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PROSPECTIVE

SCHEDULE 5

(as introduced by section 24(10))

HIGHER RATES RESIDENTIAL PROPERTY TRANSACTIONS

PART 1

INTRODUCTORY

Overview

- 1 (1) This Schedule makes provision about higher rates residential property transactions.
- (2) This Schedule is arranged as follows—
- (a) Part 2 describes the chargeable transactions that are higher rates residential property transactions where the buyer is an individual and the transaction involves a dwelling;
 - (b) Part 3 describes the chargeable transactions that are higher rates residential property transactions where the buyer is an individual and the transaction involves multiple dwellings;
 - (c) Part 4 describes the chargeable transactions that are higher rates residential property transactions where the buyer is not an individual;
 - (d) Part 5 contains supplementary provision, including about returns and about the application of the provisions in Parts 2, 3 and 4 in specified circumstances;
 - (e) Part 6 contains interpretative provision.

PART 2

BUYER IS AN INDIVIDUAL: SINGLE DWELLING TRANSACTIONS

Introductory

- 2 This Part sets out when a chargeable transaction is a “higher rates residential property transaction” for the purpose of regulations under section 24(1)(b) in the case of a transaction involving a dwelling where the buyer is an individual.

Higher rates residential property transactions

- 3 (1) A chargeable transaction is a higher rates residential property transaction if—
- (a) it falls within sub-paragraph (2), and
 - (b) paragraph 5 applies.
- (2) A transaction falls within this sub-paragraph if—
- (a) the buyer is an individual,

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- (b) the main subject-matter of the transaction consists of a major interest in a dwelling (“the purchased dwelling”), and
 - (c) the chargeable consideration for the transaction is £40,000 or more.
- (3) But a transaction does not fall within sub-paragraph (2) if at the end of the day that is the effective date of the transaction—
- (a) the purchased dwelling is subject to a lease,
 - (b) the main subject-matter of the transaction is reversionary on that lease, and
 - (c) the lease meets the conditions set out in sub-paragraph (4).
- (4) The conditions are that—
- (a) the lease is not held by a person connected with the buyer, and
 - (b) the lease has an unexpired term of more than 21 years.
- (5) This paragraph applies subject to the exceptions provided for in—
- (a) paragraph 7 (interest in same main residence exception), and
 - (b) paragraph 8 (replacement of main residence exception).
- (6) In this Part of this Schedule, “purchased dwelling” has the meaning given by sub-paragraph (2)(b).
- 4 Where paragraph 9 applies, an intermediate transaction (within the meaning given by that paragraph) is to be treated as a higher rates residential property transaction.

Buyer has a major interest in other dwelling

- 5 (1) This paragraph applies in relation to a transaction if, at the end of the day that is the effective date of the transaction—
- (a) the buyer has a major interest in a dwelling other than the purchased dwelling, and
 - (b) that interest has a market value of £40,000 or more.
- (2) But this paragraph does not apply if the interest described in sub-paragraph (1) is reversionary on a lease which—
- (a) is not held by a person connected with the buyer, and
 - (b) has an unexpired term of more than 21 years.
- (3) Where the buyer is jointly entitled with one or more persons to the major interest referred to in sub-paragraph (1)(a), the reference in sub-paragraph (1)(b) to the market value of the interest is to the market value of the buyer's beneficial share in the interest as determined in accordance with sub-paragraph (4) or (5).
- (4) Where the buyer is beneficially entitled as a tenant in common, the market value of the buyer's beneficial share is equal to—

$$MV \times PI$$

Figure 4 where—

MV is the market value of the major interest, and

PI is—

- (a) the percentage of the interest to which the buyer is entitled, or

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(b) where—

- (i) the buyer and the buyer's spouse or civil partner are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
- (ii) taken together the buyer and the buyer's spouse or civil partner are entitled as tenants in common,

the percentage of the interest to which the buyer and the buyer's spouse or civil partner are so entitled.

- (5) Where the buyer is beneficially entitled as a joint tenant, the market value of the buyer's beneficial share is equal to—

$$\frac{MV}{JT}$$

Figure 5 where—

MV is the market value of the major interest, and

JT is the number of joint tenants entitled to the interest.

- (6) For the purpose of sub-paragraph (5), the buyer and the buyer's spouse or civil partner are to be treated as one joint tenant if—
- (a) they are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
 - (b) they are beneficially entitled as joint tenants to the interest.

Two or more buyers

- 6 Where there are two or more buyers who are individuals in a transaction—
- (a) the transaction is a higher rates residential property transaction if paragraph 3 applies in relation to any one of the buyers;
 - (b) an intermediate transaction (within the meaning of paragraph 9(2)) is to be treated as a higher rates residential property transaction if paragraph 9 applies in relation to any one of the buyers.

Interest in same main residence exception

- 7 A transaction is not a higher rates residential property transaction under paragraph 3 if the main subject-matter of the transaction is a major interest in a dwelling—
- (a) in which, immediately before the effective date of the transaction, the buyer had another major interest, and
 - (b) which, immediately before and after the effective date of the transaction, is the buyer's only or main residence.

Replacement of main residence exception

- 8 (1) A transaction is not a higher rates residential property transaction under paragraph 3 if the purchased dwelling is a replacement for the buyer's only or main residence.

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- (2) For the purposes of this paragraph, the purchased dwelling is a replacement for the buyer's only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intends the purchased dwelling to be the buyer's only or main residence,
 - (b) in another land transaction (“the previous transaction”), the effective date of which was during the period of 3 years ending with the effective date of the transaction concerned, the buyer or the buyer's spouse or civil partner at the time disposed of a major interest in another dwelling (“the sold dwelling”),
 - (c) immediately after the effective date of the previous transaction, neither the buyer nor the buyer's spouse or civil partner had a major interest in the sold dwelling,
 - (d) at any time during the period of 3 years referred to in paragraph (b) the sold dwelling was the buyer's only or main residence, and
 - (e) at no time during the period beginning with the effective date of the previous transaction and ending with the effective date of the transaction concerned has the buyer or the buyer's spouse or civil partner acquired a major interest in any other dwelling with the intention of it being the buyer's only or main residence.
- (3) Sub-paragraph (2)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them were not living together on the effective date of the transaction concerned (for the meaning of “living together”, see paragraph 25(3)).
- (4) For the purposes of this paragraph, the purchased dwelling may become a replacement for the buyer's only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intended the purchased dwelling to be the buyer's only or main residence,
 - (b) in another land transaction the effective date of which is during the period of 3 years beginning with the day after the effective date of the transaction concerned, the buyer or the buyer's spouse, former spouse, civil partner or former civil partner disposes of a major interest in another dwelling (“the sold dwelling”),
 - (c) immediately after the effective date of that other land transaction, neither the buyer nor the buyer's spouse or civil partner has a major interest in the sold dwelling, and
 - (d) at any time during the period of 3 years ending with the effective date of the transaction concerned the sold dwelling was the buyer's only or main residence.
- (5) Sub-paragraph (4)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them are not living together on the effective date of that other land transaction (for the meaning of “living together”, see paragraph 25(3)).
- (6) For further provision in connection with a dwelling becoming a replacement for the buyer's only or main residence, see paragraph 23.

Replacement of main residence: transactions during interim period

- 9 (1) This paragraph applies where—

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- (a) the buyer in an intermediate transaction replaces a main residence in another transaction, and
 - (b) the effective date of the intermediate transaction is during the interim period.
- (2) An intermediate transaction is a transaction—
- (a) that falls within paragraph 3(2), and
 - (b) to which paragraph 5 does not apply.
- (3) In determining whether a transaction falls within paragraph 3(2) for the purposes of this paragraph, the reference in paragraph 3(3) to the end of the day that is the effective date of the transaction has effect as though it were a reference to the end of either or both of the following—
- (a) the day that is the effective date of the transaction;
 - (b) the day on which the interim period ends.
- (4) For the purposes of this paragraph, a buyer replaces a main residence in another transaction if—
- (a) in relation to a dwelling in Wales, the conditions set out in paragraph 8(2) are met in respect of the transaction,
 - (b) in relation to a dwelling in England or Northern Ireland, the conditions set out in paragraph 3(6) of Schedule 4ZA to the Finance Act 2003 (c. 14) are met in respect of the transaction, or
 - (c) in relation to a dwelling in Scotland, the conditions set out in paragraph 2(2) of Schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11) are met in respect of the transaction.
- (5) In this paragraph, the interim period means—
- (a) where sub-paragraph (4)(a) applies, the period—
 - (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 8(2)(b), and
 - (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 8(2)(a);
 - (b) where sub-paragraph (4)(b) applies, the period—
 - (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 3(6)(b) of Schedule 4ZA to the Finance Act 2003 (c. 14), and
 - (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 3(6)(a) of that Schedule;
 - (c) where sub-paragraph (4)(c) applies, the period—
 - (i) beginning with the date on which the buyer disposed of the ownership of a dwelling as provided for in paragraph 2(2)(a) of Schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11), and
 - (ii) ending with the effective date of the transaction referred to in that paragraph.
- (6) For further provision in connection with an intermediate transaction being treated as a higher rates residential property transaction, see paragraph 24.

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PART 3

BUYER IS AN INDIVIDUAL: MULTIPLE DWELLING TRANSACTIONS

Introductory

- 10 This Part sets out when a chargeable transaction is a “higher rates residential property transaction” for the purpose of regulations under section 24(1)(b) in the case of a transaction involving multiple dwellings where the buyer is an individual.

Higher rates residential property transaction

- 11 (1) A chargeable transaction is a higher rates residential property transaction if—
- (a) it falls within sub-paragraph (2), and
 - (b) paragraph 13 or 15 applies.
- (2) A transaction falls within this sub-paragraph if—
- (a) the buyer is an individual, and
 - (b) the main subject-matter of the transaction consists of a major interest in two or more dwellings (“the purchased dwellings”).
- (3) In this Part of this Schedule, “purchased dwellings” has the meaning given by sub-paragraph (2)(b).
- (4) Where paragraph 18 applies, an intermediate transaction (within the meaning given by that paragraph) is to be treated as a higher rates residential property transaction.
- (5) A transaction within section 72(9) is not a higher rates residential property transaction save where Schedule 13 applies (see in particular paragraph 6(6) of that Schedule).

Two or more buyers

- 12 Where there are two or more buyers who are individuals in a transaction—
- (a) the transaction is a higher rates residential property transaction if paragraph 11 applies in relation to any one of the buyers;
 - (b) an intermediate transaction (within the meaning given by paragraph 18(2)) is to be treated as a higher rates residential property transaction if paragraph 18 applies in relation to any one of the buyers.

Two or more qualifying dwellings

- 13 (1) This paragraph applies if at least two of the purchased dwellings are qualifying dwellings.
- (2) A purchased dwelling is a qualifying dwelling for the purposes of this Part of this Schedule if the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to the purchased dwelling is £40,000 or more.
- (3) But a purchased dwelling is not a qualifying dwelling if at the end of the day that is the effective date of the transaction—
- (a) the purchased dwelling is subject to a lease,

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- (b) the main subject-matter of the transaction is reversionary on that lease, and
- (c) the lease meets the conditions set out in sub-paragraph (4).

(4) The conditions are that—

- (a) the lease is not held by a person connected with the buyer, and
- (b) the lease has an unexpired term of more than 21 years.

(5) A purchased dwelling is not a qualifying dwelling if the exception provided for in paragraph 14 applies (subsidiary dwelling exception).

Subsidiary dwelling exception

14 (1) A purchased dwelling is not a qualifying dwelling if it is subsidiary to any of the other purchased dwellings.

(2) For the purposes of this paragraph, one of the purchased dwellings (“dwelling A”) is subsidiary to another of the purchased dwellings (“dwelling B”) if—

- (a) dwelling A is situated within the grounds of, or within the same building as, dwelling B, and
- (b) the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to dwelling B is equal to, or greater than, two thirds of the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to the following combined—
 - (i) dwelling A,
 - (ii) dwelling B, and
 - (iii) each of the other purchased dwellings (if any) which are situated within the grounds of, or within the same building as, dwelling B.

Buyer has a major interest in other dwelling

15 (1) This paragraph applies if—

- (a) only one of the purchased dwellings is a qualifying dwelling, and
- (b) at the end of the day that is the effective date of the transaction—
 - (i) the buyer has a major interest in a dwelling other than one of the purchased dwellings, and
 - (ii) that interest has a market value of £40,000 or more.

(2) But this paragraph does not apply if the interest described in sub-paragraph (1)(b) is reversionary on a lease which—

- (a) is not held by a person connected with the buyer, and
- (b) has an unexpired term of more than 21 years.

(3) Where the buyer is jointly entitled with one or more persons to the major interest referred to in sub-paragraph (1)(b)(i), the reference in sub-paragraph (1)(b)(ii) to the market value of the interest is to the market value of the buyer's beneficial share in the interest as determined in accordance with sub-paragraph (4) or (5).

(4) Where the buyer is beneficially entitled as a tenant in common, the market value of the buyer's beneficial share is equal to—

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MV × PI

Figure 6 where—

MV is the market value of the major interest, and

PI is—

- (a) the percentage of the interest to which the buyer is entitled, or
- (b) where—
 - (i) the buyer and the buyer's spouse or civil partner are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
 - (ii) taken together the buyer and the buyer's spouse or civil partner are entitled as tenants in common,

the percentage of the interest to which the buyer and the buyer's spouse or civil partner are so entitled.

- (5) Where the buyer is beneficially entitled as a joint tenant, the market value of the buyer's beneficial share is equal to—

$$\frac{MV}{JT}$$

Figure 7 where—

MV is the market value of the major interest, and

JT is the number of joint tenants entitled to the interest.

- (6) For the purpose of sub-paragraph (5), the buyer and the buyer's spouse or civil partner are to be treated as one joint tenant if—
 - (a) they are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
 - (b) they are beneficially entitled as joint tenants to the interest.
- (7) This paragraph applies subject to the exceptions provided for in—
 - (a) paragraph 16 (interest in same main residence exception), and
 - (b) paragraph 17 (replacement of main residence exception).

Interest in same main residence exception

- 16 Paragraph 15 does not apply if the main subject-matter of the transaction is a major interest in the qualifying dwelling referred to in paragraph 15(1)(a), and that dwelling is one—

- (a) in which, immediately before the effective date of the transaction, the buyer had another major interest, and
- (b) which, immediately before and after the effective date of the transaction, is the buyer's only or main residence.

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Replacement of main residence exception

- 17 (1) Paragraph 15 does not apply if the qualifying dwelling referred to in paragraph 15(1) (a) is a replacement for the buyer's only or main residence.
- (2) For the purposes of this paragraph, a qualifying dwelling is a replacement for the buyer's only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intends that qualifying dwelling to be the buyer's only or main residence,
 - (b) in another land transaction (“the previous transaction”), the effective date of which was during the period of 3 years ending with the effective date of the transaction concerned, the buyer or the buyer's spouse or civil partner at the time disposed of a major interest in another dwelling (“the sold dwelling”),
 - (c) immediately after the effective date of the previous transaction, neither the buyer nor the buyer's spouse or civil partner had a major interest in the sold dwelling,
 - (d) at any time during the period of 3 years referred to in paragraph (b) the sold dwelling was the buyer's only or main residence, and
 - (e) at no time during the period beginning with the effective date of the previous transaction and ending with the effective date of the transaction concerned has the buyer or the buyer's spouse or civil partner acquired a major interest in any other dwelling with the intention of it being the buyer's only or main residence.
- (3) Sub-paragraph (2)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them were not living together on the effective date of the transaction concerned (for the meaning of “living together”, see paragraph 25(3)).
- (4) For the purposes of this paragraph, that qualifying dwelling may become a replacement for the buyer's only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intended that qualifying dwelling to be the buyer's only or main residence,
 - (b) in another land transaction the effective date of which is during the period of 3 years beginning with the day after the effective date of the transaction concerned, the buyer or the buyer's spouse, former spouse, civil partner or former civil partner disposes of a major interest in another dwelling (“the sold dwelling”),
 - (c) immediately after the effective date of that other land transaction, neither the buyer nor the buyer's spouse or civil partner has a major interest in the sold dwelling, and
 - (d) at any time during the period of 3 years ending with the effective date of the transaction concerned the sold dwelling was the buyer's only or main residence.
- (5) Sub-paragraph (4)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them are not living together on the effective date of that other land transaction (for the meaning of “living together”, see paragraph 25(3)).
- (6) For further provision in connection with a dwelling becoming a replacement for the buyer's only or main residence, see paragraph 23.

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Replacement of main residence: transactions during interim period

- 18 (1) This paragraph applies where—
- (a) the buyer in an intermediate transaction replaces a main residence in another transaction, and
 - (b) the effective date of the intermediate transaction is during the interim period.
- (2) An intermediate transaction is a transaction—
- (a) that falls within paragraph 11(2),
 - (b) where only one of the purchased dwellings is a qualifying dwelling, and
 - (c) to which paragraph 15 does not apply.
- (3) In determining whether a purchased dwelling is a qualifying dwelling for the purposes of this paragraph, the reference in paragraph 13(3) to the end of the day that is the effective date of the transaction has effect as though it were a reference to the end of either or both of the following—
- (a) the day that is the effective date of the transaction;
 - (b) the day on which the interim period ends.
- (4) For the purposes of this paragraph, a buyer replaces a main residence in another transaction if—
- (a) in relation to a dwelling in Wales, the conditions set out in paragraph 17(2) are met in respect of the transaction,
 - (b) in relation to a dwelling in England or Northern Ireland, the conditions set out in paragraph 3(6) of Schedule 4ZA to the Finance Act 2003 (c. 14) are met in respect of the transaction, or
 - (c) in relation to a dwelling in Scotland, the conditions set out in paragraph 2(2) of Schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11) are met in respect of the transaction.
- (5) In this paragraph, the interim period means—
- (a) where sub-paragraph (4)(a) applies, the period—
 - (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 17(2)(b), and
 - (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 17(2)(a);
 - (b) where sub-paragraph (4)(b) applies, the period—
 - (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 3(6)(b) of Schedule 4ZA to the Finance Act 2003 (c. 14), and
 - (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 3(6)(a) of that Schedule;
 - (c) where sub-paragraph (4)(c) applies, the period—
 - (i) beginning with the date on which the buyer disposed of the ownership of a dwelling as provided for in paragraph 2(2)(a) of Schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11), and
 - (ii) ending with the effective date of the transaction referred to in that paragraph.
- (6) For further provision in connection with an intermediate transaction being treated as a higher rates residential property transaction, see paragraph 24.

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PART 4

BUYER IS NOT AN INDIVIDUAL

Introductory

- 19 This Part sets out when a chargeable transaction where the buyer is not an individual is a “higher rates residential property transaction” for the purpose of regulations under section 24(1)(b).

Transaction involving a dwelling

- 20 (1) A chargeable transaction is a higher rates residential property transaction if—
- (a) the buyer is not an individual,
 - (b) the main subject-matter of the transaction consists of a major interest in a dwelling (“the purchased dwelling”), and
 - (c) the chargeable consideration for the dwelling is £40,000 or more.
- (2) But a transaction is not a higher rates residential property transaction under sub-paragraph (1) if at the end of the day that is the effective date of the transaction—
- (a) the purchased dwelling is subject to a lease,
 - (b) the main subject-matter of the transaction is reversionary on that lease, and
 - (c) the lease meets the conditions set out in sub-paragraph (3).
- (3) The conditions are that—
- (a) the lease is not held by a person connected with the buyer, and
 - (b) the lease has an unexpired term of more than 21 years.

Transaction involving multiple dwellings

- 21 (1) A chargeable transaction is a higher rates residential property transaction if—
- (a) the buyer is not an individual,
 - (b) the main subject-matter of the transaction consists of a major interest in two or more dwellings (“the purchased dwellings”), and
 - (c) at least one of the purchased dwellings is a dwelling to which sub-paragraph (2) applies.
- (2) This sub-paragraph applies to a purchased dwelling if the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to the purchased dwelling is £40,000 or more.
- (3) But sub-paragraph (2) does not apply to a purchased dwelling if at the end of the day that is the effective date of the transaction—
- (a) the purchased dwelling is subject to a lease,
 - (b) the main subject-matter of the transaction is reversionary on that lease, and
 - (c) the lease meets the conditions set out in sub-paragraph (4).
- (4) The conditions are that—
- (a) the lease is not held by a person connected with the buyer, and
 - (b) the lease has an unexpired term of more than 21 years.

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- (5) A transaction within section 72(9) is not a higher rates residential property transaction save where Schedule 13 applies (see in particular paragraph 6(6) of that Schedule).

Two or more buyers

- 22 Where there are two or more buyers in a transaction, the transaction is a higher rates residential property transaction if paragraph 20 or 21 applies in relation to any one of the buyers.

PART 5

SUPPLEMENTARY PROVISIONS

Further provision in connection with replacement of main residence exception

- 23 (1) This paragraph applies where by reason of paragraph 8(4) or 17(4) a chargeable transaction (“the transaction concerned”) ceases to be a higher rates residential property transaction for the purpose of regulations under section 24(1)(b).
- (2) The land transaction (“the subsequent transaction”) by reference to which the condition in paragraph 8(4)(b) or 17(4)(b) was met may not be taken into account for the purposes of paragraph 8(2)(b) or 17(2)(b) in determining whether any other chargeable transaction is a higher rates residential property transaction.
- (3) Sub-paragraph (4) applies where—
- (a) the effective date of the subsequent transaction falls on or before the filing date for the return in respect of the transaction concerned, and
 - (b) the return has not been made.
- (4) The buyer may, when making the return in respect of the transaction concerned, treat the purchased dwelling referred to in paragraph 8(4) or 17(4) as though it had been a replacement for the buyer's only or main residence on the effective date of the transaction concerned; and in such a case the transaction concerned is to be treated as if it had never been a higher rates residential property transaction.
- (5) Sub-paragraph (6) applies where the effect of the transaction concerned ceasing to be a higher rates residential property transaction is that less tax is payable in respect of it than the buyer has already paid in accordance with a return made for that transaction.
- (6) In order to obtain repayment of the amount of tax overpaid, the buyer may—
- (a) within the period allowed for amendment of the return, amend it accordingly (see section 41 of TCMA);
 - (b) after the end of that period (if that return is not so amended), make a claim for repayment of the amount overpaid in accordance with Chapter 7 of Part 3 of TCMA.

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Further provision in connection with transactions being treated as higher rates residential property transactions

- 24 (1) This paragraph applies where by reason of the application of paragraph 9 or 18 a chargeable transaction (“the intermediate transaction”) is treated as a higher rates residential property transaction.
- (2) The intermediate transaction is treated as a higher rates residential property transaction for the purposes of this Act as from the end of the interim period that applies in accordance with paragraph 9(5) or 18(5).
- (3) The buyer in the intermediate transaction must make a return to WRA in respect of that transaction.
- (4) A return made under this paragraph must—
- (a) be made before the end of the period of 30 days beginning with the day after the end of the interim period that applies in accordance with paragraph 9(5) or 18(5), and
 - (b) include a self-assessment.

Spouses and civil partners purchasing alone

- 25 (1) Sub-paragraph (2) applies in relation to a chargeable transaction if—
- (a) the buyer (or one of them) is married or in a civil partnership on the effective date,
 - (b) the buyer and the buyer's spouse or civil partner are living together on that date, and
 - (c) the buyer's spouse or civil partner is not a buyer in the transaction.
- (2) The transaction is to be treated as being a higher rates residential property transaction if it would have been a higher rates residential property transaction had the buyer's spouse or civil partner been a buyer.
- (3) Individuals who are married to, or are civil partners of, each other are treated for the purposes of this Schedule as living together unless—
- (a) they are separated under an order of a court of competent jurisdiction,
 - (b) they are separated by a deed of separation, or
 - (c) they are in fact separated in circumstances in which the separation is likely to be permanent.

Property adjustment on divorce, dissolution of civil partnership etc.

- 26 (1) For the purpose of determining whether paragraph 5 or 15 applies to a chargeable transaction, the buyer is not to be treated as having a major interest in another dwelling to which sub-paragraphs (2) and (3) apply.
- (2) This sub-paragraph applies to a dwelling the interest in which is held by the buyer as a tenant in common in consequence of—
- (a) an order under section 24(1)(b) of the Matrimonial Causes Act 1973 (c. 18) (property adjustments orders in connection with matrimonial proceedings),
 - (b) an order under section 17(1)(a)(ii) of the Matrimonial and Family Proceedings Act 1984 (c. 42) (property adjustment orders after overseas divorce) corresponding to such an order as is mentioned in paragraph (a),

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- (c) an order under paragraph 7(1)(b) of Schedule 5 to the Civil Partnership Act 2004 (c. 33) (property adjustment orders in connection with dissolution etc. of civil partnership), or
- (d) an order under paragraph 9 of Schedule 7 to the Civil Partnership Act 2004 (c. 33) (property adjustment orders in connection with overseas dissolution etc. of civil partnership) corresponding to such an order as is mentioned in paragraph (c).

- (3) This sub-paragraph applies to a dwelling that is the only or main residence of a person for the benefit of whom an order referred to in sub-paragraph (2) is made.

Settlements and bare trusts

- 27 (1) Sub-paragraph (3) applies in relation to a land transaction if—
- (a) the main subject-matter of the transaction consists of a major interest in one or more dwellings,
 - (b) the buyer (or one of them) is acting as trustee of a settlement, and
 - (c) under the terms of the settlement a beneficiary will be entitled to—
 - (i) occupy the dwelling or dwellings for life, or
 - (ii) income earned in respect of the dwelling or dwellings.
- (2) Sub-paragraph (3) also applies in relation to a land transaction if—
- (a) the main subject-matter of the transaction consists of a term of years absolute in a dwelling, and
 - (b) the buyer (or one of them) is acting as a trustee of a bare trust (within the meaning given by paragraph 2(1) and (2) of Schedule 8).
- (3) Where this sub-paragraph applies in relation to a land transaction the beneficiary of the settlement or bare trust (rather than the trustee) is to be treated for the purposes of this Schedule as the buyer (or as one of them).
- (4) Paragraphs 3(3) and 4 of Schedule 8 (trustees to be treated as the buyer) have effect subject to sub-paragraph (3).
- 28 (1) Sub-paragraph (3) applies where—
- (a) a person is a beneficiary under a settlement,
 - (b) a major interest in a dwelling forms part of the trust property, and
 - (c) under the terms of the settlement, the beneficiary is entitled to—
 - (i) occupy the dwelling for life, or
 - (ii) income earned in respect of the dwelling.
- (2) Sub-paragraph (3) also applies where—
- (a) a person is a beneficiary under a bare trust (within the meaning given by paragraph 2(1) and (2) of Schedule 8), and
 - (b) a term of years absolute in a dwelling forms part of the trust property.
- (3) Where this sub-paragraph applies—
- (a) the beneficiary is to be treated for the purposes of this Schedule as holding the interest in the dwelling, and
 - (b) if the trustee of the settlement or bare trust disposes of the interest, the beneficiary is to be treated for the purposes of this Schedule as having disposed of it.

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- 29 (1) Where—
- (a) the main subject-matter of a land transaction consists of an interest other than a major interest in a dwelling, and
 - (b) sub-paragraph (2) or (3) applies in relation to the transaction,
- then, for the avoidance of doubt, the effect of paragraph 28 of this Schedule or, as the case may be, paragraph 3(1) of Schedule 8, is that the main subject-matter of the transaction is to be treated for the purposes of this Schedule as consisting of a major interest in a dwelling.
- (2) This sub-paragraph applies in relation to a transaction where—
- (a) a major interest in the dwelling is held on a bare trust for a beneficiary (“B”),
 - (b) there is a disposal of the whole or part of B's interest in the dwelling,
 - (c) immediately before the effective date of the transaction—
 - (i) the major interest is, by virtue of paragraph 3(1) of Schedule 8, treated as if it were vested in B, or
 - (ii) B is, by virtue of paragraph 28, treated as holding the major interest in the dwelling, and
 - (d) immediately after the effective date of the transaction—
 - (i) the major interest is, by virtue of paragraph 3(1) of Schedule 8, treated as if it were vested in the buyer, or
 - (ii) the buyer is, by virtue of paragraph 28, treated as holding the major interest.
- (3) This sub-paragraph applies in relation to a transaction where—
- (a) a person (“B”) is a beneficiary under a settlement where a major interest in the dwelling forms part of the trust property,
 - (b) under the terms of the settlement B is entitled to—
 - (i) occupy the dwelling for life, or
 - (ii) income earned in respect of the dwelling,
 - (c) there is a disposal of the whole or part of B's interest in the dwelling,
 - (d) immediately before the effective date of the transaction B is, by virtue of paragraph 28, treated as holding the major interest in the dwelling, and
 - (e) immediately after the effective date of the transaction the buyer is, by virtue of that paragraph, treated as holding the major interest.
- (4) In determining whether sub-paragraph (2) or (3) applies to a transaction, ignore paragraphs 30 and 35(5).
- 30 (1) This paragraph applies where, by reason of paragraph 27 or 28 or paragraph 3(1) of Schedule 8 (bare trusts), the child of a person (“P”) would (but for this paragraph) be treated for the purposes of this Schedule as—
- (a) being the buyer in relation to a land transaction,
 - (b) holding an interest in a dwelling, or
 - (c) having disposed of an interest in a dwelling.
- (2) Where this paragraph applies—
- (a) P and any spouse or civil partner of P are to be treated for the purposes of this Schedule as being the buyer, holding the interest or (as the case may be) having disposed of the interest, and
 - (b) the child is not to be so treated.

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- (3) Sub-paragraph (2)(a) does not apply in relation to a spouse or civil partner of P if the two of them are not living together (for the meaning of which, see paragraph 25(3)).
- (4) This paragraph does not apply where—
- (a) a person (“D”) acquires, holds or disposes of, a major interest in a dwelling in a child's name or on the child's behalf,
 - (b) D does so in the exercise of powers conferred on D as the deputy of the child, and
 - (c) D holds or, in the case of a disposal, held, that interest on trust for the child.
- (5) In sub-paragraph (4), “deputy” means—
- (a) a person appointed under section 16 of the Mental Capacity Act 2005 (c. 9), or
 - (b) a person appointed to an equivalent position under the law of a country or territory outside England and Wales (and accordingly the reference to an interest being held on trust by such a person is to its being held on an equivalent basis under that law).
- 31 (1) This paragraph applies in relation to a land transaction if—
- (a) the main subject-matter of the transaction consists of a major interest in one or more dwellings,
 - (b) the buyer (or one of them) is acting as trustee of a settlement,
 - (c) that buyer is an individual, and
 - (d) under the terms of the settlement a beneficiary is not entitled to—
 - (i) occupy the dwelling or dwellings for life, or
 - (ii) income earned in respect of the dwelling or dwellings.
- (2) In determining whether paragraph 20 or 21 applies to the transaction—
- (a) if the buyer mentioned in sub-paragraph (1) is the only buyer, ignore sub-paragraph (1)(a) of those paragraphs, and
 - (b) if that buyer is not the only buyer, ignore sub-paragraph (1)(a) of those paragraphs when having regard to that buyer.

Partnerships

- 32 (1) Sub-paragraph (2) applies in relation to a chargeable transaction, the subject-matter of which consists of a major interest in one or more dwellings if—
- (a) the buyer (or one of them) is a partner in a partnership, but
 - (b) the buyer does not enter into the transaction for the purposes of the partnership.
- (2) For the purposes of determining whether paragraph 5 or 15 applies to the transaction, any major interest in any other dwelling that is held by or on behalf of the partnership for the purposes of a trade carried on by the partnership is not to be treated as held by or on behalf of the buyer.
- (3) Paragraph 4(1)(a) of Schedule 7 (chargeable interests held by partnerships treated as held by the partners) has effect subject to sub-paragraph (2).

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Alternative finance arrangements

- 33 (1) This paragraph applies in relation to a chargeable transaction which is the first transaction under an alternative finance arrangement entered into between a person and a financial institution.
- (2) The person (rather than the institution) is to be treated for the purposes of this Schedule as the buyer in relation to the transaction.
- (3) In this paragraph—
- “alternative finance arrangement” (“*trefniant cyllid arall*”) means an arrangement of a kind mentioned in paragraph 2(1) or 3(1) of Schedule 10 (alternative property finance reliefs);
 - “financial institution” (“*sefydliad ariannol*”) has the meaning given by paragraph 8 of that Schedule;
 - “first transaction” (“*trafodiad cyntaf*”), in relation to an alternative finance arrangement, has the meaning given by paragraph 2(1)(a) or 3(1)(a) of that Schedule.

Major interests in dwellings inherited jointly

- 34 (1) This paragraph applies where by virtue of an inheritance—
- (a) a person (“P”) becomes jointly entitled with one or more other persons to a major interest in a dwelling, and
 - (b) P's beneficial share in the interest does not exceed 50% (see sub-paragraph (4)).
- (2) P is not to be treated for the purposes of paragraph 5(1)(a) or 15(1)(b) as having the major interest at any time during the period of 3 years beginning with the date of the inheritance.
- (3) But if at any time during that period of 3 years P becomes the only person beneficially entitled to the whole of the interest or P's beneficial share in the interest exceeds 50% P is, from that time, to be treated as having the major interest for the purposes of the application of paragraphs 5(1)(a) and 15(1)(b) (subject to any disposal by P).
- (4) P's share in the interest exceeds 50% if—
- (a) P is beneficially entitled as a tenant in common or coparcener to more than half the interest,
 - (b) P and P's spouse or civil partner taken together are beneficially entitled as tenants in common or coparceners to more than half the interest, or
 - (c) P and P's spouse or civil partner are beneficially entitled as joint tenants to the interest and there is no more than one other joint tenant who is so entitled.
- (5) Sub-paragraph (4)(b) and (c) do not apply if, on the effective date of the transaction referred to in paragraph 5 or 15, P and P's spouse or civil partner are not living together (for the meaning of “living together”, see paragraph 25(3)).
- (6) In this paragraph “inheritance” means the acquisition of an interest in or towards satisfaction of an entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person.
- (7) This paragraph applies in relation to an interest acquired following a person's death as a result of a variation of a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property comprised in that person's estate made

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within the period of 2 years after the person's death, as it applies in relation to an inheritance; and in such a case the reference in sub-paragraph (2) to the date of the inheritance means the date of the acquisition of the interest in accordance with the variation.

PART 6

INTERPRETATION

Dwellings outside Wales

- 35 (1) In the provisions of this Schedule specified in sub-paragraph (4), references to a “dwelling” include references to a dwelling situated outside Wales.
- (2) In relation to a dwelling situated in England, those provisions are to be construed in accordance with the provisions of the Finance Act 2003 (c. 14).
- (3) In the application of those provisions in relation to a dwelling situated in a country or territory outside England and Wales—
- (a) references to a “major interest” in the dwelling are to an equivalent interest in the dwelling under the law of that country or territory,
 - (b) references to persons being beneficially entitled as joint tenants, tenants in common or coparceners to an interest in the dwelling are to persons having an equivalent entitlement to the interest in the dwelling under the law of that country or territory,
 - (c) references to a “land transaction” in relation to the dwelling are to the acquisition of an interest in the dwelling under the law of that country or territory,
 - (d) references to the “effective date” of a land transaction in relation to the dwelling are to the date on which the interest in the dwelling is acquired under the law of that country or territory, and
 - (e) references to “inheritance” are to the acquisition of an interest from a deceased person's estate in accordance with the laws of that country or territory concerning the inheritance of property.
- (4) The provisions of this Schedule referred to in sub-paragraphs (1), (2) and (3) are—
- (a) paragraph 5(1)(a),
 - (b) paragraph 8(2)(b), (c), (d) and (e) and (4)(b), (c) and (d),
 - (c) paragraph 9(4),
 - (d) paragraph 15(1)(b),
 - (e) paragraph 17(2)(b), (c), (d) and (e) and (4)(b), (c) and (d),
 - (f) paragraph 18(4),
 - (g) paragraph 26,
 - (h) paragraph 28,
 - (i) paragraph 32(2), and
 - (j) paragraph 34.
- (5) Where the child of a person (“P”) has an interest in a dwelling which is situated in a country or territory outside Wales—

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- (a) P and any spouse or civil partner of P are to be treated for the purposes of this Schedule as having that interest, and
 - (b) the child is not to be so treated.
- (6) Sub-paragraph (5)(a) does not apply in relation to a spouse or civil partner of P if the two of them are not living together (for the meaning of which, see paragraph 25(3)).
- (7) Sub-paragraph (5) does not apply where—
- (a) a person (“D”) acquires, holds or disposes of, a major interest in a dwelling in a child's name or on the child's behalf,
 - (b) D does so in the exercise of powers conferred on D as the deputy of the child, and
 - (c) D holds or, in the case of a disposal, held, that interest on trust for the child.
- (8) In sub-paragraph (7), “deputy” means—
- (a) a person appointed under section 16 of the Mental Capacity Act 2005 (c. 9), or
 - (b) a person appointed to an equivalent position under the law of a country or territory outside England and Wales (and accordingly the reference to an interest being held on trust by such a person is to its being held on an equivalent basis under that law).

What counts as a dwelling

- 36 (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.
- (2) A building or part of a building counts as a dwelling if—
- (a) it is used or suitable for use as a dwelling, or
 - (b) it is in the process of being constructed or adapted for such use.
- (3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on that land) is taken to be part of that dwelling.
- (4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.
- (5) The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if—
- (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
 - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a dwelling, and
 - (c) construction or adaptation of the building, or part of a building, has not begun by the time the contract is substantially performed.
- (6) In sub-paragraph (5)—
- “contract” (“*contract*”) includes any agreement;
 - “relevant deeming provision” (“*darpariaeth dybio berthnasol*”) means any of sections 10 to 13 or paragraph 8(1) to (5) of Schedule 2 (pre-completion transactions) or paragraph 20 of Schedule 6 (agreement for lease);

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“substantially performed” (“cyflawni'n sylweddol”) has the same meaning as in section 14.

- (7) A building or part of a building used for a purpose specified in section 72(4) or (5) is not used as a dwelling for the purposes of sub-paragraph (2) or (5).
- (8) Where a building or part of a building is used for a purpose mentioned in sub-paragraph (7), no account is to be taken for the purposes of sub-paragraph (2) of its suitability for any other use.

Major interest not to include certain leases

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For the purposes of this Schedule, any term of years absolute or leasehold estate is not a “major interest” if its term does not exceed 7 years on the date of its grant.

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Changes and effects yet to be applied to :

- Sch. 5 applied (with modifications) by S.I. 2018/126 reg. 12
- Sch. 5 para. 1 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 2 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 3 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 4 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 5 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 6 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 7 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 8 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 9 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 10 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 11 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 12 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 13 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 14 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 15 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 16 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 17 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 18 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 19 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 20 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 21 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 22 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 23 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 24 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 25 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 26 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 27 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 28 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 29 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 30 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 31 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 32 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 33 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 34 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 35 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 36 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 37 coming into force by S.I. 2018/34 art. 3
- Sch. 5 para. 7(a) words inserted by S.I. 2018/125 reg. 2(a)
- Sch. 5 para. 16(a) words inserted by S.I. 2018/125 reg. 2(b)