purchase price” is the aggregate of—
      - (a) the amount of such of the sums held for the purposes of the pension scheme, and
      - (b) the market value of such of the assets held for the purposes of the pension scheme,

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as are applied in (or in connection with) the purchase or provision of the scheme pension and any related dependants' scheme pension, but subject to sub-paragraph (8).

(7C) For the purposes of this Part a dependants' scheme pension is related to a scheme pension payable to a member of a registered pension scheme if—

- (a) the day on which one is purchased or sums or assets are applied for its provision is no earlier than seven days before, and no later than seven days after, the day on which the other is purchased or sums or assets are applied for its provision, and
- (b) the dependants' scheme pension will be payable to a dependant of the member.”

(4) In sub-paragraph (8)—

- (a) after “crystallised”, in the first place, insert “ or from the scheme pension purchase price ”, and
- (b) after “crystallised”, in the second place, insert “ or of the scheme pension purchase price ”.

(5) After that sub-paragraph insert—

“(9) Sub-paragraph (10) applies if—

- (a) sums or assets held for the purposes of, or representing accrued rights under, a money purchase arrangement relating to the member under a registered pension scheme (“member money purchase funds”) are subject to a relevant surrender or a relevant transfer,
- (b) the sole or main purpose of the relevant surrender or relevant transfer is to increase the applicable amount on the member becoming entitled to a scheme pension, and
- (c) the member becomes entitled to a scheme pension under a relevant defined benefits arrangement.

(10) The pension scheme under which the relevant defined benefits arrangement is an arrangement is to be treated as making an unauthorised payment to the member of any amount by which—

- (a) the applicable amount in relation to the scheme pension under sub-paragraph (6), exceeds
- (b) the amount which would be that applicable amount under sub-paragraph (7A) if the arrangement were a money purchase arrangement.

(11) For the purposes of sub-paragraph (9)—

- (a) member money purchase funds are subject to a relevant surrender if they are surrendered and, in consequence of the surrender, there is a corresponding increase in the sums or assets held for the purposes of, or representing rights under, a defined benefits arrangement relating to the member under the pension scheme (or such an arrangement is established), and
- (b) member money purchase funds are subject to a relevant transfer if they are transferred so as to become held for the purposes of, or to represent rights under, a defined benefits arrangement relating to the member under any other registered pension scheme.

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- (12) In sub-paragraphs (9) and (10) “relevant defined benefits arrangement” means—
- (a) the defined benefits arrangement mentioned in paragraph (a) or (b) of sub-paragraph (11), or
  - (b) any other defined benefits arrangement relating to the member (under the pension scheme or any other registered pension scheme) in the case of which any of the sums or assets held for the purposes of, or representing accrued rights under, the arrangement directly or indirectly represent sums or assets previously held for the purposes of, or representing accrued rights under, the defined benefits arrangement so mentioned.”
- 23 (1) Paragraph 2 of that Schedule (the permitted maximum) is amended as follows.
- (2) In sub-paragraph (6), in the definition of AAC, for “amounts crystallised by” substitute “relevant amount in the case of”.
  - (3) After that sub-paragraph insert—
    - “(6A) Subject to sub-paragraph (6B), the relevant amount in the case of a benefit crystallisation event is the amount crystallised by it.
    - (6B) If the benefit crystallisation event is becoming entitled to a scheme pension under a money purchase arrangement, the relevant amount in the case of the benefit crystallisation event is the aggregate of—
      - (a) the amount of such of the sums held for the purposes of the pension scheme, and
      - (b) the market value of such of the assets held for the purposes of the pension scheme,
 as are applied in (or in connection with) the purchase or provision of the scheme pension and any related dependants' scheme pension.”
  - (4) In sub-paragraph (7), for “an amount crystallised by” substitute “the relevant amount in the case of”.
- 24 (1) Paragraph 29 of Schedule 36 (transitional provisions: applicable amount in cases of enhanced protection) is amended as follows.
- (2) In sub-paragraph (3), for “(7)” substitute “(7A)”.
  - (3) In the sub-paragraph (6) of paragraph 3 of Schedule 29 substituted by sub-paragraph (3), after “pension” insert “under a defined benefits arrangement”.
  - (4) After the sub-paragraph (7) of that paragraph so substituted insert—
    - “(7A) Where the member becomes entitled to a scheme pension under a money purchase arrangement, the applicable amount is (subject to sub-paragraph (8))—

$$\frac{\text{VULSR}}{\text{VUR}} \times (\text{LS} + \text{SPPP})$$

where—

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VULSR, VUR and LS have the same meaning as in sub-paragraph (1), and SPPP is the scheme pension purchase price.”

- 25 (1) Paragraph 34 of that Schedule (transitional provisions: entitlement to lump sums exceeding 25% of uncrystallised rights) is amended as follows.
- (2) In the sub-paragraph (7A) of paragraph 2 of Schedule 29 substituted by sub-paragraph (2), in the definition of AC, for “sub-paragraph (7B)” substitute “ sub-paragraphs (7AA) and (7B) ”.
- (3) After that substituted sub-paragraph insert—
- “(7AA) Where the pension in connection with which the lump sum is paid is a scheme pension under a money purchase arrangement, AC is the scheme pension purchase price, as it would be defined by paragraph 3 if the words “but subject to sub-paragraph (8)” in sub-paragraph (7A) and sub-paragraph (8) were omitted.”
- (4) In the sub-paragraph (7B) so substituted, for “the lump sum and the amount crystallised” substitute “ what would otherwise be LS or AC ”.
- (5) In sub-paragraph (3), insert at the end “ (but without prejudice to its operation for the purposes of paragraph 2(7AA) of Schedule 29 as inserted by sub-paragraph (2)). ”
- 26 In section 280(2) (general index), after the entry relating to “related dependants' annuity” insert—

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“related dependants' scheme pension paragraph 3(7C) of Schedule 29”.

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*Short service refund lump sum: protected rights etc.*

- 27 In paragraph 5(1)(d) of Schedule 29 (requirement that lump sum under a pension scheme must extinguish member's entitlement to benefits under the pension scheme in order to be short service refund lump sum), after “scheme” insert “ (except to the extent that it is prohibited from being extinguished by the payment of a lump sum by reason of the operation of provision made by or under any enactment). ”.

*Refund of excess contributions lump sum: excess relief at source*

- 28 (1) Paragraph 6 of Schedule 29 (refund of excess contributions lump sum) is amended as follows.
- (2) In sub-paragraphs (4) and (5), after “year is” insert “ (subject to sub-paragraph (7)) ”.
- (3) After sub-paragraph (6) insert—
- “(7) If any relief given in accordance with section 192(1) in relation to any contribution included in RPC is in excess of the maximum amount of relief to which the member is entitled under section 190, RPC is to be taken to be reduced by the amount of that excess.”

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*Annuity protection lump sum death benefit: benefits from unsecured pension fund*

- 29 In paragraph 16(3) of Schedule 29 (annuity protection lump sum death benefit: annuity protection limit), in the definition of AC, insert at the end “ , but disregarding paragraphs 3 and 4 of Schedule 32, ”.

*Benefit crystallisation events: reaching 75 after designation for unsecured pension*

- 30 In section 216(1) (benefit crystallisation events and amounts crystallised), in the table, after the entry relating to benefit crystallisation event 5, insert—

“5A. The individual reaching the age of 75 having designated sums or assets held for the purposes of a money purchase arrangement under any of the relevant pension schemes as available for the payment of unsecured pension to the individual	The aggregate of the amount of the sums and the market value of the assets representing the individual's unsecured pension fund under the arrangement less the aggregate of amounts crystallised by benefit crystallisation event 1 in relation to the arrangement and the individual”.
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*Availability of individual's lifetime allowance: previous benefit crystallisation events*

- 31 (1) Section 219 (availability of individual's lifetime allowance) is amended as follows.
- (2) In subsection (4) (previously-used amount)—
- (a) in paragraph (a), for “crystallised by” substitute “ which is the relevant untaxed amount in relation to ”, and
- (b) in paragraph (b), for “crystallised by” substitute “ which are the relevant untaxed amounts in relation to ”.
- (3) After that subsection insert—
- “(4A) “The relevant untaxed amount”, in relation to a previous benefit crystallisation event, is—
- (a) where no tax was charged in relation to the benefit crystallisation event, the amount in respect of which tax would have been so charged if none of the individual's lifetime allowance had been available, and
- (b) where tax was charged in relation to the benefit crystallisation event, so much of the amount in respect of which tax would have been so charged if none of the individual's lifetime allowance had been available as exceeds the amount in respect of which tax was so charged.”
- (4) In subsection (5), for “amount crystallised by” substitute “ relevant untaxed amount in relation to ”.

*Overseas pension schemes: extension of migrant member relief*

- 32 (1) Paragraph 4 of Schedule 33 (meaning of “relevant migrant member”) is amended as follows.
- (2) The existing provision becomes sub-paragraph (1).



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(3) After that provision insert—

“(2) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that, in circumstances prescribed by the regulations, paragraphs (a), (b) and (c) of sub-paragraph (1) have effect as if the references in those paragraphs to the pension scheme were to either the pension scheme or such other pension scheme as is prescribed by the regulations.

(3) Regulations under sub-paragraph (2) may include provision having effect in relation to times before they are made.”

#### *Abatement*

33 In section 279(1) (definitions), in the definition of “abatement”—

- (a) after “scheme pension” insert “ to which a person has become entitled ”, and
- (b) for “re-employment” substitute “ the person's employment ”.

#### *Amendments and transitionals*

34 (1) Section 281 (minor and consequential amendments) is amended as follows.

(2) After subsection (2) insert—

“(2A) The Treasury may by order make in any relevant enactment such amendments (including repeals and revocations) as may appear appropriate in consequence of, or otherwise in connection with, any amendment (or repeal or revocation) made in this Part by any enactment contained in an Act passed after this Act (an “amending Act”).

(2B) For this purpose a relevant enactment is—

- (a) an enactment contained in an Act passed, or
- (b) an instrument made,

before the passing of the amending Act or in the Session in which the amending Act is passed.”

(3) In subsection (3), after “(2)” insert “ or (2A) ”.

(4) After that subsection insert—

“(4) An order under subsection (2) or (2A) may include provision having effect in relation to times before it is made if it does not increase any person's liability to tax.”

35 (1) Section 283 (transitionals and savings) is amended as follows.

(2) After subsection (3) insert—

“(3A) The Treasury may by order make any transitional provision which may appear appropriate in consequence of, or otherwise in connection with, any amendment (or repeal or revocation) made in this Part by any enactment contained in an Act passed after this Act (an “amending Act”).

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(3B) An order under subsection (3A) may, in particular, include savings from the effect of any amendment (or repeal or revocation) made by the amending Act.

(3C) An order under subsection (2) or (3A) may include provision having effect in relation to times before it is made if it does not increase any person's liability to tax."

(3) In subsections (4) and (5), after "(2)" insert " or (3A) ".

*Transitional provision: uncrystallised rights  
under paragraph 9 to include separate lump sums*

36 (1) Paragraph 9 of Schedule 36 (uncrystallised rights under arrangement under pension scheme within paragraph 1(1)(a) to (d)) is amended as follows.

(2) In sub-paragraph (3), insert at the end " as increased, in a case where sub-paragraph (5A) applies, in accordance with sub-paragraph (5B). "

(3) After sub-paragraph (5) insert—

"(5A) This sub-paragraph applies where, in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section 611A(1)(a) of ICTA—

- (a) a lump sum could be paid to the individual on 5th April 2006 under the pension scheme otherwise than by commutation of pension, and
- (b) that lump sum could not be exchanged (in whole or in part) for an increased pension.

(5B) Where sub-paragraph (5A) applies, the amount arrived at under sub-paragraph (3) is the aggregate of what it otherwise would be and so much of the amount of the lump sum as could not be so exchanged."

*Transitional protection: taking account of death benefits*

37 Schedule 36 (transitional provisions) is amended as follows.

38 After paragraph 11 insert—

"11A(1) This paragraph applies where—

- (a) paragraph 7 makes provision for the operation of a lifetime allowance enhancement factor in relation to an individual immediately before the individual's death (and any calculation required by paragraph 11 does not mean that there is then no longer a primary protection factor),
- (b) a person is paid a defined benefits lump sum death benefit or an uncrystallised funds lump sum death benefit in respect of the individual, and
- (c) notice of intention to rely on this paragraph is given to an officer of Revenue and Customs by that person in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs.

(2) If the value of the individual's pre-commencement rights to death benefits (see paragraphs 11B to 11D) exceeds RR (as adjusted under paragraph

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11, where that paragraph applies), the primary protection factor is to be recalculated.

- (3) The re-calculation involves taking RR to be the value of the individual's pre-commencement rights to death benefits and arriving at a revised primary protection factor.
- (4) The revised primary protection factor operates in relation to—
  - (a) the benefit crystallisation event consisting of the payment of the lump sum death benefit, and
  - (b) any other benefit crystallisation event consisting of the payment of a lump sum death benefit in respect of the individual.

11B (1) This paragraph and paragraphs 11C and 11D specify the value of the individual's pre-commencement rights to death benefits.

- (2) Subject to paragraphs 11C and 11D, the value of the individual's pre-commencement rights to death benefits is the aggregate of the maximum amounts that could have been paid—
  - (a) in respect of the individual as uncrystallised rights lump sum death benefits, and
  - (b) under relevant pension arrangements relating to the individual, if the individual had died on 5th April 2006.
- (3) Lump sum death benefits are “uncrystallised rights lump sum death benefits” if they are attributable to rights in respect of which the individual had not, on 5th April 2006, become entitled to the present payment of benefits.
- (4) An arrangement is a “relevant pension arrangement” if it is an arrangement under a pension scheme within paragraph 1(1).

11C (1) In arriving at the aggregate mentioned in paragraph 11B(2) the following amounts are to be left out of account—

- (a) in the case of any lump sum death benefit which could have been paid under a pension scheme in the case of which approval could have been withdrawn under section 591B, 620(7) or 650 of ICTA, any amount in excess of the permitted limit (see sub-paragraph (2)), and
  - (b) in the case of any lump sum death benefit which could have been paid under an arrangement in the case of which rights to such a benefit are commuted into prospective rights to receive dependants' pensions, any dependants' pension proportion amount (see sub-paragraphs (3) and (4)).
- (2) An “amount in excess of the permitted limit” is so much (if any) of the maximum amount of any lump sum death benefit as could not have been paid without having given grounds for withdrawing approval of the pension scheme under section 591B, 620(7) or 650 of ICTA.
  - (3) A “dependants' pension proportion amount” is so much (if any) of the maximum amount of any lump sum death benefit which could have been paid under the arrangement as is the dependants' pension proportion of the lump sum death benefit.
  - (4) The dependants' pension proportion is—

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$$\frac{UTA - TA}{UTA}$$

where—

TA is the amount which, at the time when a defined benefits lump sum death benefit or uncrystallised funds lump sum death benefit is first paid in respect of the individual, is the aggregate of the maximum amounts of any defined benefits lump sum death benefits or uncrystallised funds lump sum death benefits which could be paid under the arrangement in respect of the individual, and

UTA is what TA would be if no prospective rights to the payment of any of those lump sum death benefits had been commuted into prospective rights to receive dependants' pensions.

- 11D(1) Sub-paragraph (2) applies where any of the lump sum death benefits mentioned in sub-paragraph (2) of paragraph 11B would have been payable under a policy of life insurance held for the purposes of a pension scheme and on 5th April 2006 the pension scheme either—
- (a) was not an occupational pension scheme, or
  - (b) was an occupational pension scheme with fewer than 20 members.
- (2) The lump sum death benefit is only to be taken into account in arriving at the aggregate mentioned in that sub-paragraph if—
- (a) a sum was paid under the policy when the individual actually died, and
  - (b) the terms of the policy had not been varied significantly during the period beginning with 5th April 2006 and ending with the death;
- and any exercise of rights conferred by the policy is to be regarded for this purpose as a variation.
- (3) Sub-paragraph (4) applies where any of the lump sum death benefits mentioned in sub-paragraph (2) of paragraph 11B would have been payable under an occupational pension scheme.
- (4) The lump sum death benefit is only to be taken into account in arriving at the aggregate mentioned in that sub-paragraph if—
- (a) the individual was employed by a person on 5th April 2006 and continued to be employed by that person or a person connected with that person until the time when the individual died,
  - (b) that person was a sponsoring employer in relation to the pension scheme on 5th April 2006, and
  - (c) the individual had not become entitled to the present payment of benefits in respect of rights under the pension scheme before the time when the individual died.
- (5) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.”

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“(3) A contribution is not a relevant contribution for the purposes of paragraph 13(a) if—

- (a) it may only be applied for or towards the payment of premiums under a policy of insurance on the life of the individual,
- (b) the policy is issued, or issued in respect of insurances made, before 6th April 2006,
- (c) there is no right to surrender any rights under the policy,
- (d) the terms of the policy are not varied significantly during the period beginning with 6th April 2006 and ending with the individual's actual death so as to increase the benefits payable under the policy or extend the period during which benefits are so payable, and
- (e) no benefits are paid, or other payments made, under (or on the surrender of rights under) the policy except by reason of the individual's death;

and any exercise of rights conferred by the policy is to be regarded for this purpose as a variation.

(4) A contribution is not a relevant contribution for the purposes of paragraph 13(a) if it is paid—

- (a) by a sponsoring employer,
- (b) under a relevant hybrid arrangement, and
- (c) solely in respect of the provision in respect of the individual of lump sum death benefits which are defined benefits or cash balance benefits.

(5) A “relevant hybrid arrangement” is a hybrid arrangement under an occupational pension scheme—

- (a) which subsequently becomes a money purchase arrangement that is not a cash balance arrangement, and
- (b) under which lump sum death benefits would have been payable in respect of the individual if the individual had died on 5th April 2006.”

40 (1) Paragraph 15 (enhanced protection: “the relevant crystallised amount”) is amended as follows.

(2) In sub-paragraph (3), for “paragraph 16” substitute “ paragraphs 15A and 16 ”.

(3) In sub-paragraph (4), for “is the greater” substitute “ is (subject to paragraph 15A) the greater ”.

(4) In sub-paragraph (5), after “(4)(a)” insert “ and paragraph 15A(2)(a) ”.

(5) In sub-paragraph (6), after “(4)(b)” insert “ and paragraph 15A(2)(b) ”.

41 After that paragraph insert—

“15A(1) This paragraph applies where—

- (a) a person is paid a defined benefits lump sum death benefit or an uncrystallised funds lump sum death benefit in respect of the individual under the arrangement, and
- (b) notice of intention to rely on this paragraph is given to an officer of Revenue and Customs by that person in accordance with

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regulations made by the Commissioners for Her Majesty's Revenue and Customs.

- (2) For the purposes of paragraph 13(b), if the amount yielded by sub-paragraph (3) is greater than what would otherwise be the appropriate limit in relation to a relevant event which consists of—
- (a) the payment of the lump sum death benefit, or
  - (b) the payment of any other lump sum death benefit in respect of the individual under the arrangement or another cash balance arrangement or defined benefits arrangement related to the arrangement,
- that greater amount is the appropriate limit in relation to such a relevant event.
- (3) The amount yielded by this sub-paragraph is the greater of—
- (a) the value of the individual's pre-commencement rights to death benefits, as increased by the relevant indexation percentage (see sub-paragraph (5) of paragraph 15), or
  - (b) what would be the value of the individual's pre-commencement rights to death benefits on the assumptions specified in sub-paragraph (6) of that paragraph (but subject to the modifications in sub-paragraph (7) of this paragraph).
- (4) The value of the individual's pre-commencement rights to death benefits is the aggregate of the maximum amounts that could have been paid in respect of the individual as uncrystallised rights lump sum death benefits under—
- (a) the arrangement, or
  - (b) any other cash balance arrangement or defined benefits arrangement related to the arrangement,
- if the individual had died on 5th April 2006.
- (5) Lump sum death benefits are “uncrystallised rights lump sum death benefits” if they are attributable to rights in respect of which the individual had not, on 5th April 2006, become entitled to the present payment of benefits.
- (6) Paragraphs 11C and 11D apply in arriving at the aggregate mentioned in sub-paragraph (4) as in arriving at that mentioned in paragraph 11B(2) but as if—
- (a) each of the references to paragraph 11B(2) were to sub-paragraph (4) of this paragraph, and
  - (b) in paragraph 11D(1), for “of a pension scheme” there were substituted “ of any arrangement within paragraph 15A(4) under a pension scheme ”.
- (7) In their operation for the purposes of this paragraph sub-paragraphs (6) to (11) of paragraph 15 have effect as if—
- (a) for the references in sub-paragraphs (6)(a) and (7)(a) and (10) to the time of the first relevant event there were substituted a reference to the time immediately before the individual's death, and
  - (b) the words in parentheses in sub-paragraph (6)(a) were omitted.”
- 42 In section 256(1) (enhanced lifetime allowance regulations)—
- (a) in paragraph (d), after “7(1)(b)” insert “ or 11A(1)(c) ”, and
  - (b) in paragraph (e), after “12(1)” insert “ or 15A(1)(b) ”.

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*Transitional protection: right to take benefits before normal pension age*

- 43 (1) Paragraph 22 of Schedule 36 (right to take benefits before normal minimum pension age: schemes within paragraph 1(1)(a) to (e) of Schedule 36) is amended as follows.
- (2) In sub-paragraph (7), for paragraph (b) substitute—
- “(b) in a case where on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 50, Condition 1 is met or, in any other case, Condition 2 or 3 is met.”
- (3) After that sub-paragraph insert—
- “(7A) Condition 1 is met if—
- (a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected, and
- (b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.
- (7B) Condition 2 is met if—
- (a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person specified in sub-paragraph (7C), and
- (b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.
- (7C) The persons referred to in sub-paragraph (7B)(a) are—
- (a) any person who was a sponsoring employer in relation to the pension scheme at any time during the period of six months ending with the day on which the member became entitled to the benefits mentioned in sub-paragraph (7)(a) and by whom the member was employed at any time during that period,
- (b) any person who is connected with any such person, or
- (c) any person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected.
- (7D) If the member has become entitled to the benefits payable under arrangements under the pension scheme by reason of service in the armed forces of the Crown, any employment on compulsory recall is to be disregarded for the purposes of sub-paragraph (7B)(a).
- (7E) Condition 3 is met if —
- (a) paragraph (a) of sub-paragraph (7B) is not satisfied but one of the re-employment conditions is met, and
- (b) paragraph (b) of that sub-paragraph is satisfied.
- (7F) The re-employment conditions are—
- (a) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of six months beginning with

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the day on which the member becomes entitled to the benefits mentioned in sub-paragraph (7)(a), and

- (b) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of one month beginning with that day, but is so employed during the period of five months beginning at the end of that period, and either the pension abatement condition or the materially different employment condition is met.

(7G) The pension abatement condition is met if—

- (a) the pension scheme is a public service pension scheme, and
- (b) the member's benefits under the scheme consist of or include a scheme pension which is liable to reduction by abatement while the member is employed as mentioned in sub-paragraph (7B)(a) and is under the age of 55.

(7H) The materially different employment condition is met—

- (a) in a case where the member is employed as mentioned in sub-paragraph (7B)(a) in more than one employment during the period of five months mentioned in sub-paragraph (7F)(b), if each of those employments, and
- (b) otherwise, if the employment in which the member is so employed during that period,

is materially different in nature from the employment in which the member was employed immediately before becoming entitled to the benefits mentioned in sub-paragraph (7)(a).

(7I) For the purposes of sub-paragraph (7D) “employment on compulsory recall” means permanent service—

- (a) under Part 4 of the Reserve Forces Act 1996,
- (b) under Part 5 of that Act,
- (c) under a call-out or recall order made under that Act,
- (d) having been called out or recalled under the Reserve Forces Act 1980, or
- (e) because of any other call-out or recall obligation of an officer.

(7J) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.”

*Transitional provisions: minor corrections*

44 Schedule 36 (transitional provisions) is amended as follows.

45 In paragraphs 9(4)(a) and 26(3)(a) (primary protection: maximum permitted pension and maximum permitted lump sum), for “611(1)(a)” substitute “ 611A(1)(a) ”.

46 In paragraph 54(1)(b) (benefits taxable under Chapter 2 of Part 6 of ITEPA 2003 where contributions taxed pre-commencement: old schemes), for “1st September 1993” substitute “ 1st December 1993 ”.



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