



# Finance Act 2004

## 2004 CHAPTER 12

### PART 4

#### PENSION SCHEMES ETC

### CHAPTER 1

#### INTRODUCTION

##### *Introductory*

#### **149 Overview of Part 4**

- (1) This Part contains tax provision about pension schemes and other similar schemes.
- (2) This Chapter defines some basic concepts.
- (3) As for the rest of this Part—
  - Chapter 2 is about the registration and de-registration of pension schemes,
  - Chapter 3 is about the payments that may be made by registered pension schemes and related matters,
  - Chapter 4 deals with tax reliefs and exemptions in connection with registered pension schemes,
  - Chapter 5 imposes tax charges in connection with registered pension schemes,
  - Chapter 6 is about some schemes that are not registered pension schemes,
  - Chapter 7 makes provision about compliance, and
  - Chapter 8 contains interpretation and other supplementary provisions.

### *Main concepts*

#### **150 Meaning of “pension scheme”**

- (1) In this Part “pension scheme” means a scheme or other arrangements, comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of persons—
  - (a) on retirement,
  - (b) on death,
  - (c) on having reached a particular age,
  - (d) on the onset of serious ill-health or incapacity, or
  - (e) in similar circumstances.
- (2) A pension scheme is a registered pension scheme for the purposes of this Part at any time if it is at that time registered under Chapter 2.
- (3) In this Part “public service pension scheme” means a pension scheme—
  - (a) established by or under any enactment,
  - (b) approved by a relevant governmental or Parliamentary person or body, or
  - (c) specified in an order made by the Treasury.
- (4) In subsection (3) “a relevant governmental or Parliamentary person or body” means—
  - (a) a Minister of the Crown or a government department,
  - (b) the Scottish Parliament, the Scottish Parliamentary Corporate Body or a member of the Scottish Executive,
  - (c) the National Assembly for Wales, or
  - (d) the Northern Ireland Assembly, the Northern Ireland Assembly Commission, a Northern Ireland Minister, the head of a Northern Ireland department or a Northern Ireland department.
- (5) In this Part “occupational pension scheme” means a pension scheme established by an employer or employers and having or capable of having effect so as to provide benefits to or in respect of any or all of the employees of—
  - (a) that employer or those employers, or
  - (b) any other employer,
 (whether or not it also has or is capable of having effect so as to provide benefits to or in respect of other persons).
- (6) In this Part “sponsoring employer”, in relation to an occupational pension scheme, means the employer, or any of the employers, to or in respect of any or all of whose employees the pension scheme has, or is capable of having, effect so as to provide benefits.
- (7) In this Part “overseas pension scheme” means a pension scheme (other than a registered pension scheme) which—
  - (a) is established in a country or territory outside the United Kingdom, and
  - (b) satisfies any requirements prescribed for the purposes of this subsection by regulations made by the Board of Inland Revenue.
- (8) In this Part “recognised overseas pension scheme” means an overseas pension scheme which—

- (a) is established in a country or territory prescribed, or of a description prescribed, for the purposes of this subsection by regulations made by the Board of Inland Revenue, or
- (b) satisfies any requirements so prescribed.

#### **151 Meaning of “member”**

- (1) In this Part “member” in relation to a pension scheme, means any active member, pensioner member, deferred member or pension credit member of the pension scheme.
- (2) For the purposes of this Part a person is an active member of a pension scheme if there are presently arrangements made under the pension scheme for the accrual of benefits to or in respect of the person.
- (3) For the purposes of this Part a person is a pensioner member of a pension scheme if the person is entitled to the present payment of benefits under the pension scheme and is not an active member.
- (4) A person is a deferred member of a pension scheme if the person has accrued rights under the pension scheme and is neither an active member nor a pensioner member.
- (5) A person is a pension credit member of a pension scheme if the person has rights under the pension scheme which are attributable (directly or indirectly) to pension credits.

#### **152 Meaning of “arrangement”**

- (1) In this Part “arrangement”, in relation to a member of a pension scheme, means an arrangement relating to the member under the pension scheme.
- (2) For the purposes of this Part an arrangement is a “money purchase arrangement” at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are cash balance benefits or other money purchase benefits.
- (3) For the purposes of this Part a money purchase arrangement is a “cash balance arrangement” at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are cash balance benefits.
- (4) In this Part “money purchase benefits”, in relation to a member of a pension scheme, means benefits the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made under the pension scheme by the member or any other person in respect of the member or any other factor).
- (5) In this Part “cash balance benefits” means benefits the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member calculated otherwise than wholly by reference to payments made under the arrangement by the member or by any other person in respect of the member (or transfers or other credits).
- (6) For the purposes of this Part an arrangement is a “defined benefits arrangement” at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are defined benefits.

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- (7) In this Part “defined benefits”, in relation to a member of a pension scheme, means benefits which are not money purchase benefits (but which are calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision).
- (8) For the purposes of this Part an arrangement is a “hybrid arrangement” at any time if, at that time, all of the benefits that may be provided to or in respect of the member under the arrangement are, depending on the circumstances, to be of one of any two or three of the following varieties—
  - (a) cash balance benefits,
  - (b) other money purchase benefits, and
  - (c) defined benefits.
- (9) Where not all of the benefits that may be provided under an arrangement to or in respect of the member are of the same one of those varieties of benefits, the arrangement is to be treated for the purposes of this Part as being two or three separate arrangements one of which relates to each of the two or three varieties of benefits that may be so provided.

## CHAPTER 2

### REGISTRATION OF PENSION SCHEMES

#### *Registration*

#### **153 Registration of pension schemes**

- (1) An application may be made to the Inland Revenue for a pension scheme to be registered.
- (2) The application—
  - (a) must contain any information which is reasonably required by the Inland Revenue in any form specified by the Board of Inland Revenue, and
  - (b) must be accompanied by a declaration that the application is made by the scheme administrator (see section 270) and any other declarations by the scheme administrator which are reasonably required by the Inland Revenue.
- (3) The declarations which the Inland Revenue may require to accompany an application for the registration of a pension scheme include, in particular, a declaration that the instruments or agreements by which it is constituted do not entitle any person to unauthorised payments (see section 160(5)).
- (4) On receipt of an application for a pension scheme to be registered the Inland Revenue must decide whether or not to register the pension scheme.
- (5) The Inland Revenue’s decision must be to register the pension scheme unless it appears that—
  - (a) any information contained in the application is incorrect, or
  - (b) any declaration accompanying it is false.
- (6) The Inland Revenue must notify the scheme administrator of the decision on the application.

- (7) Unless the Inland Revenue's decision is not to register the pension scheme, the notification must state the day on and after which the pension scheme will be a registered pension scheme.
- (8) An annuity contract—
  - (a) by means of which benefits under a registered pension scheme have been secured, but
  - (b) which does not provide for the immediate payment of benefits,is to be treated as having become a registered pension scheme on the day on which it is made.
- (9) Schedule 36 contains (in Part 1) provisions treating certain pension schemes in existence immediately before 6th April 2006 as registered pension schemes (and related provisions).

#### **154 Persons by whom registered pension scheme may be established**

- (1) An application to register a pension scheme may be made only if the pension scheme is an occupational pension scheme or has been established by—
  - (a) an insurance company (see section 275),
  - (b) a unit trust scheme manager,
  - (c) an operator, trustee or depositary of a recognised EEA collective investment scheme,
  - (d) an authorised open-ended investment company,
  - (e) a building society,
  - (f) a bank, or
  - (g) an EEA investment portfolio manager.
- (2) But subsection (1) does not apply to a public service pension scheme.
- (3) Section 155 defines terms used in subsection (1)(b) to (g).
- (4) The Treasury may by order amend this section and section 155.

#### **155 Persons by whom scheme may be established: supplementary**

- (1) This section has effect for defining terms used in section 154(1)(b) to (g).
- (2) “Unit trust scheme manager” means—
  - (a) a person who has permission under Part 4 of FISMA 2000 to manage unit trust schemes authorised under section 243 of FISMA 2000, or
  - (b) a firm which has permission under paragraph 4 of Schedule 4 to FISMA 2000 (as a result of qualifying for authorisation under paragraph 2 of that Schedule: Treaty firms) to manage unit trust schemes authorised under that section.
- (3) “Recognised EEA collective investment scheme” means a collective investment scheme (within the meaning given by section 235 of FISMA 2000) which is recognised by virtue of section 264 of FISMA 2000 (schemes constituted in other EEA States).
- (4) “Authorised open-ended investment company” has the meaning given by section 237(3) of FISMA 2000.

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- (5) “Building society” means a building society within the Building Societies Act 1986 (c. 53).
- (6) “Bank” means—
  - (a) a person falling within section 840A(1)(b) of ICTA (persons, other than building societies etc. permitted to accept deposits), or
  - (b) a body corporate which is a subsidiary or holding company of a person falling within section 840A(1)(b) of ICTA or is a subsidiary of the holding company of such a person.

In paragraph (b) “subsidiary” and “holding company” are to be read in accordance with section 736 of the Companies Act 1985 (c. 6) or Article 4 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).

- (7) “EEA investment portfolio manager” means an institution which—
  - (a) is an EEA firm of the kind mentioned in paragraph 5(a), (b) or (c) of Schedule 3 to FISMA 2000 (certain credit and financial institutions),
  - (b) qualifies for authorisation under paragraph 12(1) or (2) of that Schedule, and
  - (c) has permission under FISMA 2000 to manage portfolios of investments.

## **156 Appeal against decision not to register**

- (1) This section applies where, on an application for a pension scheme to be registered, the Inland Revenue’s decision is not to register the pension scheme.
- (2) The scheme administrator may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the scheme administrator may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the scheme administrator was notified of the decision.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the pension scheme ought to have been registered by the Inland Revenue.
- (7) If they decide that the pension scheme ought not to have been registered by the Inland Revenue, they must dismiss the appeal.
- (8) If they decide that the pension scheme ought to have been registered by the Inland Revenue, the pension scheme is to be treated as having been registered on such date as the Commissioners determine (but subject to any further appeal or any determination on, or in consequence of, a case stated).

### *De-registration*

#### **157 De-registration**

- (1) The Inland Revenue may withdraw the registration of a pension scheme.
- (2) If the Inland Revenue withdraws the registration of a pension scheme the Inland Revenue must notify the scheme administrator.
- (3) If there is no-one who is the scheme administrator, the Inland Revenue must instead notify any person or persons—
  - (a) who has or have responsibility for the discharge of any obligation relating to the pension scheme under section 271(4) (continuation of liability where no scheme administrator), section 272 (trustees etc.) or section 273 (members), and
  - (b) whom it is reasonably practicable for the Inland Revenue to identify.
- (4) The notification must state the date on and after which the pension scheme will not be a registered pension scheme.

#### **158 Grounds for de-registration**

- (1) The registration of a pension scheme may be withdrawn under section 157 only if it appears to the Inland Revenue—
  - (a) that the amount of the scheme chargeable payments (see section 241) made by the pension scheme during any period of 12 months exceeds the de-registration threshold,
  - (b) that the scheme administrator fails to pay a substantial amount of tax (or interest on tax) due from the scheme administrator by virtue of this Part,
  - (c) that the scheme administrator fails to provide information required to be provided to the Inland Revenue by virtue of this Part and the failure is significant,
  - (d) that any information contained in the application to register the pension scheme or otherwise provided to the Inland Revenue is incorrect in a material particular,
  - (e) that any declaration accompanying that application or the provision of other information to the Inland Revenue is false in a material particular, or
  - (f) that there is no scheme administrator.
- (2) The amount of the scheme chargeable payments made by a pension scheme during any period of 12 months exceeds the de-registration threshold if the scheme chargeable payments percentage is 25% or more.
- (3) The scheme chargeable payments percentage is—
  - (a) if only one scheme chargeable payment is made during the period of 12 months, the percentage of the pension fund used up on the occasion of that scheme chargeable payment, and
  - (b) if two or more scheme chargeable payments are made during the period of 12 months, the aggregate of the percentages of the pension fund used up on the occasion of each of those scheme chargeable payments.
- (4) The percentage of the pension fund used up on the occasion of a scheme chargeable payment is—

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

where—

SCP is the amount of the scheme chargeable payment, 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 at the time when the scheme chargeable payment is made.

- (5) A failure by a scheme administrator to provide information required to be provided to the Inland Revenue by or under this Part is significant if—
- (a) the amount of information which the scheme administrator fails to provide is substantial, or
  - (b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.

## **159 Appeal against decision to de-register**

- (1) This section applies where the Inland Revenue decides to withdraw the registration of a pension scheme under section 157.
- (2) The scheme administrator, or any person notified under that section of the withdrawal of registration, may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the appellant may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the appellant was notified of the decision.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the registration of the pension scheme ought to have been withdrawn.
- (7) If they decide that the registration of the pension scheme ought to have been withdrawn, they must dismiss the appeal.
- (8) If they decide that the registration of the pension scheme ought not to have been withdrawn, the pension scheme is to be treated as having remained a registered pension scheme (but subject to any further appeal or any determination on, or in consequence of, a case stated).



## CHAPTER 3

### PAYMENTS BY REGISTERED PENSION SCHEMES

#### *Introductory*

#### **160 Payments by registered pension schemes**

- (1) The only payments which a registered pension scheme is authorised to make to or in respect of a member of the pension scheme are those specified in section 164.
- (2) In this Part “unauthorised member payment” means—
  - (a) a payment by a registered pension scheme to or in respect of a member of the pension scheme which is not authorised by section 164, and
  - (b) anything which is to be treated as an unauthorised payment to or in respect of a member of the pension scheme under section 172, 173 or 174.
- (3) The only payments which a registered pension scheme that is an occupational pension scheme is authorised to make to or in respect of a sponsoring employer are those specified in section 175.
- (4) In this Part “unauthorised employer payment” means—
  - (a) a payment by a registered pension scheme that is an occupational pension scheme, to or in respect of a sponsoring employer, which is not authorised by section 175, and
  - (b) anything which is to be treated as an unauthorised payment to a sponsoring employer under section 181.
- (5) In this Part “unauthorised payment” means—
  - (a) an unauthorised member payment, or
  - (b) an unauthorised employer payment.
- (6) As well as section 157 (de-registration), the following provisions—
  - (a) section 208 (unauthorised payments charge),
  - (b) section 209 (unauthorised payments surcharge),
  - (c) section 239 (scheme sanction charge), and
  - (d) section 242 (de-registration charge),specify consequences of making unauthorised payments.
- (7) Sections 182 to 185 contain provision about amounts that a registered pension scheme is not authorised to borrow.
- (8) As well as section 157, sections 239 and 242 specify consequences of unauthorised borrowing.
- (9) Schedule 36 contains (in Parts 3 and 4) transitional provision about unauthorised payments.

#### **161 Meaning of “payment” etc**

- (1) This section applies for the interpretation of this Chapter.
- (2) “Payment” includes a transfer of assets and any other transfer of money’s worth.

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- (3) Subsection (4) applies to a payment made or benefit provided under or in connection with an investment (including an insurance contract or annuity) acquired using sums or assets held for the purposes of a registered pension scheme.
- (4) The payment or benefit is to be treated as made or provided from sums or assets held for the purposes of the pension scheme, even if the pension scheme has been wound up since the investment was acquired.
- (5) A payment made by a registered pension scheme to a person who—
  - (a) is connected with a member or sponsoring employer (or was connected with a member at the date of the member's death), and
  - (b) is not a member or sponsoring employer,
 is to be treated as made in respect of the member or sponsoring employer.
- (6) Any asset held by a person connected with a member or sponsoring employer (or who was connected with a member at the date of the member's death) is to be treated as held for the benefit of the member or sponsoring employer.
- (7) Any increase in the value of an asset held by, or reduction in the liability of, a person connected with a member or sponsoring employer (or who was connected with a member at the date of the member's death) is to be treated as an increase or reduction for the benefit of the member or sponsoring employer.
- (8) Section 839 of ICTA (connected persons) applies for the purposes of this section.

## **162    Meaning of “loan”**

- (1) This section applies for the interpretation of this Chapter.
- (2) “Loan” does not include the purchase of or subscription to debentures, debenture stock, loan stock, bonds, certificates of deposit or other instruments creating or acknowledging indebtedness which are—
  - (a) listed or dealt in on a recognised stock exchange (within the meaning of section 841 of ICTA), or
  - (b) offered to the public.
- (3) A guarantee of a loan made to or in respect of a member or sponsoring employer of a registered pension scheme is to be treated as a loan to or in respect of the member or sponsoring employer of an amount equal to the amount guaranteed.
- (4) If a member or sponsoring employer of a registered pension scheme—
  - (a) is liable to pay a debt, the right to payment of which constitutes an asset held for the purposes of the pension scheme, but
  - (b) is not required to pay it by the relevant date,
 the debt is to be treated as a loan made by the pension scheme to the member or sponsoring employer on that date.
- (5) The relevant date is the date by which a person at arm's length from the pension scheme might be expected to be required to pay the debt.

## **163    Meaning of “borrowing” etc**

- (1) This section applies for the interpretation of this Chapter.

- (2) Borrowing is borrowing by a registered pension scheme if the amount borrowed is to be repaid from sums or assets held for the purposes of the pension scheme.
- (3) A liability is a liability of a registered pension scheme if the liability is to be met from sums or assets held for the purposes of the pension scheme.
- (4) Borrowing by a registered pension scheme is in respect of an arrangement if it is properly attributable to the arrangement in accordance with the provisions of the pension scheme and any just and reasonable apportionment.

### *Authorised member payments*

## **164 Authorised member payments**

The only payments a registered pension scheme is authorised to make to or in respect of a member of the pension scheme are—

- (a) pensions permitted by the pension rules or the pension death benefit rules (see sections 165 and 167),
- (b) lump sums permitted by the lump sum rule or the lump sum death benefit rule (see sections 166 and 168),
- (c) recognised transfers (see section 169),
- (d) scheme administration member payments (see section 171),
- (e) payments pursuant to a pension sharing order or provision, and
- (f) payments of a description prescribed by regulations made by the Board of Inland Revenue.

## **165 Pension rules**

- (1) These are the rules relating to the payment of pensions by a registered pension scheme to a member of the pension scheme (“the pension rules”).

### *Pension rule 1*

No payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the pension scheme.

### *Pension rule 2*

If the member dies before the end of the period of ten years beginning with the day on which the member became entitled to a scheme pension, an annuity or alternatively secured pension, payment of the scheme pension, annuity or alternatively secured pension may continue to be made (to any person) until the end of that period.

But no other payment of the member’s pension may be made after the member’s death.

### *Pension rule 3*

No payment of pension other than a scheme pension may be made in respect of a defined benefits arrangement.

### *Pension rule 4*

If the member has not reached the age of 75, no payment of pension other than—

- (a) a scheme pension,

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- (b) a lifetime annuity, or
- (c) unsecured pension,

may be made in respect of a money purchase arrangement; but a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead.

*Pension rule 5*

The total amount of unsecured pension paid in each unsecured pension year in respect of a money purchase arrangement must not exceed 120% of the basis amount for the unsecured pension year.

*Pension rule 6*

If the member has reached the age of 75, no payment of pension other than—

- (a) a scheme pension,
- (b) a lifetime annuity, or
- (c) alternatively secured pension,

may be made in respect of a money purchase arrangement; but a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead.

*Pension rule 7*

The total amount of alternatively secured pension paid in each alternatively secured pension year in respect of a money purchase arrangement must not exceed 70% of the basis amount for the alternatively secured pension year.

- (2) In this Part “pension”, in relation to a registered pension scheme, includes—
  - (a) an annuity, and
  - (b) income withdrawal.
- (3) For the purposes of this Part, a person becomes entitled to a pension under a registered pension scheme—
  - (a) in the case of income withdrawal under the pension scheme, whenever sums or assets held for the purposes of an arrangement under the pension scheme are designated as available for the payment of unsecured pension, and
  - (b) in any other case, when the person first acquires an actual (rather than a prospective) right to receive the pension.
- (4) Part 1 of Schedule 28 gives the meaning of expressions used in the pension rules.

## **166 Lump sum rule**

- (1) This is the rule relating to the payment of lump sums by a registered pension scheme to a member of the pension scheme (“the lump sum rule”).

*Lump sum rule*

No lump sum may be paid other than—

- (a) a pension commencement lump sum,
- (b) a serious ill-health lump sum,
- (c) a short service refund lump sum,
- (d) a refund of excess contributions lump sum,
- (e) a trivial commutation lump sum,
- (f) a winding-up lump sum, or
- (g) a lifetime allowance excess lump sum.

- (2) For the purposes of this Part, a person becomes entitled to a lump sum under a registered pension scheme—
- (a) in the case of a pension commencement lump sum, immediately before the person becomes entitled to the pension in connection with which it is paid, and
  - (b) in any other case, when the person acquires an actual (rather than a prospective) right to receive the lump sum.
- (3) Part 1 of Schedule 29 gives the meaning of expressions used in the lump sum rule.
- (4) Schedule 36 contains (in Part 3) transitional provisions about lump sums.

## **167 Pension death benefit rules**

- (1) These are the rules relating to the payment of pension death benefits by a registered pension scheme in respect of a member of the pension scheme (“the pension death benefit rules”).

### *Pension death benefit rule 1*

No payment of pension death benefit may be made otherwise than to a dependant of the member.

### *Pension death benefit rule 2*

No payment of pension death benefit other than a dependants' scheme pension may be made in respect of a defined benefits arrangement.

### *Pension death benefit rule 3*

If a dependant has not reached the age of 75, no payment of pension death benefit to the dependant other than—

- (a) a dependants' scheme pension,
- (b) a dependants' annuity, or
- (c) dependants' unsecured pension,

may be made to the dependant in respect of a money purchase arrangement; but a dependants' scheme pension may only be paid if the member or dependant had an opportunity to select a dependants' annuity instead.

### *Pension death benefit rule 4*

The total amount of dependants' unsecured pension paid to a dependant in each unsecured pension year in respect of a money purchase arrangement must not exceed 120% of the basis amount for the unsecured pension year.

### *Pension death benefit rule 5*

If a dependant has reached the age of 75, no payment of pension other than—

- (a) a dependants' scheme pension,
- (b) a dependants' annuity, or
- (c) dependants' alternatively secured pension,

may be made to the dependant in respect of a money purchase arrangement; but a dependants' scheme pension may only be paid if the member or dependant had an opportunity to select a dependants' annuity instead.

### *Pension death benefit rule 6*

The total amount of dependants' alternatively secured pension paid to a dependant in each alternatively secured pension year in respect of a money purchase arrangement must not exceed 70% of the basis amount for the alternatively secured pension year.

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- (2) “Pension death benefit” means a pension payable on the death of the member (other than a member’s pension payable after the member’s death under pension rule 2: see section 165).
- (3) Part 2 of Schedule 28 gives the meaning of expressions used in the pension death benefit rules.

## **168 Lump sum death benefit rule**

- (1) This is the rule relating to the payment of lump sum death benefits by a registered pension scheme in respect of a member of the pension scheme (“the lump sum death benefit rule”).

### *Lump sum death benefit rule*

No lump sum death benefit may be paid other than—

- (a) a defined benefits lump sum death benefit,
  - (b) a pension protection lump sum death benefit,
  - (c) an uncrystallised funds lump sum death benefit,
  - (d) an annuity protection lump sum death benefit,
  - (e) an unsecured pension fund lump sum death benefit,
  - (f) a charity lump sum death benefit,
  - (g) a transfer lump sum death benefit,
  - (h) a trivial commutation lump sum death benefit, or
  - (i) a winding-up lump sum death benefit.
- (2) In this Part “lump sum death benefit” means a lump sum payable on the death of the member.
  - (3) Part 2 of Schedule 29 gives the meaning of expressions used in the lump sum death benefit rule.
  - (4) Schedule 36 contains (in Part 3) transitional provision about lump sum death benefits.

## **169 Recognised transfers**

- (1) A “recognised transfer” is a transfer of sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme so as to become held for the purposes of, or to represent rights under—
  - (a) another registered pension scheme, or
  - (b) a qualifying recognised overseas pension scheme,
 in connection with a member of that pension scheme.
- (2) For the purposes of this Part a recognised overseas pension scheme is a qualifying recognised overseas pension scheme if—
  - (a) the scheme manager has given to the Inland Revenue notification that it is a recognised overseas pension scheme and has provided any such evidence that it is a recognised overseas pension scheme as the Inland Revenue may require,
  - (b) the scheme manager has undertaken to the Inland Revenue to inform the Inland Revenue if it ceases to be a recognised overseas pension scheme,
  - (c) the scheme manager has undertaken to the Inland Revenue to comply with any prescribed information requirements imposed on the scheme manager, and

- (d) the recognised overseas pension scheme is not excluded from being a qualifying recognised overseas pension scheme by subsection (5).
- (3) In this Part “scheme manager”, in relation to a pension scheme, means the person or persons administering, or responsible for the management of, the pension scheme.
- (4) In this section “prescribed information requirements” means—
  - (a) requirements imposed by or under regulations made by the Board of Inland Revenue to provide to the Inland Revenue any information of a description prescribed by regulations so made, and
  - (b) requirements specified by regulations so made to provide information to an authority so specified in circumstances so specified.
- (5) A recognised overseas pension scheme is excluded from being a qualifying recognised overseas pension scheme by this subsection if the Inland Revenue has decided that—
  - (a) there has been a failure to comply with any prescribed information requirements imposed on the scheme manager and the failure is significant, and
  - (b) by reason of the failure it is not appropriate that transfers of sums or assets held for the purposes of, or representing accrued rights under, registered pension schemes so as to become held for the purposes of, or to represent rights under, the recognised overseas pension scheme should be recognised transfers,and has notified the person or persons appearing to be the scheme manager of that decision (but subject to subsection (7) and section 170).
- (6) A failure to comply with prescribed information requirements imposed on the scheme manager is significant if—
  - (a) the amount of the information which has not been provided is substantial, or
  - (b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.
- (7) The Inland Revenue—
  - (a) may at any time after a recognised overseas pension scheme becomes excluded from being a qualifying recognised overseas pension scheme decide that the pension scheme is to cease to be so excluded, and
  - (b) must notify the scheme manager of the decision.

## **170 Appeal against decision to exclude recognised overseas pension scheme**

- (1) This section applies where a recognised overseas pension scheme is excluded from being a qualifying recognised overseas pension scheme by a decision of the Inland Revenue under section 169(5).
- (2) The scheme manager may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the scheme manager may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.

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- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the notification of the decision was given.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme.
- (7) If they decide that the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme, they must dismiss the appeal.
- (8) If they decide that the recognised overseas pension scheme ought not to have been excluded from being a qualifying recognised overseas pension scheme, the recognised overseas pension scheme is to be treated as having remained a qualifying recognised overseas pension scheme (but subject to any further appeal or any determination on, or in consequence of, a case stated).

## **171 Scheme administration member payments**

- (1) A “scheme administration member payment” is a payment by a registered pension scheme to or in respect of a member of the pension scheme which is made for the purposes of the administration or management of the pension scheme.
- (2) But if a payment falling within subsection (1) exceeds the amount which might be expected to be paid to a person who was at arm’s length, the excess is not a scheme administration member payment.
- (3) Scheme administration member payments include in particular—
  - (a) the payment of wages, salaries or fees to persons engaged in administering the pension scheme, and
  - (b) payments made for the purchase of assets to be held for the purposes of the pension scheme.
- (4) A loan to or in respect of a member of the pension scheme is not a scheme administration member payment.
- (5) Regulations made by the Board of Inland Revenue may provide that payments of a description specified in the regulations are, or are not, scheme administration member payments.

### *Unauthorised member payments*

## **172 Assignment**

- (1) Subsection (2) applies if a member of a registered pension scheme (or the member’s personal representatives) assigns or agrees to assign any benefit, other than an excluded pension, to which the member has an actual or prospective entitlement under the pension scheme.
- (2) Unless the assignment or agreement is pursuant to a pension sharing order or provision, the pension scheme is to be treated as making an unauthorised payment to the member (or to the member’s personal representatives in respect of the member).



- (3) Subsection (4) applies if a person (or a person's personal representatives) assigns or agrees to assign any benefit, other than an excluded pension, to which the person has an actual or prospective entitlement under a registered pension scheme in respect of a member of the pension scheme.
- (4) Unless the assignment or agreement is pursuant to a pension sharing order or provision, the pension scheme is to be treated as making an unauthorised payment to the person (or the person's personal representatives) in respect of the member.
- (5) The amount of the unauthorised payment is the greater of—
  - (a) the consideration received in respect of the assignment or agreement, and
  - (b) the consideration which might be expected to be received in respect of the assignment or agreement if the parties to the transaction were at arm's length.
- (6) Where a pension scheme is treated by this section as having made an unauthorised payment in relation to an assignment (or an agreement to assign), payments by the pension scheme of the benefit assigned (or agreed to be assigned) are not unauthorised payments.
- (7) An excluded pension is a pension which under pension rule 2 may continue to be paid after the member's death (see section 165).
- (8) "Assignment" includes assignation and related expressions are to be read accordingly.

### **173 Benefits**

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to a member of the pension scheme if an asset held for the purposes of the pension scheme is used to provide a benefit (other than a payment) to—
  - (a) the member, or
  - (b) a member of the member's family or household.
- (2) If the benefit is received by reason of an employment which is not an excluded employment, subsection (1) does not apply.
- (3) If the benefit is received by reason of an excluded employment, subsection (1) only applies if—
  - (a) it is a benefit to which Chapter 6 or 10 of the benefits code (cars and vans, and benefits not dealt with elsewhere in benefits code) would apply if the employment were not an excluded employment,
  - (b) the pension scheme is an occupational pension scheme, and
  - (c) the member, or a member of the member's family or household, is a director of, and has a material interest in, a sponsoring employer.
- (4) A registered pension scheme is to be treated as having made an unauthorised payment in respect of a member of the pension scheme if, after the member's death, an asset held for the purposes of the pension scheme is used to provide a benefit (other than a payment) to a person who, at the date of the member's death, was a member of the member's family or household.
- (5) The person who receives the benefit is to be treated as having received the unauthorised payment.

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- (6) If the benefit is received by reason of an employment which is not an excluded employment, subsections (4) and (5) do not apply.
- (7) If the benefit is received by reason of an excluded employment, subsections (4) and (5) only apply if—
  - (a) paragraphs (a) and (b) of subsection (3) apply, and
  - (b) at the date of the member's death the member, or a member of the member's family or household, was a director of, and had a material interest in, a sponsoring employer.
- (8) The amount of an unauthorised payment treated as having been made by this section—
  - (a) in relation to such benefits, and in such circumstances, as may be prescribed by regulations made by the Board of Inland Revenue, is an amount determined in accordance with the regulations, and
  - (b) otherwise, is the amount which would be the cash equivalent of the benefit under the benefits code if the benefit were received by reason of an employment and the benefits code applied to it.
- (9) For the purposes of subsection (8)—
  - (a) references in the benefits code to the employee are to be treated as references to the member, and
  - (b) references in the benefits code to the employer are to be treated as references to the pension scheme.
- (10) In this section—
  - “the benefits code” has the meaning given by section 63(1) of ITEPA 2003,
  - “director” has the meaning given by section 67 of that Act,
  - “excluded employment” has the meaning given by section 63(4) of that Act, and
  - “material interest” has the meaning given by section 68 of that Act.
- (11) Section 721 of ITEPA 2003 applies for the purposes of determining the members of a person's family or household.

## **174 Value shifting**

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to a member of the pension scheme if, in connection with any of the events mentioned in subsection (3) or a change in the value of a currency—
  - (a) the value of an asset held for the purposes of the pension scheme is reduced or a liability of the pension scheme is increased, and
  - (b) the value of an asset held by or for the benefit of the member is increased, a liability of the member is reduced, or a liability of another person is reduced for the benefit of the member.
- (2) But if the event or the change in the value of the currency occurs after the member's death—
  - (a) the pension scheme is to be treated as having made an unauthorised payment in respect of the member (rather than to the member), and
  - (b) the person who holds the asset or is subject to the liability in relation to which subsection (1)(b) is satisfied is to be treated as having received the unauthorised payment.

(3) The events are—

- (a) the creation, alteration, release or extinction of any power, right, option or liability relating to assets held for the purposes of the pension scheme (whether or not provided for in the terms on which the asset is acquired or held),
- (b) the creation, alteration, release or extinction of any power, right or option relating to a liability of the pension scheme (whether or not provided for in the terms on which the liability is incurred),
- (c) the exercise of, or failure to exercise, any power, right or option in relation to assets held for the purposes of the pension scheme or a liability of the pension scheme, or
- (d) the exercise of, or failure to exercise, any power, right or option which constitutes an asset held for the purposes of the pension scheme,

in a way which differs from that which might be expected if the parties to the transaction were at arm's length.

- (4) The amount of the unauthorised payment is the amount by which the reduction in value of the asset held for the purposes of the pension scheme, or the increase in the liability of the pension scheme, exceeds that which might be expected if the parties to the transaction were at arm's length.
- (5) Regulations made by the Board of Inland Revenue may make provision as to how the excess is to be calculated in relation to events of a description specified in the regulations (including provision as to the times at which the asset or liability is to be valued).

*Authorised employer payments*

**175 Authorised employer payments**

The only payments which a registered pension scheme that is an occupational pension scheme is authorised to make to or in respect of a sponsoring employer are—

- (a) public service scheme payments (see section 176),
- (b) authorised surplus payments (see section 177),
- (c) compensation payments (see section 178),
- (d) authorised employer loans (see section 179),
- (e) scheme administration employer payments (see section 180), and
- (f) payments of a description prescribed by regulations made by the Board of Inland Revenue.

**176 Public service scheme payment**

A payment is a public service scheme payment if—

- (a) it is made by a public service pension scheme, and
- (b) it is not of a description prescribed by regulations made by the Board of Inland Revenue.

**177 Authorised surplus payment**

For the purposes of this Part a payment is an authorised surplus payment if it is of a description prescribed by regulations made by the Board of Inland Revenue.

## **178 Compensation payments**

A payment is a compensation payment if it is made in respect of a member's liability to a sponsoring employer in respect of a criminal, fraudulent or negligent act or omission by the member.

## **179 Authorised employer loan**

- (1) A loan made to or in respect of a sponsoring employer is an authorised employer loan if—
  - (a) the amount loaned does not exceed an amount equal to 50% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme immediately before the loan is made,
  - (b) the loan is secured by a charge which is of adequate value, and
  - (c) the repayment terms comply with subsection (2).
- (2) The repayment terms comply with this subsection if—
  - (a) the rate of interest payable on the loan is not less than the rate prescribed by regulations made by the Board of Inland Revenue,
  - (b) the loan repayment date is before the end of the period of five years beginning with the date on which the loan is made, or has been postponed to a date after the end of that period under subsection (3), and
  - (c) the amount payable in each period beginning with the date on which the loan is made, and ending with the last day of a loan year, is not less than the required amount.
- (3) If on a standard loan repayment date any amount (including interest) is owing, the loan repayment date may be postponed to a date before the end of the period of five years beginning with the standard loan repayment date.
- (4) The loan repayment date may be postponed under subsection (3) only once.
- (5) If the amount of a loan to or in respect of a sponsoring employer is increased, the amount of the increase is to be treated as a loan made on the date of the increase.
- (6) Schedule 30 gives the meaning of expressions used in this section and explains how to calculate the amount of the unauthorised payment when a loan to or in respect of a sponsoring employer does not comply with subsection (1).
- (7) In this section and that Schedule “charge” includes a right in security or an agreement to create a right in security; and any reference to assets subject to a charge or assets charged includes a reference to the property over which such a right is granted.
- (8) Schedule 36 contains (in Part 4) transitional provision about loans to sponsoring employers.

## **180 Scheme administration employer payments**

- (1) A “scheme administration employer payment” is a payment made—
  - (a) by a registered pension scheme that is an occupational pension scheme, and
  - (b) to or in respect of a sponsoring employer,for the purposes of the administration or management of the pension scheme.

- (2) But if a payment falling within subsection (1) exceeds the amount which might be expected to be paid to a person who was at arm's length, the excess is not a scheme administration employer payment.
- (3) Scheme administration employer payments include in particular—
  - (a) the payment of wages, salaries or fees to persons engaged in administering the pension scheme, and
  - (b) payments made for the purchase of assets to be held for the purposes of the pension scheme.
- (4) A loan to or in respect of a sponsoring employer is not a scheme administration employer payment.
- (5) Payments made to acquire shares in a sponsoring employer are not scheme administration employer payments if, when the payment is made—
  - (a) the market value of shares in the sponsoring employer held for the purposes of the pension scheme is equal to or greater than 5% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme, or
  - (b) the total market value of shares in sponsoring employers held for the purposes of the pension scheme is equal to or greater than 20% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme.
- (6) Regulations made by the Board of Inland Revenue may provide that payments of a description specified in the regulations are, or are not, scheme administration employer payments.

### *Unauthorised employer payments*

## **181 Value shifting**

- (1) A registered pension scheme that is an occupational pension scheme is to be treated as having made an unauthorised payment to a sponsoring employer if, in connection with any of the events mentioned in subsection (2) or a change in the value of a currency—
  - (a) the value of an asset held for the purposes of the pension scheme is reduced or a liability of the pension scheme is increased, and
  - (b) the value of an asset held by or for the benefit of the sponsoring employer is increased, a liability of the sponsoring employer is reduced, or a liability of another person is reduced for the benefit of the sponsoring employer.
- (2) The events are—
  - (a) the creation, alteration, release or extinction of any power, right, option or liability relating to assets held for the purposes of the pension scheme (whether or not provided for in the terms on which the asset is acquired or held),
  - (b) the creation, alteration, release or extinction of any power, right or option relating to a liability of the pension scheme (whether or not provided for in the terms on which the liability is incurred),
  - (c) the exercise of, or failure to exercise, any power, right or option in relation to assets held for the purposes of the pension scheme or a liability of the pension scheme, or

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- (d) the exercise of, or failure to exercise, any power, right or option which constitutes an asset held for the purposes of the pension scheme, in a way which differs from that which might be expected if the parties to the transaction were at arm's length.
- (3) The amount of the unauthorised payment is the amount by which the reduction in value of the asset held for the purposes of the pension scheme, or the increase in the liability of the pension scheme, exceeds that which might be expected if the parties to the transaction were at arm's length.
- (4) Regulations made by the Board of Inland Revenue may make provision as to how the excess is to be calculated in relation to events of a description specified in the regulations (including provision as to the times at which the asset or liability is to be valued).

### *Borrowing*

## **182 Unauthorised borrowing: money purchase arrangements**

- (1) A registered pension scheme is not authorised to borrow an amount in respect of a money purchase arrangement unless the arrangement borrowing condition is met.
- (2) The arrangement borrowing condition is met if—

$$APB + PB < \frac{VA}{2}$$

where—

APB is the aggregate of the amounts previously borrowed in respect of the arrangement (excluding any amounts which have been repaid),

PB is the amount proposed to be borrowed in respect of the arrangement, and

VA is the value of the arrangement.

- (3) The value of the arrangement is the aggregate of—
  - (a) the amount of such of the sums and the market value of such of the assets as represent the member's unsecured pension fund or alternatively secured pension fund in respect of the arrangement (if any),
  - (b) the amount of such of the sums and the market value of such of the assets as represent dependants' unsecured pension funds or alternatively secured pension funds in respect of the arrangement (if any),
  - (c) the aggregate of the value of each scheme pension or dependants' scheme pension payable in respect of the arrangement, and
  - (d) the value of the uncrystallised rights under the arrangement.
- (4) The value of a scheme pension or dependants' scheme pension payable in respect of the arrangement is—

$$RVF \times ARP$$

where—

RVF is the relevant valuation factor (see section 276), and

ARP is the annual rate at which the pension is payable.

- (5) Rights are uncrystallised if no-one has become entitled to the present payment of benefits in respect of the rights; and a person is to be treated as entitled to the present payment of benefits in respect of the sums and assets representing the person's unsecured pension fund or alternatively secured pension fund.
- (6) If the arrangement is a cash balance arrangement, the value of the uncrystallised rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits in respect of those rights if a person became entitled to benefits in respect of those rights.
- (7) If the arrangement is a money purchase arrangement other than a cash balance arrangement, the value of the uncrystallised rights under the arrangement is the aggregate of the amount of such of the sums, and the market value of such of the assets, held for the purposes of the arrangement as represent those rights.
- (8) If the arrangement is a hybrid arrangement under which either cash balance benefits or other money purchase benefits (but not defined benefits) may be provided, the value of the uncrystallised rights under the arrangement is the greater of—
  - (a) their value calculated under subsection (6) (on the assumption that cash balance benefits are provided), and
  - (b) their value calculated under subsection (7) (on the assumption that other money purchase benefits are provided).

### **183 Effect of unauthorised borrowing: money purchase arrangements**

- (1) Subsection (2) applies if a registered pension scheme borrows in respect of a money purchase arrangement an amount which it is not authorised to borrow under section 182.
- (2) The pension scheme is to be treated as having made a scheme chargeable payment—
  - (a) if subsection (3) applies, of an amount calculated in accordance with subsection (4), and
  - (b) otherwise, of the amount borrowed.

- (3) This subsection applies if, immediately before the amount is borrowed—

$$APB < \frac{VA}{2}$$

- (4) If subsection (3) applies, the amount of the scheme chargeable payment is—

$$APB + AB - \frac{VA}{2}$$

- (5) In subsections (3) and (4)—

APB is the aggregate of the amounts previously borrowed in respect of the arrangement (excluding any amounts which have been repaid),

AB is the amount borrowed, and

VA is the value of the arrangement, calculated in accordance with section 182(3), immediately before the amount is borrowed.

## 184 Unauthorised borrowing: other arrangements

- (1) A registered pension scheme is not authorised to borrow an amount in respect of any arrangement which is not a money purchase arrangement unless the scheme borrowing condition is met.
- (2) The scheme borrowing condition is met if—

$$(APB + PB) < \frac{AARA}{2}$$

where—

APB is the aggregate of the amounts previously borrowed by the pension scheme in respect of arrangements which are not money purchase arrangements (excluding any amounts which have been repaid),  
 PB is the amount proposed to be borrowed by the pension scheme, and  
 AARA is the aggregate amount of the relevant sums and assets.

- (3) The aggregate amount of the relevant sums and assets is the aggregate of—
- (a) the amount of the sums held for the purposes of such of the arrangements under the pension scheme as are not money purchase arrangements, and
  - (b) the market value of the assets held for the purposes of such of the arrangements under the pension scheme as are not money purchase arrangements.

## 185 Effect of unauthorised borrowing: other arrangements

- (1) Subsection (2) applies if a registered pension scheme borrows, in respect of an arrangement which is not a money purchase arrangement, an amount which it is not authorised to borrow under section 184.
- (2) The pension scheme is to be treated as having made a scheme chargeable payment—
- (a) if subsection (3) applies, of an amount calculated in accordance with subsection (4), and
  - (b) otherwise, of the amount borrowed.
- (3) This subsection applies if, immediately before the amount is borrowed—

$$APB < \frac{AARA}{2}$$

- (4) If subsection (3) applies, the amount of the scheme chargeable payment is—

$$APB + AB - \frac{AARA}{2}$$

- (5) In subsections (3) and (4)—

APB is the aggregate of the amounts previously borrowed by the pension scheme in respect of arrangements which are not money purchase arrangements (excluding any amounts which have been repaid),  
 AB is the amount borrowed, and  
 AARA is the aggregate amount of the relevant sums and assets, calculated in accordance with section 184(3), immediately before the amount is borrowed.



## CHAPTER 4

### REGISTERED PENSION SCHEMES: TAX RELIEFS AND EXEMPTIONS

#### *Scheme investments*

#### **186 Income**

- (1) No liability to income tax arises in respect of—
  - (a) income derived from investments or deposits held for the purposes of a registered pension scheme, or
  - (b) underwriting commissions applied for the purposes of a registered pension scheme which would otherwise be chargeable to tax under Case VI of Schedule D.
- (2) The exemption provided by subsection (1) does not apply to income derived from investments or deposits held as a member of a property investment LLP; and for this purpose “income” includes relevant stock lending fees, in relation to any investments, to which subsection (1) would apply by virtue of section 129B of ICTA (inclusion of relevant stock lending fees in income).
- (3) In this Part “investments”, in relation to a registered pension scheme, includes futures contracts and options contracts; and income derived from transactions relating to futures contracts or options contracts is to be treated as derived from the contracts.
- (4) For that purpose a contract is not prevented from being a futures contract or an options contract by the fact that a party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets) in full settlement of all obligations.

#### **187 Chargeable gains**

- (1) Section 271 of TCGA 1992 (exemptions) is amended as follows.
- (2) In paragraph (b) of subsection (1), for the words after “part of” substitute “the Fund mentioned in section 613(4) of the Taxes Act (House of Commons Members' Fund);”.
- (3) In subsection (1), omit—
  - (a) paragraph (d) (retirement annuity contracts),
  - (b) paragraph (g) (exempt approved schemes),
  - (c) paragraph (h) (approved personal pension schemes), and
  - (d) paragraph (j) (authorised unit trusts which are also approved personal pension schemes or exempt approved schemes),and the second sentence.
- (4) After that subsection insert—

“(1A) A gain accruing to a person on a disposal of investments held for the purposes of a registered pension scheme is not a chargeable gain.”
- (5) Omit subsection (2) (superannuation funds approved before 6th April 1980).
- (6) In subsection (10)—
  - (a) for “subsections (1)(g) and (h) and (2)” substitute “subsection (1A)”, and

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(b) omit the words after “options contracts”.

(7) In subsection (12), for “Subsection (1)(b), (c), (d), (g) and (h) and subsection (2)” substitute “Subsections (1)(b) and (c) and (1A)”.

### *Members' contributions*

## **188 Relief for contributions**

- (1) An individual who is an active member of a registered pension scheme is entitled to relief under this section in respect of relievable pension contributions paid during a tax year if the individual is a relevant UK individual for that year.
- (2) In this Part “relievable pension contributions”, in relation to an individual and a pension scheme, means contributions by or on behalf of the individual under the pension scheme other than contributions to which subsection (3) applies.
- (3) This subsection applies to—
  - (a) any contributions paid after the individual has reached the age of 75,
  - (b) any contributions paid by an employer of the individual (as to which see sections 196 to 201), and
  - (c) any amounts paid by the Board of Inland Revenue under section 42A(3) or 43 of the Pension Schemes Act 1993 (c. 48) or section 38A(3) or 39 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (rebates and minimum contributions).
- (4) For the purposes of this Part a pension credit which increases the rights of the individual under the pension scheme is only to be treated as a contribution on behalf of the individual if it derives from a pension scheme that is not a registered pension scheme.
- (5) For the purposes of this Part—
  - (a) any other transfer of any sum held for the purposes of, or representing accrued rights under, a pension scheme so as to become held for the purposes of, or to represent rights under, another pension scheme, and
  - (b) any transfer lump sum death benefit,
 is not to be treated as a contribution.
- (6) Any amount recovered by the individual’s employer under regulations made under—
  - (a) section 8(3) of the Pension Schemes Act 1993 (recovery of minimum payments), or
  - (b) section 4(3) of the Pension Schemes (Northern Ireland) Act 1993, (corresponding provision for Northern Ireland),
 in respect of minimum payments made to a registered pension scheme is to be treated for the purposes of this section (and sections 191 to 194) as a contribution paid by the individual under the pension scheme.
- (7) References in the Income Tax Acts to relief in respect of life assurance premiums do not include relief under this section.
- (8) The following sections make further provision about relief under this section—
  - section 189 (relevant UK individual),
  - section 190 (annual limit for relief),

sections 191 to 194 (methods of giving relief), and  
section 195 (transfer of certain shares to be treated as payment of contribution).

## **189 Relevant UK individual**

- (1) For the purposes of this Part an individual is a relevant UK individual for a tax year if—
  - (a) the individual has relevant UK earnings chargeable to income tax for that year,
  - (b) the individual is resident in the United Kingdom at some time during that year,
  - (c) the individual was resident in the United Kingdom both at some time during the five tax years immediately before that year and when the individual became a member of the pension scheme, or
  - (d) the individual, or the individual's spouse, has for the tax year general earnings from overseas Crown employment subject to UK tax.
- (2) In this Part “relevant UK earnings” means—
  - (a) employment income,
  - (b) income which is chargeable under Schedule D and is immediately derived from the carrying on or exercise of a trade, profession or vocation (whether individually or as a partner acting personally in a partnership), and
  - (c) income to which section 529 of ICTA (patent income of an individual in respect of inventions) applies.
- (3) For the purposes of this section and section 190 relevant UK earnings are to be treated as not being chargeable to income tax if, in accordance with arrangements having effect by virtue of section 788 of ICTA (double taxation agreements), they are not taxable in the United Kingdom.
- (4) “General earnings from overseas Crown employment subject to UK tax” has the meaning given by section 28 of ITEPA 2003.

## **190 Annual limit for relief**

- (1) The maximum amount of relief to which an individual is entitled under section 188 (relief for contributions) for a tax year is (subject as follows) the amount of the individual's relevant UK earnings which are chargeable to income tax for the tax year.
- (2) If the amount of the individual's relevant UK earnings which are chargeable to income tax for the tax year is less than the basic amount, the maximum amount of relief to which the individual is entitled under section 188 for the tax year is increased by the difference between—
  - (a) the amount of the individual's relevant UK earnings which are so chargeable, and
  - (b) the basic amount,(so that, if the individual has no relevant UK earnings which are so chargeable, the maximum amount of such relief is the basic amount).
- (3) Subsection (2) is subject to section 191(7) (limit on methods of giving relief to which individual is entitled by virtue of subsection (2)).
- (4) “The basic amount” is £3,600 or such greater amount as the Treasury may by order specify.

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- (5) Subsections (1) and (2) do not apply in relation to any amount of relief to which an individual is entitled under section 188 in respect of any amount recovered by the individual's employer under regulations made under—
- (a) section 8(3) of the Pension Schemes Act 1993 (c. 48) (recovery of minimum payments), or
  - (b) section 4(3) of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (corresponding provision for Northern Ireland).

## **191 Methods of giving relief**

- (1) Relief to which an individual is entitled under section 188 (relief for contributions) in respect of contributions is to be given as provided by this section.
- (2) Subject as follows, the relief is to be given in accordance with section 192 (relief at source).
- (3) Subject to subsection (7), relief in respect of contributions under a pension scheme made by a member of the pension scheme may (instead of being given in accordance with section 192) be given in accordance with section 193 (relief under net pay arrangements) if—
  - (a) the pension scheme is an occupational pension scheme,
  - (b) the member is an employee of a sponsoring employer, and
  - (c) relief in respect of contributions made under the pension scheme by all of the other members of the pension scheme who are employees of the sponsoring employer is given in accordance with that section.
- (4) Subject to subsection (7), relief in respect of contributions under a pension scheme made by a member of the pension scheme may (instead of being given in accordance with section 192) be given in accordance with section 193 if—
  - (a) the pension scheme is a public service pension scheme or marine pilots' benefits fund, and
  - (b) the member is an employee.
- (5) Subject to subsection (7), subsection (6) applies where—
  - (a) contributions are made under a public service pension scheme or marine pilots' benefit fund by a member who is not an employee, or
  - (b) contributions are made otherwise than by a member of the pension scheme under a net pay pension scheme.
- (6) Relief in respect of the contributions—
  - (a) may (but need not) be given in accordance with section 192, but
  - (b) where not so given, is to be given in accordance with section 194 (relief on making of claim).
- (7) Relief to which an individual is entitled by virtue of section 190(2)—
  - (a) may only be given in accordance with section 192, and
  - (b) is not required to be given in respect of contributions under a net pay pension scheme.
- (8) In this section “marine pilots' benefits fund” means—
  - (a) a fund established under section 15(1)(i) of the Pilotage Act 1983 (c. 21), or
  - (b) any scheme supplementing or replacing such a fund.

- (9) In this Part “net pay pension scheme” means a pension scheme in the case of which some or all of the members of the pension scheme are entitled to be given relief in accordance with section 193 in respect of the payment of contributions by them under the pension scheme.
- (10) Schedule 36 contains (in Part 4) transitional provision about relief in respect of contributions to pre-commencement retirement annuity contracts.

## **192 Relief at source**

- (1) Where an individual is entitled to be given relief in accordance with this section in respect of the payment of a contribution under a pension scheme, the individual or other person by whom the contribution is paid is entitled, on making the payment, to deduct and retain out of it a sum equal to income tax on the contribution at the basic rate for the tax year in which the payment is made.
- (2) If a sum is deducted from the payment of the contribution—
- (a) the scheme administrator must allow the deduction on receipt of the residue,
  - (b) the individual or other person is acquitted and discharged of so much money as is represented by the deduction as if the sum had actually been paid, and
  - (c) the sum deducted is to be treated as income tax paid by the scheme administrator.
- (3) When the payment of the contribution is received—
- (a) the scheme administrator is entitled to recover from the Board of Inland Revenue the amount which is treated as income tax paid by the scheme administrator in relation to the contribution, and
  - (b) any amount so recovered is to be treated for the purposes of the Tax Acts in the same manner as the payment of the contribution.
- (4) If (apart from this subsection) income tax or capital gains tax at the higher rate is chargeable in respect of any part of the individual’s total income or chargeable gains for the tax year, on the making of a claim the basic rate limit for that year in the individual’s case is increased by the amount of the contribution.
- (5) For the purposes of sections 257(5) and 257A(5) of ICTA (age related allowances), the individual’s total income for the tax year is to be treated as reduced by the amount of the contribution.
- (6) Subsections (1) and (2) have effect subject to such conditions as the Board of Inland Revenue may prescribe by regulations.
- (7) The Board of Inland Revenue may by regulations make provision for carrying subsections (1) to (3) into effect, in particular by making provision—
- (a) about how a sum is to be recovered under subsection (3)(a) (including the manner in which a claim for the recovery of a sum is to be made),
  - (b) for the giving of such information, in such form, as may be prescribed by or under the regulations,
  - (c) for the inspection of documents by persons authorised by the Board of Inland Revenue, and
  - (d) specifying the consequences of failure to comply with conditions prescribed by virtue of subsection (6).

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- (8) Regulations under this section may, in particular—
  - (a) modify the operation of any provision of the Tax Acts, or
  - (b) provide for the application of any provision of the Tax Acts (with or without modification).
- (9) Where, after relief is given to an individual in accordance with this section for a tax year, an assessment, alteration of an assessment or other adjustment of the individual's liability to tax is made, any appropriate consequential adjustments are to be made in relief given to the individual in accordance with this section.
- (10) Where relief is given to an individual in accordance with this section for a tax year in respect of a contribution, relief is not to be given—
  - (a) in respect of the contribution under any other provision of the Income Tax Acts, or
  - (b) (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

### **193 Relief under net pay arrangements**

- (1) This section applies where an individual is entitled to be given relief in accordance with this section in respect of the payment of a contribution under a pension scheme.
- (2) The amount of the contribution is to be allowed to be deducted by the sponsoring employer from the employment income from the individual's employment with the employer for the tax year in which the payment is made.
- (3) A deduction may be made only once in respect of the same contribution.
- (4) A claim for excess relief may be made if—
  - (a) the amount of the contributions paid by an individual under one or more relevant net pay pension schemes in a tax year exceeds the employment income from the individual's employment or employments with the sponsoring employer or employers for the tax year, or
  - (b) it is not possible for the sponsoring employer or employers for any other reason to deduct the whole amount of the contribution from the individual's employment income.
- (5) A net pay pension scheme is a relevant net pay pension scheme if the members of the pension scheme entitled to be given relief in accordance with this section in respect of the payment of contributions by them under the pension scheme include the individual.
- (6) On the making of the claim for excess relief the amount of the excess may be deducted from the total income of the individual for the tax year.
- (7) Where, after relief is given to an individual in accordance with this section for a tax year, an assessment, alteration of an assessment or other adjustment of the individual's liability to tax is made, any appropriate consequential adjustments are to be made in relief given to the individual in accordance with this section.
- (8) Where relief is given to an individual in accordance with this section for a tax year in respect of a contribution, relief is not to be given in respect of it under any other provision of the Income Tax Acts.

## **194 Relief on making of claim**

- (1) Where an individual is entitled to be given relief in accordance with this section in respect of the payment of a contribution, on the making of a claim the amount of the contribution may be deducted from the total income of the individual for the tax year in which the payment is made.
- (2) Where, after relief is given to an individual in accordance with this section for a tax year, an assessment, alteration of an assessment or other adjustment of the individual's liability to tax is made, any appropriate consequential adjustments are to be made in relief given to the individual in accordance with this section.
- (3) Where relief is given to an individual in accordance with this section for a tax year in respect of a contribution, relief is not to be given—
  - (a) in respect of the contribution under any other provision of the Income Tax Acts, or
  - (b) (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

## **195 Transfer of certain shares to be treated as payment of contribution**

- (1) For the purposes of sections 188 to 194 (relief for contributions) references to contributions paid by an individual include contributions made in the form of the transfer by the individual of eligible shares in a company within the permitted period.
- (2) For the purposes of those sections the amount of a contribution made by way of a transfer of shares is the market value of the shares at the date of the transfer.
- (3) “Eligible shares”, in relation to a contribution made by an individual, means shares—
  - (a) which the individual has exercised a right to acquire in accordance with the provisions of an SAYE option scheme, or
  - (b) which have been appropriated to the individual in accordance with the provisions of a share incentive plan.
- (4) “The permitted period”—
  - (a) in relation to shares which the individual has exercised a right to acquire in accordance with the provisions of an SAYE option scheme, is the period of 90 days following the exercise of that right, and
  - (b) in relation to shares which have been appropriated to the individual in accordance with the provisions of a share incentive plan, is the period of 90 days following the date when the individual directed the trustees of the share incentive plan to transfer the ownership of the shares to the individual.
- (5) In this section—

“SAYE option scheme” has the same meaning as in the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)), and

“share incentive plan” has the same meaning as in the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

### *Employers' contributions*

#### **196 Relief for employers in respect of contributions paid**

- (1) This section makes provision about an employer's entitlement to relief in respect of contributions paid by the employer under a registered pension scheme in respect of any individual.
- (2) For the purposes of Case I or II of Schedule D—
  - (a) the contributions are to be treated as not being payments of a capital nature to the extent that they otherwise would be, and
  - (b) if they are allowed to be deducted in computing the amount of the profits of the employer, they are deductible in computing the amount of the profits for the period of account in which they are paid.
- (3) For the purposes of section 75 of ICTA (expenses of management: companies with investment business), the contributions—
  - (a) are to be treated as being expenses of management to the extent that they otherwise would not be, and
  - (b) are referable to the accounting period in which they are paid.
- (4) For the purposes of section 76 of ICTA (expenses of insurance companies), the contributions—
  - (a) are to be brought into account at Step 1 in subsection (7) of that section to the extent that they otherwise would not be, and
  - (b) are referable to the accounting period in which they are paid.
- (5) The references in this section to contributions include minimum payments under—
  - (a) section 8 of the Pension Schemes Act 1993 (c. 48), or
  - (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),other than any part recovered from a member of the pension scheme under regulations made under subsection (3) of either of those sections.
- (6) This section is subject to sections 197 and 198 (spreading of relief) (and to transitional provision contained in Part 4 of Schedule 36).

#### **197 Spreading of relief**

- (1) This section applies where—
  - (a) contributions are paid by an employer under a registered pension scheme in two consecutive chargeable periods ("the previous chargeable period" and "the current chargeable period"), and
  - (b) the amount of the contributions paid in the current chargeable period otherwise than for an excepted purpose ("CCCP") exceeds 210% of the amount of the contributions paid in the previous chargeable period ("CPCP").
- (2) Relief under section 196 (relief for employers in respect of contributions paid) is to be given in respect of so much of CCCP as exceeds 110% of CPCP ("the amount of the relevant excess contributions") in accordance with subsections (4) and (5).
- (3) But subsection (2)—
  - (a) does not apply if the amount of the relevant excess contributions is less than £500,000, and



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- (b) has effect subject to section 198 (cessation of business).
- (4) A fraction of the whole of the amount of the relevant excess contributions is to be treated for the purposes of section 196 as if it had been paid in the chargeable period, or in each of the two or three chargeable periods, immediately after the current chargeable period (leaving only the remainder to be treated as paid in the current chargeable period).
- (5) The following table specifies (by reference to the amount of the relevant excess contributions)—
- the fraction of the whole of the amount of the relevant excess contributions which is to be treated as paid in the chargeable period, or in each of the two or three chargeable periods, immediately after the current chargeable period, and
  - the chargeable period or periods in which it is to be treated as paid.

<i>AMOUNT OF THE RELEVANT EXCESS CONTRIBUTIONS</i>	<i>FRACTION AND CHARGEABLE PERIOD OR PERIODS</i>
500,000 or more but less than 1,000,000	One-half of the whole of the amount of the relevant excess contributions is to be treated as paid in the chargeable period immediately after the current chargeable period
1,000,000 or more but less than 2,000,000	One-third of the whole of the amount of the relevant excess contributions is to be treated as paid in each of the two chargeable periods immediately after the current chargeable period
2,000,000 or more	One-quarter of the whole of the amount of the relevant excess contributions is to be treated as paid in each of the three chargeable periods immediately after the current chargeable period

- (6) Subsection (7) specifies for the purposes of subsection (1) when contributions paid by the employer in the current chargeable period are paid for an excepted purpose.
- (7) They are paid for an excepted purpose if paid with a view to funding—
- an increase in the amount of pensions paid to pensioner members of the pension scheme to reflect increases in the cost of living, or
  - benefits which may accrue under the pension scheme to or in respect of individuals who become members of the pension scheme in the current chargeable period as a result of future service as employees of the employer.
- (8) Where the previous chargeable period and the current chargeable period are not of equal length, this section has effect as if CPCP were the amount it would otherwise be as adjusted by being multiplied by the appropriate factor.
- (9) The appropriate factor is—

$$\frac{\text{DCCP}}{\text{DPCP}}$$

where—

DCCP is the number of days in the current chargeable period, and

DPCP is the number of days in the previous chargeable period.

(10) In this section “chargeable period” means—

- (a) in a case where the contributions are deducted in computing profits to be charged under Case I or II of Schedule D, a period of account, and
- (b) in a case where relief in respect of the contributions is given under section 75 or 76 of ICTA (expenses of management: companies with investment business and expenses of insurance companies), an accounting period.

## **198 Spreading of relief: cessation of business**

(1) This section applies if—

- (a) the employer ceases to carry on business in the current chargeable period or a later chargeable period in which section 197(4) would require a fraction of the amount of the relevant excess contributions to be treated as paid, and
- (b) were section 197(4) to apply, relief in relation to the whole of the amount of the relevant excess contributions would not be given pre-cessation.

(2) Relief is given pre-cessation if it is given for the chargeable period in which the employer ceases to carry on business or any earlier chargeable period.

(3) The portion of the amount of the relevant excess contributions in relation to which relief would not have been given pre-cessation (“the unrelieved portion”) is to be treated as paid (at the option of the employer) either—

- (a) in the chargeable period in which the employer ceases to carry on business, or
- (b) as provided by subsection (4).

(4) This subsection provides that the amount determined under subsection (5) is to be treated as paid on each day in the period—

- (a) beginning with the current chargeable period, and
- (b) ending with the day on which the employer ceases to carry on business, (“the relevant period”).

(5) The amount referred to in subsection (4) is—

$$\frac{UP}{DRP}$$

where—

UP is the amount of the unrelieved portion, and

DRP is the number of days in the relevant period.

(6) Expressions used in this section and section 197 have the same meaning in this section as in that section.

## **199 Deemed contributions**

(1) This section applies where a sum is paid to the trustees or managers of a registered pension scheme by an employer in or towards the discharge of any liability of the employer under—

- (a) section 75 of the Pensions Act 1995 (c. 26)(deficiencies in the assets of a pension scheme), or
  - (b) Article 75 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) (corresponding provision for Northern Ireland).
- (2) The making of the payment is to be treated for the purposes of—
  - (a) Case I and II of Schedule D,
  - (b) section 75 of ICTA (expenses of management: companies with investment business), and
  - (c) section 76 of ICTA (expenses of insurance companies),as if it were the payment of a contribution by the employer under the pension scheme.
- (3) Subsections (4) and (5) apply if the employer's trade, profession, vocation or business is discontinued before the making of the payment.
- (4) The payment is to be relieved—
  - (a) to the same extent as it would have been but for the discontinuance, and
  - (b) as if it had been made on the last day on which the trade, profession, vocation or business was carried on.
- (5) And for the purposes of section 76 of ICTA it is to be treated (to the extent that it would not otherwise be) as part of expenses payable falling to be brought into account at Step 1 in subsection (7) of that section.

## **200 No other relief for employers in connection with contributions**

No sums other than contributions paid by an employer under a registered pension scheme—

- (a) are deductible in computing the amount of the profits of the employer for the purposes of Case I or II of Schedule D,
- (b) are expenses of management for the purposes of section 75 of ICTA (expenses of management: companies with investment business), or
- (c) are to be brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies),

in connection with the cost of providing benefits under the pension scheme.

## **201 Relief for employees**

- (1) In section 307(1) of ITEPA 2003 (exemption for provision made by employer for retirement or death benefit), after “employer” insert “under a registered pension scheme or otherwise”.
- (2) For section 308 of ITEPA 2003 (exemption of contributions to approved personal pension arrangements) substitute—

### **“308 Exemption of contributions to registered pension scheme**

No liability to income tax arises in respect of earnings where an employee's employer makes contributions under a registered pension scheme.”

### *Inland Revenue contributions*

## **202 Minimum contributions under pensions legislation**

- (1) This section applies where under—
  - (a) section 43 of the Pension Schemes Act 1993 (c. 48), or
  - (b) section 39 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),
 the Board of Inland Revenue pays minimum contributions for the purposes of a registered pension scheme.
- (2) The amount of the minimum contributions is to be increased by the difference between—
  - (a) the amount of the employee's share of the minimum contributions, and
  - (b) the grossed-up equivalent of that amount.
- (3) The amount of the employee's share of the minimum contributions is the amount that would be the amount of the minimum contributions if—
  - (a) for the reference to the age-related percentage in section 45(1) of the Pension Schemes Act 1993 (amount of minimum contributions) there were substituted a reference to the percentage mentioned in section 41(1A) of that Act (percentage used to reduce primary Class 1 contribution), or
  - (b) for the reference to the age-related percentage in section 41(1) of the Pension Schemes (Northern Ireland) Act 1993 there were substituted a reference to the percentage mentioned in section 37(1A) of that Act (corresponding provisions for Northern Ireland).
- (4) The “grossed-up equivalent” of the amount of the employee's share of the minimum contributions is the sum which, after deduction of income tax at the basic rate in force for the tax year for which the minimum contributions are paid, is equal to that amount.
- (5) The Board of Inland Revenue may by regulations—
  - (a) prescribe circumstances in which this section does not apply, or
  - (b) make provision supplementing this section.
- (6) The Board of Inland Revenue must—
  - (a) pay into the National Insurance Fund out of money provided by Parliament the amount of any increase attributable to this section in the sums paid out of that Fund under the Pension Schemes Act 1993, and
  - (b) pay into the Northern Ireland National Insurance Fund out of money provided by Parliament the amount of any increase attributable to this section in the sums paid out of that Fund under the Pension Schemes (Northern Ireland) Act 1993.

### *Inheritance tax exemptions*

## **203 Inheritance tax exemptions**

- (1) The Inheritance Tax Act 1984 (c. 51) is amended as follows.
- (2) In section 12 (dispositions that are not transfers of value)—

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- (a) in subsection (2), for the words following “if” substitute “it is a contribution under a registered pension scheme or section 615(3) scheme in respect of an employee of the person making the disposition.”, and
  - (b) omit subsections (3) and (4).
- (3) In section 58(1) (settled property in which no qualifying interest in possession subsists but which is not “relevant property”), for paragraph (d) substitute—
  - “(d) property which is held for the purposes of a registered pension scheme or section 615(3) scheme;”.
- (4) In section 151 (treatment of pension rights etc.)—
  - (a) omit subsections (1) and (1A),
  - (b) in subsections (2), (4) and (5), for “fund or scheme to which this section applies” substitute “registered pension scheme or section 615(3) scheme”, and
  - (c) in subsection (2)(b), for the “fund or scheme” (in both places) substitute “scheme”.
- (5) In section 152 (cash options), for the words from the beginning to “or scheme” substitute “Where on a person’s death an annuity becomes payable under a registered pension scheme or section 615(3) scheme to a widow, widower or dependant of that person and under the terms of the scheme”.
- (6) In section 272 (general interpretation), insert at the appropriate places—
  - ““registered pension scheme” has the same meaning as in Part 4 of the Finance Act 2004;”, and
  - ““section 615(3) scheme” means a superannuation fund to which section 615(3) of the Taxes Act 1988 applies;”.

## CHAPTER 5

### REGISTERED PENSION SCHEMES: TAX CHARGES

#### *Charges on authorised payments*

#### **204 Authorised pensions and lump sums**

- (1) Schedule 31 contains provision about the taxation of pensions and lump sums which are authorised to be paid by this Part.
- (2) Schedule 36 contains (in Part 4) transitional provision about the taxation of annuities under existing retirement annuity contracts and other relevant transitional provision.

#### **205 Short service refund lump sum charge**

- (1) A charge to income tax, to be known as the short service refund lump sum charge, arises where a short service refund lump sum is paid by a registered pension scheme.
- (2) The person liable to the short service refund lump sum charge is the scheme administrator.

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- (3) The scheme administrator is liable to the short service refund lump sum charge whether or not—
  - (a) the scheme administrator, and
  - (b) the person to whom the short service refund lump sum is paid,are resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The rate of the charge is—
  - (a) 20% in respect of so much of the lump sum as does not exceed £10,800, and
  - (b) 40% in respect of so much (if any) of it as exceeds that limit.
- (5) The Treasury may by order amend subsection (4) so as to—
  - (a) increase or decrease either or both of the rates for the time being specified in that subsection, or
  - (b) increase the limit for the time being specified in paragraph (a) of that subsection.
- (6) Tax under this section is to be charged on the amount of the lump sum paid or, if the rules of the pension scheme permit the scheme administrator to deduct the tax before payment, on the amount of the lump sum before deduction of tax.
- (7) A short service refund lump sum is not to be treated as income for any purpose of the Tax Acts.

## **206 Special lump sum death benefits charge**

- (1) A charge to income tax, to be known as the special lump sum death benefits charge, arises where—
  - (a) a pension protection lump sum death benefit,
  - (b) an annuity protection lump sum death benefit, or
  - (c) an unsecured pension fund lump sum death benefit,is paid by a registered pension scheme.
- (2) The person liable to the special lump sum death benefits charge is the scheme administrator.
- (3) The scheme administrator is liable to the special lump sum death benefits charge whether or not—
  - (a) the scheme administrator, and
  - (b) the person to whom the lump sum death benefit is paid,are resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The rate of the charge is 35% in respect of the lump sum death benefit.
- (5) The Treasury may by order increase or decrease the rate for the time being specified in subsection (4).
- (6) Tax under this section is to be charged on the amount of the lump sum paid or, if the rules of the pension scheme permit the scheme administrator to deduct the tax before payment, on the amount of the lump sum before deduction of tax.
- (7) No pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit is to be treated as income for any purpose of the Tax Acts.

## **207 Authorised surplus payments charge**

- (1) A charge to income tax, to be known as the authorised surplus payments charge, arises where an authorised surplus payment is made to a sponsoring employer by an occupational pension scheme that is a registered pension scheme.
- (2) The person liable to the authorised surplus payments charge is the scheme administrator.
- (3) The scheme administrator is liable to the authorised surplus payments charge whether or not—
  - (a) the scheme administrator, and
  - (b) the sponsoring employer,are resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The rate of the charge is 35% in respect of the authorised surplus payment.
- (5) The Treasury may by order increase or decrease the rate for the time being specified in subsection (4).
- (6) Subsection (1) does not apply to any authorised surplus payment—
  - (a) to the extent that (if this section had not been enacted) the sponsoring employer would have been exempt, or entitled to claim exemption, from income tax or corporation tax in respect of it, or
  - (b) if the sponsoring employer is a charity.
- (7) An authorised surplus payment in respect of which income tax is charged under this section is not to be treated as income for any purpose of the Tax Acts.
- (8) Schedule 36 contains (in Part 4) transitional provisions about the authorised surplus payments charge.

### *Unauthorised payments charge*

## **208 Unauthorised payments charge**

- (1) A charge to income tax, to be known as the unauthorised payments charge, arises where an unauthorised payment is made by a registered pension scheme.
- (2) The person liable to the charge—
  - (a) in the case of an unauthorised member payment made before the member's death, is the member to or in respect of whom the payment is made,
  - (b) in the case of an unauthorised member payment made after the member's death, is the recipient, and
  - (c) in the case of an unauthorised employer payment, is the sponsoring employer to or in respect of whom the payment is made.
- (3) If more than one person is liable to the unauthorised payments charge in respect of an unauthorised payment, those persons are jointly and severally liable to the charge in respect of the payment.
- (4) A person is liable to the unauthorised payments charge whether or not—
  - (a) that person,
  - (b) any other person who is liable to the unauthorised payments charge, and

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- (c) the scheme administrator,  
are resident, ordinarily resident or domiciled in the United Kingdom.
- (5) The rate of the charge is 40% in respect of the unauthorised payment.
- (6) The Treasury may by order increase or decrease the rate for the time being specified in subsection (5).
- (7) An unauthorised payment may also be subject to—
  - (a) the unauthorised payments surcharge under section 209, and
  - (b) the scheme sanction charge under section 239.
- (8) An unauthorised payment is not to be treated as income for any purpose of the Tax Acts.

## **209 Unauthorised payments surcharge**

- (1) A charge to income tax, to be known as the unauthorised payments surcharge, arises where a surchargeable unauthorised payment is made by a registered pension scheme.
- (2) “Surchargeable unauthorised payments” means—
  - (a) surchargeable unauthorised member payments (see section 210), and
  - (b) surchargeable unauthorised employer payments (see section 213).
- (3) The person liable to the charge—
  - (a) in the case of a surchargeable unauthorised member payment made before the member’s death, is the member in respect of whose arrangement the payment was made,
  - (b) in the case of a surchargeable unauthorised member payment made after the member’s death, is the recipient, and
  - (c) in the case of a surchargeable unauthorised employer payment, is the sponsoring employer to or in respect of whom the payment was made.
- (4) If more than one person is liable to the unauthorised payments surcharge in respect of a surchargeable unauthorised payment, those persons are jointly and severally liable to the surcharge in respect of the payment.
- (5) A person is liable to the unauthorised payments surcharge whether or not—
  - (a) that person,
  - (b) any other person who is liable to the unauthorised payments surcharge, and
  - (c) the scheme administrator,
 are resident, ordinarily resident or domiciled in the United Kingdom.
- (6) The rate of the charge is 15% in respect of the surchargeable unauthorised payment.
- (7) The Treasury may by order increase or decrease the rate for the time being specified in subsection (6).

## **210 Surchargeable unauthorised member payments**

- (1) This section identifies which unauthorised member payments made by a registered pension scheme in respect of an arrangement relating to a member under the pension scheme are surchargeable.



- (2) If the surcharge threshold is reached before the end of the period of 12 months beginning with a reference date, each unauthorised member payment made in respect of the arrangement in the surcharge period is surchargeable.
- (3) The surcharge period is the period—
  - (a) beginning with the reference date, and
  - (b) ending with the day on which the surcharge threshold is reached.
- (4) The first reference date is the date on which the pension scheme first makes an unauthorised member payment in respect of the arrangement.
- (5) Each subsequent reference date is the date, after the end of the previous reference period, on which the pension scheme next makes an unauthorised member payment in respect of the arrangement.
- (6) The previous reference period is the period of 12 months beginning with the previous reference date or, if the surcharge threshold is reached in that period, is the surcharge period ending with the date on which it was reached.
- (7) The surcharge threshold is reached if the unauthorised payments percentage reaches 25%.
- (8) The unauthorised payments percentage is the aggregate of the percentages of the pension fund used up by each unauthorised member payment made by the pension scheme in respect of the arrangement on or after the reference date.
- (9) The percentage of the pension fund used up on the occasion of an unauthorised member payment is—
$$\frac{\text{UMP}}{\text{VR}} \times 100$$
where—
  - UMP is the amount of the unauthorised member payment, and
  - VR is an amount equal to the value of the member's rights under the arrangement when the unauthorised payment is made (or, if the unauthorised payment is made after the member's death, at the date of the member's death).
- (10) The value of the member's rights under the arrangement on that date is the aggregate of—
  - (a) the value of the member's crystallised rights under the arrangement on that date, calculated in accordance with section 211, and
  - (b) the value of the member's uncrystallised rights under the arrangement on that date, calculated in accordance with section 212.

## **211 Valuation of crystallised rights for purposes of section 210**

- (1) The value of the member's crystallised rights under the arrangement on any date is the aggregate of—
  - (a) the value of each scheme pension or lifetime annuity to which the member has an actual (rather than a prospective) entitlement under the arrangement on that date, and

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- (b) the aggregate of the amount of the sums, and the market value of the assets, representing the member's unsecured pension fund or alternatively secured pension fund in respect of the arrangement on that date (if any).

- (2) The value of a scheme pension or lifetime annuity is—

$$RVF \times ARP$$

where—

RVF is the relevant valuation factor (see section 276), and

ARP is an amount equal to the annual rate of the pension or annuity on the date.

## **212 Valuation of uncrystallised rights for purposes of section 210**

- (1) Rights are uncrystallised if the member is not entitled to the present payment of benefits in respect of the rights.
- (2) The member is to be treated as entitled to the present payment of benefits in respect of the sums and assets representing the member's unsecured pension fund or alternatively secured pension fund.
- (3) The value of the member's uncrystallised rights under the arrangement on any date is to be calculated—
  - (a) in accordance with subsection (4) if the arrangement is a cash balance arrangement,
  - (b) in accordance with subsection (5) if the arrangement is a money purchase arrangement other than a cash balance arrangement,
  - (c) in accordance with subsection (6) if the arrangement is a defined benefits arrangement, and
  - (d) in accordance with subsection (7) if the arrangement is a hybrid arrangement.
- (4) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits in respect of those rights if the member became entitled to benefits in respect of those rights on the date.
- (5) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is the aggregate of—
  - (a) the amount of such of the sums held for the purposes of the arrangement on the date as represent those rights, and
  - (b) the market value of such of the assets held for the purposes of the arrangement on the date as represent those rights.
- (6) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is—

$$(RVF \times ARP) + I.S$$

where—

RVF is the relevant valuation factor (see section 276),

ARP is the annual rate of pension to which the member would, on the valuation assumptions, be entitled under the arrangement on the date if, on the date, the member acquired an actual (rather than a prospective) right to receive a pension in respect of the rights, and

LS is the amount of any lump sum to which the member would, on the valuation assumptions, be entitled under the arrangement on the date (otherwise than by way of commutation of pension) if, on the date, the member acquired an actual (rather than a prospective) right to payment of a lump sum in respect of the rights.

- (7) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is—
- (a) if each of subsections (4), (5) and (6) is relevant, the greatest of the values of the rights calculated in accordance with each of those subsections, or
  - (b) if only two of those subsections are relevant, the greater of the values of the rights calculated in accordance with each of the two subsections.
- (8) Subsection (4) is relevant if, in any circumstances, cash balance benefits may be provided to or in respect of the member under the arrangement.
- (9) Subsection (5) is relevant if, in any circumstances, money purchase benefits other than cash balance benefits may be provided to or in respect of the member under the arrangement.
- (10) Subsection (6) is relevant if, in any circumstances, defined benefits may be provided to or in respect of the member under the arrangement.

## **213 Surchargeable unauthorised employer payments**

- (1) This section identifies which unauthorised employer payments made by a registered pension scheme to or in respect of a sponsoring employer are surchargeable.
- (2) If the surcharge threshold is reached before the end of the period of 12 months beginning with a reference date, each unauthorised employer payment made to or in respect of the employer in the surcharge period is surchargeable.
- (3) The surcharge period is the period—
- (a) beginning with the reference date, and
  - (b) ending with the day on which the surcharge threshold is reached.
- (4) The first reference date is the date on which the pension scheme first makes an unauthorised employer payment to or in respect of the employer.
- (5) Each subsequent reference date is the date, after the end of the previous reference period, on which the pension scheme next makes an unauthorised employer payment to or in respect of the employer.
- (6) The previous reference period is the period of 12 months beginning with the previous reference date or, if the surcharge threshold is reached in that period, is the surcharge period ending with the date on which it was reached.
- (7) The surcharge threshold is reached if the unauthorised payments percentage reaches 25%.
- (8) The unauthorised payments percentage is the aggregate of the percentages of the pension fund used up by each unauthorised employer payment made by the pension scheme to or in respect of the employer on or after the reference date.
- (9) The percentage of the pension fund used up on the occasion of an unauthorised employer payment is—

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

where—

UEP is the amount of the unauthorised employer payment, 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 at the time when the unauthorised employer payment is made.

### *Lifetime allowance charge*

## **214 Lifetime allowance charge**

- (1) A charge to income tax, to be known as the lifetime allowance charge, arises where—
  - (a) a benefit crystallisation event occurs in relation to an individual who is a member of one or more registered pension schemes, and
  - (b) either the first lifetime allowance charge condition or the second lifetime allowance charge condition is met.
- (2) The first lifetime allowance charge condition is that—
  - (a) the whole or any part of the individual's lifetime allowance is available on the benefit crystallisation event, but
  - (b) the amount crystallised by the benefit crystallisation event exceeds the amount of the individual's lifetime allowance which is available on the benefit crystallisation event.
- (3) The second lifetime allowance charge condition is that none of the individual's lifetime allowance is available on the benefit crystallisation event.
- (4) The following sections make further provision about the lifetime allowance charge—
  - section 215 (amount of charge),
  - section 216 and Schedule 32 (benefit crystallisation events and amounts crystallised),
  - section 217 (persons liable to charge),
  - section 218 (individual's lifetime allowance and standard lifetime allowance),
  - section 219 (availability of individual's lifetime allowance), and
  - sections 220 to 226 (lifetime allowance enhancement factors).
- (5) In sections 215 to 219—
  - (a) references to “the individual”, in relation to the lifetime allowance charge, are to the individual in relation to whom the benefit crystallisation event giving rise to the charge occurs, and
  - (b) references to “the pension scheme”, in relation to the lifetime allowance charge, are to the pension scheme to which the benefit crystallisation event giving rise to the charge, or the amount crystallised by it, relates.
- (6) Schedule 36 contains (in Part 2) transitional provision about the lifetime allowance charge.

## **215 Amount of charge**

- (1) The lifetime allowance charge is a charge in respect of the chargeable amount.
- (2) The lifetime allowance charge is a charge—
  - (a) at the rate of 55% in respect of so much (if any) of the chargeable amount as constitutes the lump-sum amount, and
  - (b) at the rate of 25% in respect of so much (if any) of the chargeable amount as constitutes the retained amount.
- (3) The “chargeable amount” is the aggregate of—
  - (a) the basic amount, and
  - (b) any amount which is treated as forming part of the lump-sum amount under subsection (6) or of the retained amount under subsection (8).
- (4) The “basic amount”—
  - (a) if the first lifetime allowance condition is met, is the amount by which the amount crystallised by the benefit crystallisation event exceeds the amount of the individual’s lifetime allowance available on it, and
  - (b) if the second lifetime allowance charge condition is met, is the amount crystallised by the benefit crystallisation event.
- (5) The “lump-sum amount” is the aggregate of—
  - (a) so much of the basic amount as is paid as a lump sum to the individual or a lump sum death benefit in respect of the individual, and
  - (b) any amount which is treated as forming part of the lump-sum amount under subsection (6).
- (6) If and to the extent that the tax payable under this section on any of the lump-sum amount is covered by a scheme-funded tax payment, it is to be treated as itself forming part of the lump-sum amount.
- (7) The “retained amount” is the aggregate of—
  - (a) so much of the basic amount as is not paid as a lump sum to the individual or a lump sum death benefit in respect of the individual, and
  - (b) any amount which is treated as forming part of the retained amount under subsection (8).
- (8) If and to the extent that the tax payable under this section on any of the retained amount is covered by a scheme-funded tax payment, it is to be treated as itself forming part of the retained amount.
- (9) An amount of tax payable under this section is “covered by a scheme-funded tax payment” if—
  - (a) the tax is paid by the scheme administrator, and
  - (b) the individual’s rights under the pension scheme are not reduced so as fully to reflect the amount of the payment of tax.
- (10) Whether the individual’s rights under the pension scheme are reduced so as fully to reflect the amount of the payment of tax is to be determined in accordance with normal actuarial practice.
- (11) The chargeable amount is not to be treated as income for any purpose of the Tax Acts.

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## 216 Benefit crystallisation events and amounts crystallised

(1) This table sets out—

- (a) the events which are benefit crystallisation events in relation to the individual, and
- (b) the amount which is crystallised by each of those events.

<i>BENEFIT CRYSTALLISATION EVENTS</i>	<i>AMOUNT CRYSTALLISED</i>
1. The designation of 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 designated
2. The individual becoming entitled to a scheme pension under any of the relevant pension schemes	$RVF \times P$
3. The individual, having become so entitled, becoming entitled to payment of the scheme pension, otherwise than in excepted circumstances, at an increased annual rate which exceeds by more than the permitted margin the rate at which it was payable on the day on which the individual became entitled to it	$RVF \times XP$
4. The individual becoming entitled to a lifetime annuity purchased under a money purchase arrangement under any of the relevant pension schemes	The aggregate of the amount of such of the sums, and the market value of such of the assets, representing the individual's rights under the arrangement as are applied to purchase the lifetime annuity
5. The individual reaching the age of 75 when prospectively entitled to a scheme pension or a lump sum (or both) under a defined benefits arrangement under any of the relevant pension schemes	$(RVF \times DP) + DSLS$
6. The individual becoming entitled to a relevant lump sum under any of the relevant pension schemes	The amount of the lump sum
7. A person being paid a relevant lump sum death benefit in respect of the individual under any of the relevant pension schemes	The amount of the lump sum death benefit
8. The transfer of sums or assets held for the purposes of, or representing accrued rights under, any of the relevant pension schemes so as to become held for the purposes of or to represent rights	The aggregate of the amount of any sums transferred and the market value of any assets transferred

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<i>BENEFIT CRYSTALLISATION EVENTS</i>	<i>AMOUNT CRYSTALLISED</i>
under a qualifying recognised overseas pension scheme in connection with the individual's membership of that pension scheme	

(2) Schedule 32 gives the meaning of expressions used in the table in subsection (1).

## 217 Persons liable to charge

- (1) The persons liable to the lifetime allowance charge are—
  - (a) the individual, and
  - (b) the scheme administrator of the pension scheme,
and their liability is joint and several.
- (2) But where the liability arises by reason of the payment of a relevant lump sum death benefit it is a liability of the person to whom the lump sum death benefit is paid.
- (3) Subsection (4) applies if—
  - (a) more than one relevant lump sum death benefit is paid in respect of an individual, and
  - (b) tax is not chargeable on the whole amount of all of them.
- (4) In that case each of the persons to whom any of the relevant lump sum death benefits is paid is liable under subsection (2) to such portion of the total amount of the tax payable by reason of their having been paid as appears to the Inland Revenue to be just and reasonable.
- (5) A person is liable to the lifetime allowance charge whether or not—
  - (a) that person,
  - (b) any other person who is liable to the lifetime allowance charge, and
  - (c) the scheme administrator (if not so liable),
are resident, ordinarily resident or domiciled in the United Kingdom.

## 218 Individual's lifetime allowance and standard lifetime allowance

- (1) Subject as follows, the individual's lifetime allowance is the standard lifetime allowance.
- (2) The standard lifetime allowance for the tax year 2006-07 is £1,500,000.
- (3) The standard lifetime allowance for each subsequent tax year is such amount, not being less than the standard lifetime allowance for the immediately preceding tax year, as is specified by order made by the Treasury.
- (4) Where one or more lifetime allowance enhancement factors operate in relation to a benefit crystallisation event occurring in relation to the individual, the individual's lifetime allowance at the time of the benefit crystallisation event is—

$$SLA + (SLA \times LAEF)$$

where—

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SLA is the standard lifetime allowance at the time of the benefit crystallisation event, and

LAEF is the lifetime allowance enhancement factor which operates with respect to the benefit crystallisation event and the individual or (where more than one so operates) the aggregate of them.

- (5) The following make provision for the operation of lifetime allowance enhancement factors—
- section 220 (pension credits from previously crystallised rights),
  - sections 221 to 223 (individuals who are not always relevant UK individuals),
  - sections 224 to 226 (transfers from recognised overseas pension schemes),
  - paragraphs 7 to 11 of Schedule 36 (primary protection), and
  - paragraph 18 of that Schedule (pre-commencement pension credits).
- (6) Paragraph 19 of that Schedule makes provision for the reduction of what would otherwise be the individual's lifetime allowance in certain cases where the individual is permitted to take pension before normal minimum pension age.
- (7) In this Part references (however expressed) to a person's lifetime allowance at any time are to what would be the person's lifetime allowance, calculated in accordance with this section, if a benefit crystallisation event occurred in relation to the person at that time.

## **219 Availability of individual's lifetime allowance**

- (1) This section is about the availability of the individual's lifetime allowance on the occurrence of a benefit crystallisation event in relation to the individual ("the current benefit crystallisation event").
- (2) If no benefit crystallisation event has occurred in relation to the individual before the current benefit crystallisation event, the whole of the individual's lifetime allowance is available on the current benefit crystallisation event.
- (3) If one or more benefit crystallisation events have occurred in relation to the individual before the current benefit crystallisation event—
- (a) in a case in which the previously-used amount is equal to or greater than the amount of the individual's lifetime allowance, none of the individual's lifetime allowance is available on the current benefit crystallisation event, and
  - (b) in any other case, so much of the individual's lifetime allowance as is left after deducting the previously-used amount is available on the current benefit crystallisation event.
- (4) The previously-used amount is—
- (a) where one benefit crystallisation event has occurred in relation to the individual before the current benefit crystallisation event, the amount crystallised by the previous benefit crystallisation event as adjusted under subsection (5), or
  - (b) where two or more benefit crystallisation events have occurred in relation to the individual before the current benefit crystallisation event, the aggregate of the amounts crystallised by each previous benefit crystallisation event as adjusted under subsection (5).



- (5) The adjustment of the amount crystallised by a previous benefit crystallisation event referred to in subsection (4)(a) and (b) is the multiplication of that amount by—

$$\frac{\text{CSLA}}{\text{PSLA}}$$

where—

CSLA is the standard lifetime allowance at the time of the current benefit crystallisation event, and

PSLA is the standard lifetime allowance at the time of the previous benefit crystallisation event.

- (6) Where more than one benefit crystallisation event occurs in relation to an individual on the same day, it is for the individual to decide the order in which they are to be treated as occurring for the purposes of this section; but this subsection is subject to section 166(2) (entitlement to pension commencement lump sum to arise immediately before entitlement to associated pension).
- (7) Where more than one benefit crystallisation event occurs by reason of the payment of lump sum death benefits in respect of an individual the benefit crystallisation events are to be treated for the purposes of this section as occurring immediately before the individual's death.
- (8) Paragraph 20 of Schedule 36 makes provision affecting this section in relation to pre-commencement pensions.
- (9) In this Part references (however expressed) to the portion of a person's lifetime allowance that is available at any time are to the portion of the person's lifetime allowance that would be available, calculated in accordance with this section, if a benefit crystallisation event occurred in relation to the person at that time.

## **220 Pension credits from previously crystallised rights**

- (1) This section makes provision for the operation of a lifetime allowance enhancement factor with respect to a benefit crystallisation event occurring in relation to an individual where—
- (a) the individual has (at any time after 5th April 2006 but before the benefit crystallisation event) acquired rights under a registered pension scheme by reason of having become entitled to a pension credit,
  - (b) the pension credit derived from the same or another registered pension scheme, and
  - (c) the rights under that registered pension scheme which became subject to the corresponding pension debit consisted of or included rights to a post-commencement pension in payment.
- (2) “Post-commencement pension in payment” means a pension to which a person became (actually) entitled on or after 6th April 2006.
- (3) The lifetime allowance enhancement factor is the pension credit factor.
- (4) The pension credit factor is—

$$\frac{\text{APC}}{\text{SLA}}$$

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where—

APC is the amount which is the appropriate amount for the purposes of section 29(1) of WRPA 1999 or Article 26(1) of WRP(NI)O 1999 in relation to the pension credit, and

SLA is the standard lifetime allowance at the time when the rights were acquired.

- (5) This section only applies if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

## **221 Non-residence: general**

- (1) This section makes provision for the operation of a lifetime allowance enhancement factor with respect to a benefit crystallisation event occurring in relation to an individual where, during any part of the period that is the active membership period in relation to an arrangement relating to the individual under a registered pension scheme, the individual is a relevant overseas individual.
- (2) Section 222 provides the lifetime allowance enhancement factor in the case of an arrangement that is a money purchase arrangement; and section 223 provides the lifetime allowance enhancement factor in the case of any other arrangement.
- (3) For the purposes of this Part an individual is a relevant overseas individual at any time if, at that time, the individual either is not a relevant UK individual or—
  - (a) is a relevant UK individual only by virtue of paragraph (c) of section 189(1) (individuals resident in UK at some time in previous five tax years), and
  - (b) is not employed by a person resident in the United Kingdom.
- (4) In this section and sections 222 and 223 “the active membership period”, in relation to a benefit crystallisation event occurring in relation to an arrangement relating to the individual, is the period—
  - (a) beginning with the date on which the benefits first began to accrue to or in respect of the individual under the arrangement or, if later, 6th April 2006, and
  - (b) ending immediately before the benefit crystallisation event.
- (5) But if benefits ceased to accrue to or in respect of the individual under the arrangement before the benefit crystallisation event, the active membership period is to be treated as having ended then.
- (6) This section only applies if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

## **222 Non-residence: money purchase arrangements**

- (1) This section applies in the case of an arrangement that is a money purchase arrangement.
- (2) The lifetime allowance enhancement factor is—
  - (a) if the arrangement is a cash balance arrangement, the cash balance arrangement non-residence factor (see subsections (3) to (5)), and
  - (b) if the arrangement is any other sort of money purchase arrangement, the other money purchase arrangement non-residence factor (see subsections (6) and (7)).

- (3) The cash balance arrangement non-residence factor is—
- (a) the factor arrived at by the application of subsection (4) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of subsection (4) in relation to each of those parts of that period.
- (4) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—

$$\frac{CV - OV}{SLA}$$

where—

CV is the closing value of the individual's rights under the arrangement,  
OV is the opening value of the individual's rights under the arrangement, and  
SLA is the standard lifetime allowance at the time when that part of that period ended.

- (5) For the purposes of subsection (4)—
- (a) the closing value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of that part of that period, and
  - (b) the opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of that part of that period.
- (6) The other money purchase arrangement non-residence factor is—
- (a) the factor arrived at by the application of subsection (7) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of subsection (7) in relation to each of those parts of that period.
- (7) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—

$$\frac{ROIC}{SLA}$$

where—

ROIC is the amount of the contributions made under the arrangement by or in respect of the individual in any part of the active membership period during which the individual is a relevant overseas individual, and  
SLA is the standard lifetime allowance at the time when that part of that period ended.

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## 223 Non-residence: other arrangements

- (1) This section applies in the case of an arrangement that is not a money purchase arrangement.
- (2) The lifetime allowance enhancement factor is—
  - (a) if the arrangement is a defined benefits arrangement, the defined benefits arrangement non-residence factor (see subsections (3) and (4)), and
  - (b) if the arrangement is a hybrid arrangement, the hybrid arrangement non-residence factor (see subsections (5) to (7)).
- (3) The defined benefits arrangement non-residence factor is—
  - (a) the factor arrived at by the application of subsection (4) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of subsection (4) in relation to each of those parts of that period.
- (4) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—

$$\frac{(RVF \times PE + LSE) - (RVF \times PB + LSB)}{SLA}$$

where—

RVF is the relevant valuation factor (see section 276),

PE is the amount of the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of that part of that period,

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the end of that part of that period,

PB is the amount of the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of that part of that period,

LSB is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the beginning of that part of that period, and

SLA is the standard lifetime allowance at the time when that part of that period ended.

- (5) The hybrid arrangement non-residence factor is the greater or greatest of such of—
  - (a) what would be the cash balance arrangement non-residence factor (under section 222) if the arrangement were a cash balance arrangement,
  - (b) what would be the other money purchase arrangement non-residence factor (under that section) if the arrangement were any other sort of money purchase arrangement, and

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- (c) what would be the defined benefits arrangement non-residence factor (under subsections (3) and (4)) if the arrangement were a defined benefits arrangement,  
as are relevant factors in relation to the arrangement.
- (6) A factor is a relevant factor in relation to a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits linked to that factor.
- (7) For that purpose—
  - (a) cash balance benefits are linked to the cash balance arrangement non-residence factor,
  - (b) other money purchase benefits are linked to the other money purchase arrangement non-residence factor, and
  - (c) defined benefits are linked to the defined benefits arrangement non-residence factor.

## **224 Transfers from recognised overseas pension scheme: general**

- (1) This section makes provision for the operation of a lifetime allowance enhancement factor with respect to a benefit crystallisation event occurring in relation to an individual where (at any time after 5th April 2006 but before the benefit crystallisation event) there has been a recognised overseas scheme transfer.
- (2) There is a “recognised overseas scheme transfer” if any sums or assets—
  - (a) held for the purposes of an arrangement under a recognised overseas pension scheme, or
  - (b) representing accrued rights under such an arrangement,are transferred so as to become held for the purposes of, or to represent rights under, an arrangement under a registered pension scheme relating to the individual.
- (3) The arrangement specified in subsection (2)(a) or (b) is referred to in this section and sections 225 and 226 as the “recognised overseas scheme arrangement”.
- (4) The lifetime allowance enhancement factor is the recognised overseas scheme transfer factor.
- (5) The recognised overseas scheme transfer factor is—

$$\frac{AAT - RRA}{SLA}$$

where—

AAT is the aggregate of the amount of any sums transferred, and the market value of any assets transferred, on the recognised overseas scheme transfer,  
RRA is the relevant relievable amount, and  
SLA is the standard lifetime allowance at the time when the recognised overseas scheme transfer took place.

- (6) Section 225 specifies the relevant relievable amount in the case of a recognised overseas scheme arrangement that was a money purchase arrangement; and section 226 specifies the relevant relievable amount in the case of an recognised overseas scheme arrangement that was any other sort of arrangement.

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- (7) In this section and sections 225 and 226 “overseas arrangement active membership period” is the period—
  - (a) beginning with the date on which the benefits first began to accrue to or in respect of the individual under the recognised overseas scheme arrangement or, if later, 6th April 2006, and
  - (b) ending immediately before the recognised overseas scheme transfer.
- (8) But if benefits ceased to accrue to or in respect of the individual under the recognised overseas scheme arrangement before the recognised overseas scheme transfer, the overseas arrangement active membership period is to be treated as having ended then.
- (9) This section only applies if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

## **225 Overseas scheme transfers: money purchase arrangements**

- (1) This section applies in the case of a recognised overseas scheme arrangement that was a money purchase arrangement.
- (2) The relevant relievable amount is—
  - (a) if the recognised overseas scheme arrangement was a cash balance arrangement, the cash balance relevant relievable amount (see subsections (3) to (5)), and
  - (b) if the recognised overseas scheme arrangement was any other sort of money purchase arrangement, the other money purchase relevant relievable amount (see subsections (6) and (7)).
- (3) The cash balance relevant relievable amount is—
  - (a) the amount arrived at by the application of subsection (4) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of subsection (4) in relation to each of those parts of that period.
- (4) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is—

**CV    OV**

where—

CV is the closing value of the individual’s rights under the arrangement, and  
 OV is the opening value of the individual’s rights under the arrangement.

- (5) For the purposes of subsection (4)—
  - (a) the closing value of the individual’s rights under the recognised overseas scheme arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of that part of that period, and
  - (b) the opening value of the individual’s rights under the arrangement is the amount which would, on the valuation assumptions, be available for the

provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of that part of that period.

- (6) The other money purchase relevant relievable amount is—
- (a) the amount arrived at by the application of subsection (7) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of subsection (7) in relation to each of those parts of that period.
- (7) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is the amount of the contributions made under the arrangement by or in respect of the individual in any part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual.

## **226 Overseas scheme transfers: other arrangements**

- (1) This section applies in the case of a recognised overseas scheme arrangement that was not a money purchase arrangement.
- (2) The relevant relievable amount is—
- (a) if the recognised overseas scheme arrangement was a defined benefits arrangement, the defined benefits relevant relievable amount (see subsections (3) and (4)), and
  - (b) if the recognised overseas scheme arrangement was a hybrid arrangement, the hybrid relevant relievable amount (see subsections (5) to (7)).
- (3) The defined benefits relevant relievable amount is—
- (a) the amount arrived at by the application of subsection (4) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of subsection (4) in relation to each of those parts of that period.
- (4) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is—

$$(\text{RVF} \times \text{PE} + \text{LSE}) - (\text{RVF} \times \text{PB} + \text{LSB})$$

where—

RVF is the relevant valuation factor (see section 276),

PE is the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the recognised overseas scheme arrangement if the individual became entitled to payment of it at the end of that part of that period,

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by

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commutation of pension) if the individual became entitled to payment of it at the end of that part of that period,

PB is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of that part of that period, and

LSB is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the beginning of that part of that period.

- (5) The hybrid relevant relievable amount is the greater or greatest of such of—
- (a) what would be the cash balance relevant relievable amount (under section 225) if the recognised overseas scheme arrangement had been a cash balance arrangement,
  - (b) what would be the other money purchase relevant relievable amount (under that section) if that arrangement had been any other sort of money purchase arrangement, and
  - (c) what would be the defined benefits relevant relievable amount (under subsections (3) and (4)) if that arrangement had been a defined benefits arrangement,
- as are relevant to that arrangement.
- (6) An amount is relevant to a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits linked to that amount.
- (7) For that purpose—
- (a) cash balance benefits are linked to the cash balance relevant relievable amount,
  - (b) other money purchase benefits are linked to the other money purchase relevant relievable amount, and
  - (c) defined benefits are linked to the defined benefits relevant relievable amount.

### *Annual allowance charge*

## **227 Annual allowance charge**

- (1) A charge to income tax, to be known as the annual allowance charge, arises where—
- (a) the total pension input amount for a tax year in the case of an individual who is a member of one or more registered pension schemes, exceeds
  - (b) the amount of the annual allowance for the tax year.
- (2) The person liable to the annual allowance charge is the individual.
- (3) The individual is liable to the annual allowance charge whether or not—
- (a) the individual, and
  - (b) the scheme administrator of the pension scheme or schemes concerned,
- are resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The annual allowance charge is a charge at the rate of 40% in respect of the amount by which the total pension input amount exceeds the amount of the annual allowance.



- (5) That excess is not to be treated as income for any purpose of the Tax Acts.
- (6) The following sections make further provision about the annual allowance charge—
  - section 228 (annual allowance),
  - section 229 (total pension input amount to be aggregate of pension input amounts for pension input periods ending in tax year),
  - sections 230 to 237 (pension input amounts), and
  - section 238 (pension input period).
- (7) Schedule 36 contains (in Part 4) transitional provision about the annual allowance charge.

## **228 Annual allowance**

- (1) The annual allowance for the tax year 2006-07 is £215,000.
- (2) The annual allowance for each subsequent tax year is such amount, not being less than the annual allowance for the immediately preceding tax year, as is specified by order made by the Treasury.

## **229 Total pension input amount**

- (1) The total pension input amount is arrived at by aggregating the pension input amounts in respect of each arrangement relating to the individual under a registered pension scheme of which the individual is a member.
- (2) The pension input amount in respect of an arrangement—
  - (a) is the amount arrived at under sections 230 to 232 if it is a cash balance arrangement,
  - (b) is the amount arrived at under section 233 if it is any other sort of money purchase arrangement,
  - (c) is the amount arrived at under sections 234 to 236 if it is a defined benefits arrangement, and
  - (d) is the amount arrived at under section 237 if it is a hybrid arrangement.
- (3) But there is no pension input amount in respect of an arrangement if, before the end of the tax year, the individual—
  - (a) has become entitled to all the benefits which may be provided to the individual under the arrangement, or
  - (b) has died.

## **230 Cash balance arrangements**

- (1) The pension input amount in respect of a cash balance arrangement is the amount of any increase in the value of the individual's rights under the arrangement during the pension input period of the arrangement that ends in the tax year.
- (2) There is an increase in the value of the individual's rights under the arrangement during the pension input period if—
  - (a) the opening value of the individual's rights under the arrangement, is exceeded by
  - (b) the closing value of the individual's rights under the arrangement.

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- (3) The amount of the increase in the value of the individual's rights under the arrangement during the pension input period is the amount of that excess.
- (4) The opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of the pension input period.
- (5) The closing value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of the pension input period.
- (6) Section 231 (uprating of opening value) and section 232 (adjustments of closing value) supplement this section.

### **231 Cash balance arrangements: uprating of opening value**

- (1) This section applies for adjusting the opening value of the individual's rights as calculated under section 230(4).
- (2) The opening value is to be increased by the appropriate percentage.
- (3) The appropriate percentage is whichever is the greatest of—
  - (a) 5%,
  - (b) the percentage (if any) by which the retail prices index for the month in which the pension input period ends is higher than it was for the month in which it began, and
  - (c) if provision made by regulations made by the Board of Inland Revenue applies in relation to the arrangement, the percentage to which the regulations refer.

### **232 Cash balance arrangements: adjustments of closing value**

- (1) This section applies for adjusting the closing value of the individual's rights under the arrangement as calculated under section 230(5).
- (2) If, during the pension input period, the rights of the individual under the arrangement have been reduced by having become subject to a pension debit, the amount of the debit is to be added.
- (3) If, during the pension input period, the rights of the individual under the arrangement have been increased by the individual having become entitled to a pension credit deriving from the same or another registered pension scheme, the amount of the credit is to be subtracted.
- (4) Subsection (5) applies if, during the pension input period, the rights of the individual under the arrangement have been reduced by virtue of a transfer of any sum or asset held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under, any other pension scheme that is—
  - (a) a registered pension scheme, or
  - (b) a qualifying recognised overseas pension scheme.

- (5) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be added.
- (6) Subsection (7) applies if, during the pension input period, the rights of the individual under the arrangement have been increased by virtue of a transfer of any sums or assets held for the purposes of, or representing accrued rights under, any pension scheme so as to become held for the purposes of, or to represent rights under, the arrangement.
- (7) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be subtracted.
- (8) If, during the pension input period, a benefit crystallisation event occurs in relation to the individual and the arrangement, the amount crystallised is to be added (but this is subject to section 229(3)).
- (9) If, during the pension input period, minimum payments are made under—
  - (a) section 8 of the Pension Schemes Act 1993 (c. 48), or
  - (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),in relation to the individual in connection with the arrangement, the amount paid is to be subtracted.

### **233 Other money purchase arrangements**

- (1) The pension input amount in respect of a money purchase arrangement other than a cash balance arrangement is the total of—
  - (a) any relievable pension contributions paid by or on behalf of the individual under the arrangement, and
  - (b) contributions paid in respect of the individual under the arrangement by an employer of the individual,during the pension input period of the arrangement that ends in the tax year.
- (2) The references to contributions in subsection (1)(a) and (b) do not include minimum payments under—
  - (a) section 8 of the Pension Schemes Act 1993, or
  - (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),or any amount recovered under regulations made under subsection (3) of either of those sections.
- (3) When at any time contributions paid under a pension scheme by an employer otherwise than in respect of any individual become held for the purposes of the provision under an arrangement under the pension scheme of benefits to or in respect of an individual, they are to be treated as being contributions paid at that time in respect of the individual under the arrangement.

### **234 Defined benefits arrangements**

- (1) The pension input amount in respect of a defined benefits arrangement is the amount of any increase in the value of the individual's rights under the arrangement during the pension input period of the arrangement that ends in the tax year.
- (2) There is an increase in the value of the individual's rights under the arrangement during the pension input period if—

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- (a) the opening value of the individual's rights under the arrangement, is exceeded by
  - (b) the closing value of the individual's rights under the arrangement.
- (3) The amount of the increase in the value of the individual's rights under the arrangement during the pension input period is the amount of that excess.
- (4) The opening value of the individual's rights under the arrangement is—

$$(10 \times PB) + LSB$$

where—

PB is the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of the pension input period, and

LSB is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at that time.

- (5) The closing value of the individual's rights under the arrangement is—
- $$(10 \times PE) + LSE$$

where—

PE is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of the pension input period, and

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at that time.

- (6) Section 235 (uprating of opening value) and section 236 (adjustments of closing value) supplement this section.

## **235 Defined benefits arrangements: uprating of opening value**

- (1) This section applies for adjusting the opening value of the individual's rights as calculated under section 234(4) in a case where rights do not accrue to the individual under the arrangement during the pension input period.
- (2) The opening value is to be increased by the appropriate percentage.
- (3) The appropriate percentage is whichever is the greatest of—
- (a) 5%,
  - (b) the percentage (if any) by which the retail prices index for the month in which the pension input period ends is higher than it was for the month in which it began, and
  - (c) if provision made by regulations made by the Board of Inland Revenue applies in relation to the arrangement, the percentage to which the regulations refer.

## **236 Defined benefits arrangements: adjustments of closing value**

- (1) This section applies for adjusting the closing value of the individual's rights as calculated under section 234(5).
- (2) If, during the pension input period, the rights of the individual under the arrangement have been reduced by having become subject to a pension debit, the amount of the debit is to be added.
- (3) If, during the pension input period, the rights of the individual under the arrangement have been increased by the individual having become entitled to a pension credit deriving from the same or another registered pension scheme, the amount of the credit is to be subtracted.
- (4) Subsection (5) applies if, during the pension input period, there is a transfer relating to the individual of any sum or asset held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under, any other pension scheme that is—
  - (a) a registered pension scheme, or
  - (b) a qualifying recognised overseas pension scheme.
- (5) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be added.
- (6) Subsection (7) applies if, during the pension input period, there is a transfer relating to the individual of any sums or assets held for the purposes of, or representing accrued rights under, any pension scheme so as to become held for the purposes of, or to represent rights under, the arrangement.
- (7) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be subtracted.
- (8) If, during the pension input period, a benefit crystallisation event occurs in relation to the individual and the arrangement, the amount crystallised is to be added (but this is subject to section 229(3)).
- (9) If, during the pension input period, minimum payments are made under—
  - (a) section 8 of the Pension Schemes Act 1993 (c. 48), or
  - (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),in relation to the individual in connection with the arrangement, the amount paid is to be subtracted.

## **237 Hybrid arrangements**

- (1) The pension input amount in respect of a hybrid arrangement is the greater or greatest of such of input amounts A, B and C as are relevant input amounts.
- (2) An input amount is a relevant input amount in the case of a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits of the variety mentioned in the definition of that input amount.
- (3) Input amount A is what would be the pension input amount under sections 230 to 232 if the benefits provided to or in respect of the individual under the arrangement were cash balance benefits.

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- (4) Input amount B is what would be the pension input amount under section 233 if the benefits provided to or in respect of the individual under the arrangement were other money purchase benefits.
- (5) Input amount C is what would be the pension input amount under sections 234 to 236 if the benefits provided to or in respect of the individual under the arrangement were defined benefits.

## **238 Pension input period**

- (1) In the case of an arrangement under a registered pension scheme the following are pension input periods—
  - (a) the period beginning with the relevant commencement date and ending with the earlier of a nominated date and the anniversary of the relevant commencement date, and
  - (b) each subsequent period beginning immediately after the end of a period which is a pension input period (under paragraph (a) or this paragraph) and ending with the appropriate date.
- (2) “The relevant commencement date” means—
  - (a) in the case of a cash balance arrangement or a defined benefits arrangement, or a hybrid arrangement the only benefits under which may be cash balance benefits or defined benefits, the date on which rights under the arrangement begin to accrue to or in respect of the individual,
  - (b) in the case of a money purchase arrangement other than a cash balance arrangement, the first date on which a contribution within section 233(1) is made, and
  - (c) in the case of a hybrid arrangement not within paragraph (a), whichever is the earlier of the date mentioned in that paragraph and the date mentioned in paragraph (b).
- (3) “Nominated date” means—
  - (a) in the case of a money purchase arrangement other than a cash balance arrangement, such date as the individual or scheme administrator nominates, and
  - (b) in the case of any other arrangement, such date as the scheme administrator nominates.
- (4) A nomination for the purposes of subsection (3)—
  - (a) if by the individual, is to be made by notice to the scheme administrator, and
  - (b) if by the scheme administrator, is to be made by notice to the individual.
- (5) If more than one date is nominated for the purposes of subsection (3)—
  - (a) in relation to the period beginning with the relevant commencement date, or
  - (b) in relation to a tax year following that in which the pension input period beginning with that date ends,

the date nominated first is the nominated date.
- (6) “The appropriate date” means the earlier of—
  - (a) a nominated date falling in the tax year immediately after that in which the last pension input period ended, and
  - (b) the anniversary of the date on which that period ended.

- (7) Once the individual has become entitled to all the benefits which may be provided to the individual under an arrangement, the last pension input period in the case of the arrangement is to be treated as having ended when that was first so.

### *Scheme sanction charge*

## **239 Scheme sanction charge**

- (1) A charge to income tax, to be known as the scheme sanction charge, arises where in any tax year one or more scheme chargeable payments are made by a registered pension scheme.
- (2) The person liable to the scheme sanction charge is the scheme administrator.
- (3) But in the case of a payment treated by virtue of section 161(3) and (4) (payments under investments acquired with scheme assets) as having been made by a pension scheme which has been wound up, the person liable to the scheme sanction charge is the person who was, or each of the persons who were, the scheme administrator immediately before the pension scheme was wound up.
- (4) A person liable to the scheme sanction charge is liable whether or not—
- (a) that person, and
  - (b) any other person who is liable to the scheme sanction charge,
- are resident, ordinarily resident or domiciled in the United Kingdom.
- (5) The following sections make further provision about the scheme sanction charge—
- section 240 (amount of charge), and
  - section 241 (scheme chargeable payment).

## **240 Amount of charge**

- (1) The scheme sanction charge for any tax year is a charge at the rate of 40% in respect of the scheme chargeable payment, or the aggregate of the scheme chargeable payments, made by the pension scheme in the tax year.
- (2) But if—
- (a) the scheme chargeable payment is an unauthorised payment, or any of the scheme chargeable payments are unauthorised payments, and
  - (b) tax charged in relation to that payment, or any of those payments, under section 208 (unauthorised payments charge) has been paid,
- a deduction is to be made from the amount of tax that would otherwise be chargeable for the tax year by virtue of subsection (1).
- (3) The amount of the deduction is the lesser of—
- (a) 25% of the amount of the scheme chargeable payment, or of the aggregate amount of such of the scheme chargeable payments as are tax-paid, and
  - (b) the amount of the tax which has been paid under section 208 in relation to the scheme chargeable payment, or in relation to such of the scheme chargeable payments as are tax-paid.
- (4) A scheme chargeable payment is “tax-paid” if the whole or any part of the tax chargeable in relation to it under section 208 has been paid.

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## **241 Scheme chargeable payment**

- (1) In this Part “scheme chargeable payment”, in relation to a registered pension scheme, means—
  - (a) an unauthorised payment by the pension scheme, other than one which is exempt from being scheme chargeable, and
  - (b) a scheme chargeable payment which the pension scheme is to be treated as having made by section 183 or 185 (unauthorised borrowing).
- (2) An unauthorised payment is exempt from being scheme chargeable if—
  - (a) it is treated as having been made by section 173 (use of scheme assets to provide benefits) and the asset used to provide the benefit in question is not a wasting asset,
  - (b) it is a compensation payment (see section 178),
  - (c) it is made to comply with an order of a court or of a person or body with power to order the making of the payment,
  - (d) it is made on the ground that a court or any such person or body is likely to order the making of the payment (or would be were it asked to do so), or
  - (e) it is of a description prescribed by regulations made by the Board of Inland Revenue.
- (3) “Wasting asset” has the same meaning as in section 44 of TCGA 1992.
- (4) Schedule 36 contains (in Part 3) transitional provision about scheme chargeable payments.

### *De-registration charge*

## **242 De-registration charge**

- (1) A charge to income tax, to be known as the de-registration charge, arises where the registration of a registered pension scheme is withdrawn.
- (2) The liability to the de-registration charge is a liability of the person who was, or each of the persons who were, the scheme administrator immediately before the registration was withdrawn.
- (3) That person, or each of those persons, is liable to the de-registration charge whether or not—
  - (a) that person, and
  - (b) any other person who is liable to the de-registration charge,
 are resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The de-registration charge is a charge at the rate of 40% in respect of the aggregate of—
  - (a) the amount of any sums held for the purposes of the pension scheme immediately before it ceased to be a registered pension scheme, and
  - (b) the market value at that time of any assets held for the purposes of the pension scheme.



## CHAPTER 6

### SCHEMES THAT ARE NOT REGISTERED PENSION SCHEMES

#### *Non-UK schemes*

#### **243 Overseas pension schemes: migrant member relief**

Schedule 33 contains provision about migrant member relief in respect of contributions under overseas pension schemes.

#### **244 Non-UK schemes: application of certain charges**

Schedule 34 contains provision applying certain charges under this Part in relation to non-UK schemes.

#### *Employer-financed retirement benefit schemes*

#### **245 Restriction of deduction for contributions by employer**

- (1) Schedule 24 to the Finance Act 2003 (c. 14) (restriction of deductions for employee benefit contributions) is amended as follows.
- (2) In paragraph 1(2)(b) (when employer makes “employee benefit contribution”), after “benefits to” insert “or in respect of present or former”.
- (3) In sub-paragraph (1) of paragraph 2 (“qualifying benefits”), insert at the end “or  
(c) is made under an employer-financed retirement benefits scheme.”
- (4) In sub-paragraph (5) of that paragraph (when qualifying benefit treated as provided), after “payment of money” insert “otherwise than under an employer-financed retirement benefits scheme”.
- (5) In paragraph 8 (deductions to which Schedule does not apply), for paragraphs (b) and (c) substitute—
  - “(b) in respect of contributions under a registered pension scheme or a section 615(3) scheme,
  - (c) in respect of contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions.”.
- (6) In sub-paragraph (1) of paragraph 9 (interpretation), in the definition of “employee benefit scheme”, after “include,” insert “present or former”.
- (7) In that sub-paragraph, after the definition of “the employer” insert—

““employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of the Income Tax (Earnings and Pensions) Act 2003 (see section 393A of that Act);”.
- (8) In that sub-paragraph, after the definition of “qualifying expenses” insert—

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““qualifying overseas pension scheme” has the same meaning as in Schedule 33 to the Finance Act 2004 (see paragraphs 5 and 6 of that Schedule);

“registered pension scheme” has the same meaning as in Part 4 of that Act (see section 150 of that Act);

“relevant migrant member” has the same meaning as in Schedule 33 to that Act (see paragraph 4 of that Schedule);

“section 615(3) scheme” means a superannuation fund to which section 615(3) of the Taxes Act 1988 applies;”.

## **246      Restriction of deduction for non-contributory provision**

- (1) This section applies in relation to an employer’s expenses of providing benefits to or in respect of present or former employees under an employer-financed retirement benefits scheme in a case where—
  - (a) the expenses do not consist of the making of contributions under the scheme, but
  - (b) in accordance with generally accepted accounting practice they are shown in the employer’s accounts.
- (2) Unless the benefits are ones in respect of which a person is, on receipt, chargeable to income tax, the expenses—
  - (a) are not deductible in computing the amount of the profits of the employer for the purposes of Case I or II of Schedule D,
  - (b) are not expenses of management of the employer for the purposes of section 75 of ICTA (expenses of management: companies with investment business), and
  - (c) are not to be brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.
- (3) But where the benefits are ones in respect of which a person is, on receipt, chargeable to income tax—
  - (a) if the expenses are allowed to be deducted in computing the amount of the profits of the employer to be charged under Case I or II of Schedule D, they are deductible in computing the amount of the profits for the period of account in which they are paid, and
  - (b) for the purposes of the operation of section 75 or 76 of ICTA in relation to the employer, the expenses are referable to the accounting period in which they are paid.
- (4) In this section “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 393A of that Act).

## **247      Abolition of income tax charge in respect of employer payments**

In Part 6 of ITEPA 2003, omit Chapter 1 (payments by employer for the provision of benefits for an employee under certain schemes to count as employment income of employee).

## **248 Employer’s cost of insuring against non-payment of benefit**

- (1) Section 307 of ITEPA 2003 (no liability to income tax in respect of chargeable benefit on provision made by employer for a retirement or death benefit) is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) Subsection (1) does not apply to provision made for insuring against the risk that a retirement or death benefit under an employer-financed retirement benefits scheme cannot be paid or given because of the employer’s insolvency.
  - (1B) In subsection (1A) “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 (see section 393A).”
- (3) In subsection (2), for “subsection (1)” substitute “this section”.

## **249 Taxation of non-pension benefits**

- (1) Chapter 2 of Part 6 of ITEPA 2003 (taxation of non-pension benefits from certain pension schemes) is amended as follows.
- (2) In the heading of the Chapter, for “NON-APPROVED PENSION” substitute “EMPLOYER-FINANCED RETIREMENT BENEFITS”.
- (3) For section 393 substitute—

### **“393 Application of this Chapter**

- (1) This Chapter applies to relevant benefits provided under an employer-financed retirement benefits scheme.
- (2) Section 393A defines “employer-financed retirement benefits scheme” and section 393B defines “relevant benefits”.

### **393A Employer-financed retirement benefits scheme**

- (1) In this Chapter “employer-financed retirement benefits scheme” means a scheme for the provision of benefits consisting of or including relevant benefits to or in respect of employees or former employees of an employer.
- (2) But neither—
  - (a) a registered pension scheme, nor
  - (b) a section 615(3) scheme,is an employer-financed retirement benefits scheme.
- (3) “Section 615(3) scheme” means a superannuation fund to which section 615(3) of ICTA applies.
- (4) “Scheme” includes a deed, agreement, series of agreements, or other arrangements.

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### **393B Relevant benefits**

- (1) In this Chapter “relevant benefits” means any lump sum, gratuity or other benefit (including a non-cash benefit) provided (or to be provided)—
    - (a) on or in anticipation of the retirement of an employee or former employee,
    - (b) on the death of an employee or former employee,
    - (c) after the retirement or death of an employee or former employee in connection with past service,
    - (d) on or in anticipation of, or in connection with, any change in the nature of service of an employee, or
    - (e) to any person by virtue of a pension sharing order or provision relating to an employee or former employee.
  - (2) But—
    - (a) benefits charged to tax under Part 9 (pension income),
    - (b) benefits chargeable to tax by virtue of Schedule 34 to FA 2004 (which applies certain charges under Part 4 of that Act in relation to non-UK schemes), and
    - (c) excluded benefits,are not relevant benefits.
  - (3) The following are “excluded benefits”—
    - (a) benefits in respect of ill-health or disablement of an employee during service,
    - (b) benefits in respect of the death by accident of an employee during service,
    - (c) benefits under a relevant life policy, and
    - (d) benefits of any description prescribed by regulations made by the Board of Inland Revenue.
  - (4) In subsection (3)(c) “relevant life policy” means—
    - (a) a group life policy as defined in section 539(3) of ICTA (life policies excluded from charges on gains) with respect to which the conditions in section 539A of that Act are met,
    - (b) a policy of life insurance the terms of which provide for the payment of benefits on the death of a single individual and with respect to which condition 1 in that section would be met if it referred to that individual (rather than each of the individuals insured under the policy) and conditions 3, 4, 5 and 7 in that section are met, or
    - (c) a policy of life insurance that would be within paragraph (a) or (b) but for the fact that it provides for a benefit which is an excluded benefit under or by virtue of paragraph (a), (b) or (d) of subsection (3).
  - (5) In subsection (1)(e) “pension sharing order or provision” means any such order or provision as is mentioned in section 28(1) of WRP 1999 or Article 25(1) of WRP(NI)O 1999.”
- (4) Section 394 (charge on benefit) is amended as follows.
- (5) After subsection (1) insert—

“(1A) Subsection (1) does not apply in relation to the benefit if the total amount of the benefits to which this Chapter applies received by the individual in the relevant tax year does not exceed £100.”

(6) In subsection (2), for “administrator of” substitute “person who is (or persons who are) the responsible person in relation to”.

(7) In subsection (3), for “subsections (1) and (2)” substitute “this section”.

(8) For sections 395 to 397 substitute—

#### **“395 Reduction where employee has contributed**

(1) This section applies in relation to a relevant benefit under an employer-financed retirement benefits scheme in the form of a lump sum where, under the scheme, an employee has paid any sum or sums by way of contribution to the provision of the lump sum.

(2) The amount which, by virtue of section 394, counts as employment income, or is chargeable to tax under Case VI of Schedule D, is the amount of the lump sum reduced by the sum, or the aggregate of the sums, paid by the employee by way of contribution to the provision of the lump sum.

(3) A reduction under this section may not be claimed in respect of the same contribution in relation to more than one lump sum.

(4) It is to be assumed, unless the contrary is shown, that no reduction is applicable under this section.”

(9) In subsection (1) of section 399 (valuation of benefit in form of loan), for “administrator of” substitute “person who is (or any of the persons who are) the responsible person in relation to”.

(10) In subsection (2) of that section, for “administrator” substitute “responsible person”.

(11) For section 400 substitute—

#### **“399A Responsible person**

(1) The following heads specify the person who is, or persons who are, the responsible person in relation to an employer-financed retirement benefits scheme for the purposes of this Chapter.

(2) But if a person is, or persons are, the responsible person in relation to the scheme by virtue of being specified under one head, no-one is the responsible person in relation to the scheme by virtue of being specified under a later head.

##### *Head 1*

If there are one or more trustees of the scheme who are resident in the United Kingdom, that trustee or each of those trustees.

##### *Head 2*

If there are one or more persons who control the management of the scheme, that person or each of those persons.

##### *Head 3*

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If alive or still in existence, the employer, or any of the employers, who established the scheme and any person by whom that employer, or any of those employers, has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

*Head 4*

Any employer of employees to or in respect of whom benefits are, or are to be, provided under the scheme.

*Head 5*

If there are one or more trustees of the scheme who are not resident in the United Kingdom, that trustee or each of those trustees.

## **400 Interpretation**

In this Chapter—

“employer-financed retirement benefits scheme” has the meaning given by section 393A;

“relevant benefits” has the meaning given by section 393B; and

“responsible person” has the meaning given by section 399A.”

(12) In Part 2 of Schedule 1 to ITEPA 2003 (defined expressions), insert at the appropriate places—

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“employer-financed retirement benefits scheme (in Chapter 2 of Part 6)	section 393A”
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“relevant benefits (in Chapter 2 of Part 6)	section 393B”
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“responsible person (in Chapter 2 of Part 6)	section 399A”.
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## **CHAPTER 7**

### **COMPLIANCE**

#### *Information*

## **250 Registered pension scheme return**

(1) The Inland Revenue may, in relation to any tax year, by notice require the scheme administrator of a registered pension scheme—

- (a) to make and deliver to the Inland Revenue a return containing any information reasonably required by the notice, and
- (b) to deliver with the return any accounts, statements or other documents relating to information contained in the return which may reasonably be required by the notice.

- (2) The information that may be required to be included in the return is any information relating to—
- (a) contributions made under the pension scheme,
  - (b) transfers of sums or assets held for the purposes of, or representing accrued rights under, another pension scheme so as to become held for the purposes of, or to represent rights under, the pension scheme,
  - (c) income and gains derived from investments or deposits held for the purposes of the pension scheme,
  - (d) other receipts of the pension scheme,
  - (e) the sums and other assets held for the purposes of the pension scheme,
  - (f) the liabilities of the pension scheme,
  - (g) the provision of benefits by the pension scheme,
  - (h) transfers of sums or assets held for the purposes of, or representing accrued rights under, the pension scheme so as to become held for the purposes of, or to represent rights under, another pension scheme,
  - (i) other expenditure of the pension scheme,
  - (j) the membership of the pension scheme, or
  - (k) any other matter relating to the administration of the pension scheme.
- (3) The information that may be required to be included in the return may be limited to information concerning any particular arrangement or arrangements under the pension scheme.
- (4) The notice must specify the period to be covered by the return.
- (5) The period may be—
- (a) the whole or any specified part of the tax year, or
  - (b) if audited accounts of the pension scheme have been prepared for any period or periods ending in the tax year, the period or periods covered by the accounts.
- (6) “Audited accounts” means accounts audited by a person of a description specified in regulations made by the Board of Inland Revenue.
- (7) A return relating to the whole or part of, or to a period or periods ending in, a tax year must be delivered—
- (a) where the notice requiring the return is given after the 31st October in the next tax year, before the end of the period of three months beginning with the day on which the notice is given, and
  - (b) otherwise, not later than the 31st January in the next tax year (but subject as follows).
- (8) If, in a case within paragraph (b) of subsection (7), the winding-up of the pension scheme has been completed before 31st October in the next tax year, the return must be delivered before the end of the period of three months beginning with the day on which the winding-up is completed.
- (9) But subsection (8) does not apply if the end of that period is before the end of the period of three months beginning with the day on which the notice is given; and in that case the return must be delivered before the end of that period.

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## **251 Information: general requirements**

- (1) The Board of Inland Revenue may by regulations make provision requiring persons of a prescribed description—
  - (a) to provide to the Inland Revenue, in a form specified by the Board of Inland Revenue, information of a prescribed description relating to any of the matters mentioned in subsection (2), and
  - (b) to preserve for a prescribed period any documents relating to such information.
- (2) Those matters are—
  - (a) any matter relating to a registered pension scheme,
  - (b) any matter relating to a pension scheme which has ceased to be a registered pension scheme,
  - (c) any matter relating to a pension scheme in relation to which an application for registration has been made,
  - (d) any matter relating to an annuity purchased with sums or assets held for the purposes of a registered pension scheme,
  - (e) the coming into operation of an employer-financed retirement benefits scheme, and
  - (f) the provision of relevant benefits under an employer-financed retirement benefits scheme.
- (3) In subsection (2)—

“employer-financed retirement benefits scheme”, and  
“relevant benefits”,

have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).
- (4) The Board of Inland Revenue may by regulations make provision—
  - (a) requiring scheme administrators of registered pension schemes or other persons of a prescribed description to provide information of a prescribed description to persons of such of the descriptions mentioned in subsection (5) as are prescribed, or
  - (b) requiring persons of such of the descriptions specified in subsection (5) as are prescribed to provide information of a prescribed description to the scheme administrators of registered pension schemes.
- (5) Those persons are—
  - (a) members of a registered pension scheme,
  - (b) persons who have ceased to be members of a registered pension scheme,
  - (c) persons to whom benefits under a registered pension scheme are being, or have been, provided,
  - (d) the personal representatives of any person within paragraphs (a) to (c), and
  - (e) insurance companies who pay annuities purchased with sums or assets held for the purposes of registered pension schemes.
- (6) “Prescribed”, in relation to regulations, means prescribed by the regulations.



## **252 Notices requiring documents or particulars**

- (1) The Inland Revenue may by notice require any person of a description prescribed by regulations made by the Board of Inland Revenue—
  - (a) to produce to the Inland Revenue, or to make available for inspection by the Inland Revenue, any documents within the person's possession or power relating to any of the matters mentioned in subsection (3) which the Inland Revenue may reasonably require, and
  - (b) to provide to the Inland Revenue any particulars relating to any of those matters which the Inland Revenue may reasonably require.
- (2) The Inland Revenue may by notice require any other person to produce to the Inland Revenue, or to make available for inspection by the Inland Revenue, any documents within the person's possession or power which—
  - (a) relate to any of the matters mentioned in subsection (3), and
  - (b) were created not more than six years before the day on which the notice is given,and which the Inland Revenue may reasonably require.
- (3) The matters referred to in subsections (1) and (2) are—
  - (a) any matter relating to a registered pension scheme,
  - (b) any matter relating to a pension scheme which has ceased to be a registered pension scheme,
  - (c) any matter relating to a pension scheme in relation to which an application for registration has been made,
  - (d) any matter relating to an annuity purchased with sums or assets held for the purposes of a registered pension scheme,
  - (e) the coming into operation of an employer-financed retirement benefits scheme, and
  - (f) the provision of relevant benefits under an employer-financed retirement benefits scheme.
- (4) In subsection (3)—

“employer-financed retirement benefits scheme”, and  
“relevant benefits”,

have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).
- (5) A notice under this section must specify the period within which it is to be complied with; and that period may not end earlier than the period of 30 days beginning with the day on which the notice is given.
- (6) A notice under subsection (2) must specify the pension scheme or employer-financed retirement benefits scheme to which it relates.
- (7) The Inland Revenue must notify the scheme administrator of the pension scheme, or the responsible person in relation to the employer-financed retirement benefits scheme, to which such a notice relates that the notice has been given no later than the end of the period of 30 days beginning with the day on which it is given.
- (8) In subsection (7) “responsible person” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 399A of that Act).

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- (9) A person may comply with a notice under this section requiring the production of a document by producing a copy of the document.
- (10) But where a person produces a copy of a document in compliance with a notice under this section the Inland Revenue may by notice require the production of the original for inspection within a period specified in the notice; and that period may not end earlier than the period of 30 days beginning with the day on which the notice is given.
- (11) The Inland Revenue may take copies of, or make extracts from, any document produced in compliance with a notice under this section.
- (12) A notice under this section does not require a person—
  - (a) to produce or make available for inspection any document, or
  - (b) to provide any particulars,relating to any pending appeal by the person relating to tax.

### **253 Appeal against notices**

- (1) The person to whom a notice under section 252(1) or (2) (notices requiring documents or particulars) is given may appeal against any requirement imposed by the notice.
- (2) The appeal must be brought within the period of 30 days beginning with the date on which the notice is given.
- (3) The appeal is to the General Commissioners, except that the appellant may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a requirement imposed by a notice must be brought within the period of 30 days beginning with the day on which the notice was given.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the production of the document, or provision of the particulars, to which the appeal relates was reasonably required by the Inland Revenue.
- (7) If they decide that it was, they must confirm the notice so far as relating to that requirement.
- (8) If they decide that it was not, they must set aside the notice so far as relating to that requirement.
- (9) If the notice is confirmed it has effect in relation to the requirement to which the appeal relates as if it specified as the period within which it must be complied with the period of 30 days beginning with the day on which the appeal was determined.
- (10) The determination of the Commissioners is final and conclusive.

### *Accounting and assessment*

#### **254 Accounting for tax by scheme administrators**

- (1) A scheme administrator of a registered pension scheme must make returns to the Inland Revenue of the income tax to which the scheme administrator is liable under this Part.
- (2) A return is to be made for each period of three months ending with 31st March, 30th June, 30th September or 31st December if tax has been charged on the scheme administrator by virtue of this Part in that period.
- (3) A return for any period must be made before the end of the period of 45 days beginning with the day immediately following the end of that period.
- (4) A return must—
  - (a) show the income tax to which the scheme administrator is liable, and
  - (b) include such particulars of the events or other circumstances giving rise to the liability (including particulars as to the persons to whom the events or other circumstances relate) as are required to be included in returns under this section by regulations made by the Board of Inland Revenue.
- (5) The income tax required to be shown in a return is due at the time by which the return is to be made and is payable without the making of an assessment.
- (6) The Board of Inland Revenue may by regulations make provision for and in connection with—
  - (a) the charging of interest on tax due under this section which is not paid on or before the due date,
  - (b) the making of amended returns by scheme administrators in the event of error in a return under this section,
  - (c) the making of assessments, repayments or adjustments in cases where the correct tax due under this section has not been paid on or before the due date, and
  - (d) otherwise for supplementing this section.
- (7) The regulations may, in particular—
  - (a) modify the operation of any provision of the Tax Acts, or
  - (b) provide for the application of any provision of the Tax Acts (with or without modifications).
- (8) References in this section to the income tax to which a scheme administrator is liable under this Part do not include any to which the scheme administrator is liable under section 239 (scheme sanction charge).
- (9) Where the registration of a registered pension scheme has been withdrawn, this section has effect as if references to the scheme administrator were to the person who was, or each of the persons who were, the scheme administrator immediately before the registration was withdrawn.

#### **255 Assessments under this Part**

- (1) The Board of Inland Revenue may by regulations make provision for and in connection with the making of assessments in respect of—

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- (a) the unauthorised payments charge,
  - (b) the unauthorised payments surcharge,
  - (c) liability to the lifetime allowance charge under section 217(2) (person to whom lump sum death benefit paid),
  - (d) the scheme sanction charge,
  - (e) liability under section 272 (trustees etc. liable as scheme administrator),
  - (f) liability under section 273 (member liable as scheme administrator), and
  - (g) liability under section 394 of ITEPA 2003 (benefit under employer-financed retirement benefits scheme: charge on responsible person).
- (2) The provision that may be made by the regulations includes (in particular) provision for the charging of interest on tax due under such assessments which remains unpaid.
- (3) The regulations may, in particular—
- (a) modify the operation of any provision of the Tax Acts, or
  - (b) provide for the application of any provision of the Tax Acts (with or without modification).

#### *Registration regulations*

### **256 Enhanced lifetime allowance regulations**

- (1) This section applies to regulations made by the Board of Inland Revenue under—
- (a) section 220(5) (lifetime allowance enhancement: registration of pension credits),
  - (b) section 221(6) (lifetime allowance enhancement: individuals who are not always relevant UK individuals),
  - (c) section 224(9) (lifetime allowance enhancement: transfers from recognised overseas pension scheme),
  - (d) paragraph 7(1)(b) of Schedule 36 (lifetime allowance enhancement: primary protection),
  - (e) paragraph 12(1) of that Schedule (lifetime allowance: enhanced protection), and
  - (f) paragraph 18(6) of that Schedule (lifetime allowance enhancement: pre-commencement pension credits).
- (2) The regulations to which this section applies are referred to in this Part as “enhanced lifetime allowance regulations”.
- (3) Enhanced lifetime allowance regulations may include any provision that appears appropriate for securing that the correct tax is charged—
- (a) by way of the lifetime allowance charge in respect of amounts crystallised by benefit crystallisation events, and
  - (b) in respect of the payment of lump sums by registered pension schemes.
- (4) Enhanced lifetime allowance regulations may, for that purpose, in particular contain provision—
- (a) requiring any person to produce or make available documents, produce certificates or provide information, and
  - (b) for the review from time to time of any matter registered in accordance with the regulations.

## *Penalties*

### **257 Registered pension scheme return**

- (1) If the scheme administrator of a registered pension scheme fails to comply with a notice under section 250 (registered pension scheme return), the scheme administrator is liable to a penalty of £100.
- (2) If the failure continues after a penalty is imposed under subsection (1), the scheme administrator is liable to a further penalty not exceeding £60 for each day on which the failure continues after the day on which that penalty was imposed (but excluding any day for which a penalty under this subsection has already been imposed).
- (3) No penalty may be imposed under subsection (1) or (2) in respect of a failure after it has been remedied.
- (4) If the scheme administrator of a registered pension scheme fraudulently or negligently—
  - (a) makes an incorrect return required by a notice under section 250, or
  - (b) delivers any incorrect accounts, statements or other documents with such a return,the scheme administrator is liable to a penalty not exceeding £3,000.

### **258 Information required by regulations**

- (1) In section 98 of TMA 1970 (penalties for failure to provide information and providing false information), in the second column of the Table, insert at the appropriate place—

“regulations under section 251(1)(a) or (4) of the Finance Act 2004;”.
- (2) A person who fails to comply with regulations under section 251(1)(b) (preservation of documents) is liable to a penalty not exceeding £3,000.

### **259 Documents and particulars required by notice**

- (1) A person who fails to comply with a notice under section 252 (notice requiring documents or particulars) is liable to a penalty not exceeding £300.
- (2) If the failure continues after a penalty is imposed under subsection (1), the person is liable to a further penalty not exceeding £60 for each day on which the failure continues after the day on which that penalty was imposed (but excluding any day for which a penalty under this subsection has already been imposed).
- (3) No penalty may be imposed under subsection (1) or (2) in respect of a failure after it has been remedied.
- (4) If a person fraudulently or negligently—
  - (a) produces or makes available for inspection any incorrect documents, or
  - (b) provides any incorrect particulars,in response to a notice under section 252, the person is liable to a penalty not exceeding £3,000.

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## **260     Accounting return**

- (1) If the scheme administrator of a registered pension scheme fails to make a return for a quarter in accordance with section 254 (return of tax charged), the scheme administrator is liable—
  - (a) to a penalty or penalties of the relevant quarterly amount for each quarter (or part of a quarter) for which the failure continues, excluding any quarter after the fourth or for which a penalty under this paragraph has already been imposed, and
  - (b) if the failure continues beyond the fourth quarter (whether or not any penalty under paragraph (a) is imposed), to a penalty not exceeding the amount of income tax to which the scheme administrator is liable (otherwise than under section 239: scheme sanction charge) for the quarter for which the return is not made.
- (2) In subsection (1)—

“quarter” means a period of three months ending with 31st March, 30th June, 30th September or 31st December, and

“the relevant quarterly amount”—

  - (a) if the number of persons in respect of whom particulars should be included in the return by virtue of section 254(4)(b) is ten or less, is £100, and
  - (b) if that number is greater than ten, is £100 for each ten such persons and an additional £100 where that number is not a multiple of ten.
- (3) The Treasury may from time to time by order amend the amounts specified in the definition of “the relevant quarterly amount” in subsection (2).
- (4) No penalty under subsection (1)(b) may be imposed unless—
  - (a) the amount of income tax to which the scheme administrator is liable (otherwise than under section 239) for the quarter concerned has been determined by the Inland Revenue, and
  - (b) the scheme administrator has been notified of that amount.
- (5) In section 100(6)(a) of TMA 1970 (excessive penalty), after “1998” insert “or section 260(1)(b) of the Finance Act 2004”.
- (6) If the scheme administrator of a registered pension scheme fraudulently or negligently makes an incorrect return under section 254, the scheme administrator is liable to a penalty not exceeding the difference between—
  - (a) the amount of the tax shown in the return, and
  - (b) the amount of the tax which should have been shown in the return,or, if no tax is shown in the return, the amount of the tax which should have been shown in the return.
- (7) Where the registration of a registered pension scheme has been withdrawn, this section has effect as if references to the scheme administrator were to the person who was or the persons who were the scheme administrator immediately before the registration was withdrawn.

## **261     Enhanced lifetime allowance regulations: documents and information**

- (1) This section applies where an individual fraudulently or negligently—

- (a) produces or makes available an incorrect document, or produces an incorrect certificate, in connection with any matter registered in accordance with enhanced lifetime allowance regulations, or
  - (b) provides false information in connection with any such matter,and the condition in subsection (2) is met.
- (2) The condition is that—
  - (a) the amount of the individual's lifetime allowance at the time which is relevant for the purposes of this paragraph, or
  - (b) the amount of the pension commencement lump sums to which the individual may be entitled at the time which is relevant for the purposes of this paragraph, would be greater than it actually is were the document or certificate correct or the information true.
- (3) The individual is liable to a penalty not exceeding 25% of the relevant excess.
- (4) In a case within paragraph (a) of subsection (2), the relevant excess is the difference between what would be the amount of the individual's lifetime allowance at the time which is relevant for the purposes of that paragraph (were the document or certificate correct or the information true) and whichever is the higher of—
  - (a) the actual amount of the individual's lifetime allowance at that time, and
  - (b) the standard lifetime allowance at that time.
- (5) The time which is relevant for the purposes of paragraph (a) of subsection (2)—
  - (a) where a benefit crystallisation event has occurred in relation to the individual since the document was produced or made available, the certificate produced or the information provided (but before a penalty under this section is imposed), is the time when the benefit crystallisation event occurred, and
  - (b) otherwise, is the time when the document was produced or made available, the certificate produced or the information provided.
- (6) In a case within paragraph (b) of subsection (2), the relevant excess is the difference between—
  - (a) what would be the amount of the pension commencement lump sums to which the individual may be entitled at the time which is relevant for the purposes of that paragraph (were the document or certificate correct or the information true), and
  - (b) the actual amount at that time of the pension commencement lump sums to which the individual may be entitled.
- (7) The time which is relevant for the purposes of paragraph (b) of subsection (2) is the time when the document was produced or made available, the certificate produced or the information provided.

## **262 Enhanced lifetime allowance regulations: failures to comply**

An individual who fails—

- (a) to produce or make available any document required to be produced by enhanced lifetime allowance regulations,
- (b) to produce any certificate required to be produced by enhanced lifetime allowance regulations, or

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- (c) to provide any information required to be provided by enhanced lifetime allowance regulations,  
is liable to a penalty not exceeding £3,000.

## **263 Lifetime allowance enhanced protection: benefit accrual**

- (1) This section applies where—
  - (a) paragraph 12 of Schedule 36 (lifetime allowance charge: enhanced protection) applies in relation to an individual, and
  - (b) relevant benefit accrual occurs in relation to the individual (as to which see paragraph 13 of that Schedule).
- (2) If the individual fails to notify the Inland Revenue of the relevant benefit accrual within the period of 90 days beginning with the day on which it occurs, the individual is liable to a penalty not exceeding £3,000.

## **264 False statements etc**

- (1) A person who fraudulently or negligently makes a false statement or representation is liable to a penalty not exceeding £3,000 if, in consequence of the statement or representation—
  - (a) that person or any other person obtains relief from, or repayment of, tax chargeable under this Part, or
  - (b) a registered pension scheme makes a payment which is an unauthorised payment.
- (2) A person who assists in or induces the preparation of any document which the person knows—
  - (a) is incorrect, and
  - (b) will, or is likely to, cause a registered pension scheme to make an unauthorised payment,is liable to a penalty not exceeding £3,000.

## **265 Winding-up to facilitate payment of lump sums**

- (1) This section applies where the winding-up of a registered pension scheme has begun and the Inland Revenue considers the pension scheme is being wound up wholly or mainly for the purpose specified in subsection (2).
- (2) That purpose is facilitating the payment of winding-up lump sums or winding-up lump sum death benefits (or both) under the pension scheme.
- (3) The scheme administrator is liable to a penalty not exceeding the relevant amount.
- (4) The relevant amount is £3,000 in respect of—
  - (a) each member to whom a winding-up lump sum is paid under the pension scheme, and
  - (b) each member in respect of whom a winding-up lump sum death benefit is paid under the pension scheme.



## **266 Transfers to insured schemes**

- (1) This section applies where sums held for the purposes of, or representing accrued rights under, a registered pension scheme (“the transferor scheme”) are transferred so as to become held for the purposes of, or to represent rights under, a registered pension scheme that is an insured scheme (“the transferee scheme”).
- (2) The scheme administrator of the transferor scheme is liable to a penalty not exceeding £3,000 unless the sums are transferred either to the scheme administrator of the transferee scheme or to a relevant insurance company.
- (3) In this section—
  - “insured scheme” means a pension scheme all the income and other assets of which are invested in policies of insurance, and
  - “relevant insurance company” means an insurance company that issued any of the policies of insurance.

*Discharge of tax liability: good faith*

## **267 Lifetime allowance charge**

- (1) This section applies where the scheme administrator of a registered pension scheme is liable to the lifetime allowance charge in respect of a benefit crystallisation event.
- (2) The scheme administrator may apply to the Inland Revenue for the discharge of the scheme administrator’s liability to the lifetime allowance charge in respect of the benefit crystallisation event on the ground mentioned in subsection (3).
- (3) The ground is that—
  - (a) the scheme administrator reasonably believed that there was no liability to the lifetime allowance charge in respect of the benefit crystallisation event, and
  - (b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the lifetime allowance charge in respect of the benefit crystallisation event.
- (4) On receiving an application under subsection (2), the Inland Revenue must decide whether to discharge the scheme administrator’s liability to the lifetime allowance charge in respect of the benefit crystallisation event.
- (5) The scheme administrator may apply to the Inland Revenue for the discharge of part of the scheme administrator’s liability to the lifetime allowance charge in respect of the benefit crystallisation event on the ground mentioned in subsection (6).
- (6) The ground is that—
  - (a) the scheme administrator reasonably believed that the amount of the lifetime allowance charge in respect of the benefit crystallisation event was less than the actual amount, and
  - (b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to an amount (“the excess amount”) equal to the difference between the amount which the scheme administrator believed to be the amount of the charge and the actual amount.

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- (7) On receiving an application under subsection (5), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the lifetime allowance charge in respect of the excess amount (or part of the excess amount).
- (8) The discharge of the scheme administrator's liability to the lifetime allowance charge (or to the excess amount or part of the excess amount) does not affect the liability of any other person to the lifetime allowance charge.
- (9) The Inland Revenue must notify the scheme administrator of the decision on an application under this section.
- (10) Regulations made by the Board of Inland Revenue may make provision supplementing this section; and the regulations may in particular make provision as to the time limits for the making of an application.

## **268     Unauthorised payments surcharge and scheme sanction charge**

- (1) This section applies where—
  - (a) a person is liable to the unauthorised payments surcharge in respect of an unauthorised payment, or
  - (b) the scheme administrator of a registered pension scheme is liable to the scheme sanction charge in respect of a scheme chargeable payment.
- (2) The person liable to the unauthorised payments surcharge may apply to the Inland Revenue for the discharge of the person's liability to the unauthorised payments surcharge in respect of the unauthorised payment on the ground mentioned in subsection (3).
- (3) The ground is that in all the circumstances of the case, it would not be just and reasonable for the person to be liable to the unauthorised payments surcharge in respect of the payment.
- (4) On receiving an application by a person under subsection (2) the Inland Revenue must decide whether to discharge the person's liability to the unauthorised payments surcharge in respect of the payment.
- (5) The scheme administrator may apply to the Inland Revenue for the discharge of the scheme administrator's liability to the scheme sanction charge in respect of a scheme chargeable payment on the ground mentioned in subsection (6) or (7).
- (6) In the case of a scheme chargeable payment which is treated as being an unauthorised member payment by section 172 (assignment), the ground is that, in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the scheme sanction charge.
- (7) In any other case, the ground is that—
  - (a) the scheme administrator reasonably believed that the unauthorised payment was not a scheme chargeable payment, and
  - (b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the scheme sanction charge in respect of the unauthorised payment.
- (8) On receiving an application under subsection (5), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the scheme sanction charge in respect of the unauthorised payment.

- (9) The Inland Revenue must notify the applicant of the decision on an application under this section.
- (10) Regulations made by the Board of Inland Revenue may make provision supplementing this section; and the regulations may in particular make provision as to the time limits for the making of an application.

## **269 Appeal against decision on discharge of liability**

- (1) This section applies where the Inland Revenue—
  - (a) decides to refuse an application under section 267(2) (discharge of liability to lifetime allowance charge) or section 268 (discharge of liability to unauthorised payments surcharge or scheme sanction charge), or
  - (b) on an application under section 267(5), decides to refuse the application or to discharge the applicant's liability to the lifetime allowance charge in respect of part only of the excess amount.
- (2) The applicant may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the person may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the applicant was given notification of the decision.
- (6) The Commissioners before whom an appeal under subsection (1)(a) is brought must consider whether the applicant's liability to the lifetime allowance charge, unauthorised payments surcharge or scheme sanction charge ought to have been discharged.
- (7) If they consider that the applicant's liability ought not to have been discharged, they must dismiss the appeal.
- (8) If they consider that the applicant's liability ought to have been discharged, they must grant the application.
- (9) The Commissioners before whom an appeal under subsection (1)(b) is brought must consider whether the applicant's liability to the lifetime allowance charge ought to have been discharged in respect of the excess amount or a greater part of the excess amount.
- (10) If they consider that the applicant's liability ought not to have been discharged in respect of the excess amount or a greater part of the excess amount, they must dismiss the appeal.
- (11) If they consider that the applicant's liability ought to have been discharged in respect of the excess amount or a greater part of the excess amount, they must discharge the applicant's liability in respect of the excess amount or that part of the excess amount.

### *Scheme administrator*

#### **270 Meaning of “scheme administrator”**

- (1) References in this Part to the scheme administrator, in relation to a pension scheme, are to the person who is, or persons who are, appointed in accordance with the rules of the pension scheme to be responsible for the discharge of the functions conferred or imposed on the scheme administrator of the pension scheme by and under this Part.
- (2) But a person cannot be the person who is, or one of the persons who are, the scheme administrator of a pension scheme unless the person—
  - (a) is resident in the United Kingdom or another state which is a member State or a non-member EEA State, and
  - (b) has made the required declaration to the Inland Revenue.
- (3) “The required declaration” is a declaration that the person—
  - (a) understands that the person will be responsible for discharging the functions conferred or imposed on the scheme administrator of the pension scheme by and under this Part, and
  - (b) intends to discharge those functions at all times, whether resident in the United Kingdom or another state which is a member State or a non-member EEA State.
- (4) “Non-member EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as adjusted by the Protocol signed at Brussels on 17th March 1993) but which is not a member State.

#### **271 Liability of scheme administrator**

- (1) Any liability of a person who is, or of any of the persons who are, the scheme administrator of a registered pension scheme ceases to be a liability of that person on the person ceasing to be, or to be one of the persons who is, the scheme administrator of the pension scheme.  
  
 This subsection does not apply to a liability to pay a penalty and is subject to subsection (4).
- (2) Where a person becomes, or becomes one of the persons who is, the scheme administrator of a registered pension scheme, the person assumes any existing liabilities of the scheme administrator of the pension scheme, other than any liability to pay a penalty.
- (3) Subsection (4) applies where, on the person who is or the persons who are the scheme administrator of a registered pension scheme ceasing to be the scheme administrator, there is no scheme administrator of the pension scheme.
- (4) Any liability of the person or persons as scheme administrator remains a liability of that person or those persons as if still the scheme administrator (unless dead or having ceased to exist) until another person becomes, or other persons become, the scheme administrator of the pension scheme.
- (5) But a person who retains, or persons who retain, any liability by virtue of subsection (4) may apply to the Inland Revenue to be released from the liability.

- (6) On receipt of the application the Inland Revenue must decide whether or not to release the applicant or applicants from the liability and must notify the applicant, or each of the applicants, of the decision.
- (7) If the decision is not to release the applicant or applicants from the liability the applicant or applicants may appeal against the decision.
- (8) The appeal is to the General Commissioners, except that the applicant or applicants may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (9) The appeal must be brought within the period of 30 days beginning with the day on which the applicant was notified of the decision.
- (10) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (11) The Commissioners before whom an appeal under this section is brought must consider whether the applicant or applicants ought to have been released from the liability.
- (12) If they decide that the applicant or applicants ought not to have been released from the liability, they must dismiss the appeal.
- (13) If they decide that the applicant or applicants ought to have been released from the liability, the applicant is, or applicants are, to be treated as having been released from the liability (but subject to any further appeal or any determination on, or in consequence of, a case stated).

## **272 Trustees etc. liable as scheme administrator**

- (1) This section applies in relation to a registered pension scheme if—
  - (a) there is no scheme administrator of the pension scheme and no-one who remains subject to the liabilities of the scheme administrator by virtue of section 271(4) (continuation of liability where no scheme administrator),
  - (b) the person who is, or all the persons who are, the scheme administrator of the pension scheme or remain so subject cannot be traced, or
  - (c) the person who is, or all the persons who are, the scheme administrator of the pension scheme or remain so subject are in serious default.
- (2) Any person who assumes liability by reason of this section applying in relation to the pension scheme—
  - (a) is liable to pay any tax (and any interest on tax) due from the scheme administrator of the pension scheme by virtue of this Part, and
  - (b) is responsible for the discharge of all other obligations imposed on the scheme administrator of the pension scheme by or under this Part.
- (3) In subsection (2)—
  - (a) the references in paragraph (a) to tax, and interest on tax, include any that has become due before this section applied in relation to the pension scheme and remains unpaid, and

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- (b) the reference in paragraph (b) to obligations includes any that have become due before this section applied in relation to the pension scheme and remain unsatisfied, other than any liability to pay a penalty which has become due before this section so applied.
- (4) The following heads specify the persons who assume liability by reason of this section applying in relation to the pension scheme; but if—
  - (a) a person assumes, or persons assume, liability by virtue of being specified under one head, and
  - (b) that person, or any of those persons, can be traced and is not in default,
 no-one assumes liability by virtue of being specified under a later head.

*Head 1*

If there are one or more trustees of the pension scheme who are resident in the United Kingdom, that trustee or each of those trustees.

*Head 2*

If there are one or more persons who control the management of the pension scheme, that person or each of those persons.

*Head 3*

If alive or still in existence, the person, or any of the persons, who established the pension scheme and any person by whom that person, or any of those persons, has been directly or indirectly succeeded in relation to the provision of benefits under the pension scheme.

*Head 4*

If the pension scheme is an occupational pension scheme, any sponsoring employer.

*Head 5*

If there are one or more trustees of the pension scheme who are not resident in the United Kingdom, that trustee or each of those trustees.

- (5) Where a person assumes liability by reason of this section applying in relation to the pension scheme, the Inland Revenue must, as soon as is reasonably practicable, notify the person of that fact; but failure to do so does not affect the person's liability.
- (6) For the purposes of this section a person is in default if the person—
  - (a) has failed to pay all or any of the tax (or interest on tax) due from the person by virtue of this Part, or
  - (b) has failed to discharge any other obligation imposed on the person by or under this Part,
 and a person in default is in serious default if the Inland Revenue considers the failure to be of a serious nature.

## **273 Members liable as scheme administrator**

- (1) This section applies in relation to a registered pension scheme if—
  - (a) a person has, or persons have, assumed liability by reason of section 272 (trustees etc.) applying in relation to the pension scheme,
  - (b) the person has, or the persons have, become liable to pay tax (or interest on tax) which became due by virtue of section 239 (scheme sanction charge) or section 242 (de-registration charge) before section 272 applied in relation to the pension scheme,

- (c) that person, or each of those persons, has failed (in whole or in part) to satisfy the liability, and
  - (d) that person, or each of those persons, has either died or ceased to exist or is a person in whose case the Inland Revenue considers the person's failure to satisfy the liability to be of a serious nature.
- (2) Any person who was a member of the pension scheme at any time during the relevant three-year period is liable to pay the appropriate share of the unpaid amount if—
  - (a) any of the conditions in subsection (5) is met, and
  - (b) the Inland Revenue notifies the person of the person's liability to do so.
- (3) "The relevant three-year period" is the period of three years ending with the date on which the liability to pay the tax arose.
- (4) The "appropriate share of the unpaid amount", in the case of a person, is—

$$\frac{AAP}{AA} \times UT$$

where—

AA is an amount equal to aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme at the time when the liability to pay the tax arose,

AAP is an amount equal to so much of AA as is held for the purposes of such of the arrangements under the pension scheme as relate to the person or a person connected with the person, and

UT is so much of the tax (and any interest on it) as remains unpaid.

- (5) The conditions referred to in subsection (2)(a) are—
  - (a) that the pension scheme was established by a person or body specified in section 154(1)(a) to (g) (insurance companies etc.) and was not an occupational pension scheme,
  - (b) that at any time during the relevant three-year period the pension scheme received a transfer value in which there were represented relevant personal pension contributions made by or in respect of the person,
  - (c) that the pension scheme was an occupational pension scheme and at any time during the relevant three-year period the person was a controlling director of a company that was a sponsoring employer, and
  - (d) that at any time during the relevant three-year period the pension scheme received a transfer value in which there were represented relevant controlling director contributions made by or in respect of the person.
- (6) A notification under subsection (2)(b) may be included in an assessment in respect of a liability under this section; and such an assessment made in relation to an amount is not out of time if made within the period of three years beginning with the date on which the person assessed first became liable to pay the amount.
- (7) "Relevant personal pension contributions" means contributions under a pension scheme (whether or not the pension scheme from which the transfer value was received) which was established by a person or body specified in section 154(1)(a) to (g) and was not an occupational pension scheme.
- (8) "Relevant controlling director contributions" means contributions under an occupational pension scheme (whether or not the pension scheme from which the

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transfer value was received) made by reference to service (or remuneration in respect of service) as a controlling director of a company that was a sponsoring employer.

- (9) A person is a “controlling director” of a company if the person is a director of the company and is within section 417(5)(b) of ICTA (director able to control 20% of ordinary share capital) in relation to the company.
- (10) References to receipt of a transfer value by the pension scheme are to the transfer, so as to become held for the purposes of or to represent rights under the pension scheme, of any sums or assets held for the purposes of or representing accrued rights under any other pension scheme.
- (11) Section 839 of ICTA (connected persons) applies for the purposes of this section.

## **274     Supplementary**

- (1) The fact that any person is liable to pay any tax or interest, or is responsible for the discharge of any other obligation, under section 272 (trustees etc.) or section 273 (members) does not relieve any other person of any liability to pay the tax or interest, or any obligation to discharge the obligation, arising—
  - (a) by reason of that other person being, or being one of the persons who is, the scheme administrator of the pension scheme, or
  - (b) under section 271(4) (continuation of liability where no scheme administrator).
- (2) Where a liability imposed on the scheme administrator of a registered pension scheme falls to be satisfied by two or more persons (whether or not they constitute the scheme administrator), they are jointly and severally liable.
- (3) No liability to pay tax or interest, or other obligation, of any person in relation to a registered pension scheme arising—
  - (a) by reason of the person being, or being one of the persons who is, the scheme administrator of the pension scheme concerned, or
  - (b) under section 271(4), 272 or 273,
 is affected by the termination of the pension scheme or by its ceasing to be a registered pension scheme.

## **CHAPTER 8**

### **SUPPLEMENTARY**

#### *Interpretation*

## **275     Insurance company**

- (1) In this Part “insurance company” means—
  - (a) a person who has permission under Part 4 of FISMA 2000 to effect or carry out contracts of long-term insurance, or
  - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to FISMA 2000 (certain direct insurance undertakings) which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation



under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance.

- (2) “Contracts of long-term insurance” means contracts which fall within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#)).

## **276 Relevant valuation factor**

- (1) For the purposes of this Part the relevant valuation factor in relation to any registered pension scheme, or any arrangement under a registered pension scheme, is 20.
- (2) But the Inland Revenue and the scheme administrator of any registered pension scheme may agree that the relevant valuation factor in relation to the pension scheme, or any arrangement under the pension scheme, is to be a number greater than 20.

## **277 Valuation assumptions**

For the purposes of this Part the valuation assumptions in relation to a person, benefits and a date are—

- (a) if the person has not reached such age (if any) as must have been reached to avoid any reduction in the benefits on account of age, that the person reached that age on the date, and
- (b) that the person’s right to receive the benefits had not been occasioned by physical or mental impairment.

## **278 Market value**

- (1) For the purposes of this Part the market value of an asset held for the purposes of a pension scheme is to be determined in accordance with section 272 of TCGA 1992.
- (2) Where an asset held for the purposes of a pension scheme is a right or interest in respect of any money lent (directly or indirectly) to any relevant associated person, the value of the asset is to be treated as being the amount owing (including any unpaid interest) on the money lent.
- (3) The following are “relevant associated persons”—
- (a) any employer who has at any time (whether or not before the making of the loan) made contributions under the pension scheme,
  - (b) any company connected (at the time of the making of the loan or subsequently) with any such employer,
  - (c) any person who has at any time (whether or not before the making of the loan) been a member of the pension scheme, and
  - (d) any person connected (at the time of the making of the loan or subsequently) with any such person.
- (4) Section 839 of ICTA (connected persons) applies for the purposes of this section.

## **279 Other definitions**

- (1) In this Part—
- “the Board of Inland Revenue” means the Commissioners of Inland Revenue,

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“charity” has the same meaning as in section 506 of ICTA,

“employee” and “employer” have the same meaning as in the employment income Parts of ITEPA 2003 (see sections 4 and 5 of that Act) but include (respectively) a former employee and a former employer (and “employment” is to be read accordingly),

“the Inland Revenue” means any officer of the Board of Inland Revenue,

“normal minimum pension age” means—

- (a) before 6th April 2010, 50, and
- (b) on and after that date, 55,

“pension credit” and “pension debit” have the same meaning as in Chapter 1 of Part 4 of WRP(A) (see section 46(1) of that Act) or Chapter 1 of Part 5 of WRP(NI)O 1999 (see Article 43(1) of that Order),

“pension sharing order or provision” means any order or provision mentioned in section 28(1) of WRP(A) 1999 or Article 25(1) of WRP(NI)O 1999,

“personal representatives”, in relation to a person who has died, means—

- (a) in the United Kingdom, persons responsible for administering the estate of the deceased, and
- (b) in a country or territory outside the United Kingdom, the persons having functions under its law equivalent to those of administering the estate of the deceased,

“retail prices index” means the general index (for all items) published by the Office for National Statistics or, if that index is not published for a relevant month, any substituted index or index figures published by that Office,

“tax year” means, in relation to income tax, a year for which any Act provides for income tax to be charged, and

“the tax year 2006-07” means the tax year beginning on 6th April 2006 (and any corresponding expression in which two years are simultaneously mentioned is to be read in the same way).

- (2) In this Part references to payments made, or benefits provided, by a pension scheme are to payments made or benefits provided from sums or assets held for the purposes of the pension scheme.
- (3) For the purposes of this Part the sums and assets held for the purposes of an arrangement under a pension scheme are so much of the sums and assets held for the purposes of the pension scheme under which the arrangement is made as are properly attributable, in accordance with the provisions of the pension scheme and any just and reasonable apportionment, to the arrangement.

## **280 Abbreviations and general index**

(1) In this Part—

“NIA 1965” means the National Insurance Act 1965 (c. 51),

“NIA(NI) 1966” means the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.)),

“TMA 1970” means the Taxes Management Act 1970 (c. 9),

“ICTA 1970” means the Income and Corporation Taxes Act 1970 (c. 10),

“ICTA” means the Income and Corporation Taxes Act 1988 (c. 1),

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“SSCBA 1992” means the Social Security Contributions and Benefits Act 1992 (c. 4),

“SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),

“TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12),

“WRPA 1999” means the Welfare Reform and Pensions Act 1999 (c. 30),

“WRP(NI)O 1999” means the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/ 3147 (N.I. 11)),

“FISMA 2000” means the Financial Services and Markets Act 2000 (c. 8), and

“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

(2) In this Part the following expressions are defined or otherwise explained by the provisions indicated—

accounting period	section 834(1) of ICTA
active member (of a pension scheme)	section 151(2)
active membership period (in sections 221 to 223)	section 221(4) and (5)
amount crystallised	section 216
annual allowance	section 228
annual allowance charge	section 227(1)
annuity protection lump sum death benefit	paragraph 16 of Schedule 29
arrangement	section 152(1)
authorised surplus payment	section 177
available (in relation to a person’s lifetime allowance)	section 219
basic rate	section 832(1) of ICTA
basic rate limit	section 832(1) of ICTA
benefits (provided by pension scheme)	section 279(2)
benefit crystallisation event	section 216
the Board of Inland Revenue	section 279(1)
borrowing (in Chapter 3)	section 163
cash balance arrangement	section 152(3)
cash balance benefits	section 152(5)
chargeable gain	section 832(1) of ICTA
charity	section 279(1)
company	section 832(1) of ICTA
compensation payment	section 178

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contribution	sections 188(4) to (6) and 195
defined benefits	section 152(7)
defined benefits arrangement	section 152(6)
defined benefits lump sum death benefit	paragraph 13 of Schedule 29
dependant's alternatively secured pension fund	paragraph 25 of Schedule 28
dependants' scheme pension	paragraph 16 of Schedule 28
dependant's unsecured pension fund	paragraph 22 of Schedule 28
employee and employer (and employment)	section 279(1)
employment income	section 7(2) of ITEPA 2003
enhanced lifetime allowance regulations	section 256(2)
entitled (in relation to a lump sum)	section 166(2)
entitled (in relation to a pension)	section 165(3)
higher rate	section 832(1) of ICTA
hybrid arrangement	section 152(8)
ill-health condition	paragraph 1 of Schedule 28
the individual (in sections 215 to 219)	section 214(5)
the Inland Revenue	section 279(1)
insurance company	section 275
investments (in relation to a pension scheme)	sections 186(3) and (4)
liability (in Chapter 3)	section 163
lifetime allowance (in relation to a person)	section 218
lifetime allowance charge	section 214(1)
lifetime allowance enhancement factors	section 218(5)
lifetime allowance excess lump sum	paragraph 11 of Schedule 29
lifetime annuity	paragraph 3 of Schedule 28
loan (in Chapter 3)	section 162
lump sum death benefit	section 168(2)
market value	section 278
member (of a pension scheme)	section 151(1)
member's alternatively secured pension fund	paragraph 11 of Schedule 28
member's unsecured pension fund	paragraph 8 of Schedule 28
money purchase arrangement	section 152(2)
money purchase benefits	section 152(4)
net pay pension scheme	section 191(9)

normal minimum pension age	section 279(1)
occupational pension scheme	section 150(5)
overseas arrangement active membership period (in sections 224 to 226)	section 224(7) and (8)
overseas pension scheme	section 150(7)
payment (in Chapter 3)	section 161
payments (made by pension scheme)	section 279(2)
pension	section 165(2)
pension commencement lump sum	paragraph 1 of Schedule 29
pension credit and pension debit	section 279(1)
pension input amount	section 229
pension input period	section 238
pension protection lump sum death benefit	paragraph 14 of Schedule 29
pension scheme	section 150(1)
the pension scheme (in sections 215 to 219)	section 214(5)
pension sharing order or provision	section 279(1)
pensioner member (of a pension scheme)	section 151(3)
period of account	section 832(1) of ICTA
personal representatives	section 279(1)
property investment LLP	section 842B of ICTA
public service pension scheme	section 150(3)
qualifying recognised overseas pension scheme	section 169(2)
recognised overseas pension scheme	section 150(8)
recognised overseas scheme arrangement (in sections 224 to 226)	section 224(2) and (3)
registered pension scheme	section 150(2)
relevant overseas individual	section 221(3)
relevant UK earnings	section 189(2)
relevant UK individual	section 189
relevant valuation factor	section 276
relievable pension contributions	section 188(2) and (3)
retail prices index	section 279(1)
scheme administrator	section 270 (but see also sections 271 to 274)
scheme chargeable payment	section 241
scheme manager	section 169(3)

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scheme pension	paragraph 2 of Schedule 28
scheme sanction charge	section 239(1)
serious ill-health lump sum	paragraph 4 of Schedule 29
short service refund lump sum	paragraph 5 of Schedule 29
short service refund lump sum charge	section 205(1)
special lump sum death benefits charge	section 206(1)
sponsoring employer	section 150(6)
standard lifetime allowance	section 218(2) and (3)
sums and assets held for the purposes of an arrangement	section 279(3)
tax year	section 279(1)
the tax year 2006-07 etc.	section 279(1)
total income	section 835 of ICTA
total pension input amount	section 229
transfer lump sum death benefit	paragraph 19 of Schedule 29
trivial commutation lump sum	paragraph 7 of Schedule 29
unauthorised employer payment	section 160(4)
unauthorised member payment	section 160(2)
unauthorised payment	section 160(5)
unauthorised payments charge	section 208(1)
unauthorised payments surcharge	section 209(1)
uncrystallised funds lump sum death benefit	paragraph 15 of Schedule 29
unsecured pension fund lump sum death benefit	paragraph 17 of Schedule 29
valuation assumptions (in relation to a person)	section 277
winding-up lump sum	paragraph 10 of Schedule 29
winding-up lump sum death benefit	paragraph 21 of Schedule 29

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*Other supplementary provisions*

## **281 Minor and consequential amendments**

- (1) Schedule 35 contains minor and consequential amendments of enactments in consequence of, or otherwise in connection with, this Part.
- (2) The Treasury may by order make such other amendments (including repeals and revocations) as may appear appropriate in consequence of, or otherwise in connection with, this Part—
  - (a) in any enactment contained in an Act passed before 6th April 2006 or in the Session in which that date falls, and

- (b) in any instrument made before that date or in the Session in which that date falls.
- (3) An order under subsection (2) may include any transitional provisions or savings appearing to the Treasury to be appropriate.

## **282 Orders and regulations**

- (1) Any power of the Treasury or the Board of Inland Revenue to make any order or regulations under this Part is exercisable by statutory instrument.
- (2) Any statutory instrument containing any order or regulations made by the Treasury or the Board of Inland Revenue under this Part is subject to annulment in pursuance of a resolution of the House of Commons.

## **283 Transitionals and savings**

- (1) Schedule 36 contains miscellaneous transitional provisions and savings.
- (2) The Treasury may by order make any other transitional provision which may appear appropriate in consequence of, or otherwise in connection with, this Part or the repeals made by this Act in consequence of this Part.
- (3) An order under subsection (2) may, in particular, include savings from the effect of any amendment made by this Part or any repeal made by this Act in consequence of this Part.
- (4) Nothing in Schedule 36 limits the power conferred by subsection (2).
- (5) Nothing in that Schedule or in any provision made by virtue of subsection (2) prejudices the operation of sections 16 and 17 of the Interpretation Act 1978 (c. 30) (effect of repeals).

## **284 Commencement**

- (1) Chapters 3 to 7 and section 281 (with Schedule 35) do not come into force until 6th April 2006.
- (2) But any power to make an order or regulations under any of those provisions may be exercised at any time after this Act is passed.