

## SCHEDULES

### SCHEDULE 36

#### PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

##### PART 2

##### PRE-COMMENCEMENT RIGHTS: LIFETIME ALLOWANCE CHARGE

##### *“Primary protection”*

- 7 (1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where—
- (a) the amount of the relevant pre-commencement pension rights of the individual exceeds £1,500,000 (the standard lifetime allowance for the tax year 2006-07), and
  - (b) notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
- (2) The lifetime allowance enhancement factor is the primary protection factor.
- (3) The primary protection factor is—
- $$\frac{RR - SLA}{SLA}$$
- where—
- RR is the amount of the relevant pre-commencement pension rights of the individual, and
  - SLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).
- (4) Sub-paragraph (3) is subject to paragraph 11 (pension debit on or after 6th April 2006).
- (5) The amount of the relevant pre-commencement pension rights of the individual is the aggregate of—
- (a) the value of the individual’s relevant uncrystallised pension rights on 5th April 2006 (calculated in accordance with paragraphs 8 and 9), and
  - (b) the value of the individual’s relevant crystallised pension rights on that date (calculated in accordance with paragraph 10).
- 8 (1) The value of the individual’s relevant uncrystallised pension rights on 5th April 2006 is the aggregate value of the individual’s uncrystallised rights on that date under each relevant pension arrangement relating to the individual.

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- (2) An arrangement is a “relevant pension arrangement” if it is an arrangement under a pension scheme within paragraph 1(1).
- (3) For the purposes of this paragraph the individual’s rights are “uncrystallised” if the individual has not, on 5th April 2006, become entitled to the present payment of benefits in respect of the rights.
- (4) And the individual is to be treated as entitled to the present payment of benefits in respect of any accrued rights in relation to which the individual has (under section 634A (1) of ICTA) made an election to defer the purchase of an annuity.
- (5) For the purposes of this paragraph the value of the individual’s uncrystallised rights on 5th April 2006 under an arrangement is to be calculated in accordance with section 212 (valuation of uncrystallised rights for purposes of section 210) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.
- (6) Section 212 has effect for the purposes of sub-paragraph (5) as if the reference to such age (if any) as must have been reached to avoid any reduction in benefits on account of age in paragraph (a) of section 277 were to the relevant age; and for this purpose “the relevant age” is—
- (a) if on 10th December 2003 the terms of the arrangement made provision for a reduction in the amount of benefits payable in respect of rights under the arrangement on account of the holder of the rights being below a particular age, that age, and
  - (b) otherwise, 60.
- 9 (1) This paragraph applies if any of the individual’s uncrystallised rights on 5th April 2006 are rights under one or more arrangements under a pension scheme or schemes within paragraph 1(1)(a) to (d).
- (2) The value of the individual’s uncrystallised rights on 5th April 2006 under the arrangement, or the aggregate of the values of the individual’s uncrystallised rights on 5th April 2006 under such of the arrangements as relate to a particular employment, is the lower of—
- (a) the value, or the aggregate of the values, calculated under paragraph 8, and
  - (b) the amount arrived at in accordance with sub-paragraph (3).
- (3) The amount arrived at in accordance with this sub-paragraph is—
- $$20 \times \text{MPP}$$
- where MPP is the maximum permitted pension.
- (4) “The maximum permitted pension” means the maximum annual pension that could be paid to the individual on 5th April 2006 under the arrangement or arrangements if it or they were made under a pension scheme within paragraph 1(1)(a) without giving the Board of Inland Revenue grounds for withdrawing approval of the pension scheme under section 591B of ICTA.
- (5) For the purposes of sub-paragraph (4) it is to be assumed—
- (a) if the individual was in the employment to which the arrangement or arrangements relates or relate on 5th April 2006, that the individual left the employment on that date, and

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- (b) if the individual had not reached the lowest age at which a pension may be paid under a pension scheme within paragraph 1(1)(a) to a person in good health without giving the Board of Inland Revenue grounds for withdrawing the approval of the pension scheme, that that fact would not give the Board such grounds.
- (6) For the purposes of this paragraph an arrangement relating to an individual relates to an employment if—
- (a) the earnings by reference to which benefits under the arrangement are calculated are earnings from the employment, or
  - (b) the person who is the employer in relation to the employment pays contributions under the arrangement in respect of the individual.
- 10 (1) The value of the individual's relevant crystallised pension rights on 5th April 2006 is—

$$25 \times \text{ARP}$$

where ARP is an amount equal to the annual rate at which any relevant existing pension is payable to the individual on 5th April 2006 or, if more than one relevant existing pension is payable to the individual on that date, to the aggregate of the annual rates at which each of the relevant existing pensions is so payable.

- (2) “Relevant existing pension” means—
- (a) a pension under a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
  - (b) a pension under a former approved superannuation fund (defined as for the purposes of paragraph 1(1)(b)),
  - (c) a pension under a relevant statutory scheme, as defined in section 611A of ICTA, or a pension scheme treated by the Inland Revenue as if it were such a relevant statutory scheme,
  - (d) an annuity (or pension in the form of income drawdown) under an annuity contract by means of which benefits provided under a pension scheme within paragraph (a), (b) or (c) have been secured,
  - (e) a pension under a scheme or fund mentioned in section 613(4)(b) to (d) of ICTA (Parliamentary pension schemes or funds),
  - (f) an annuity under an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA,
  - (g) an annuity acquired using funds held for the purposes of a personal pension scheme approved under Chapter 4 of Part 14 of ICTA, or
  - (h) a right to make income withdrawals under section 634A of ICTA.
- (3) But a pension, annuity or right is not a relevant existing pension if entitlement to it was attributable to the death of any person.
- (4) In the case of a pension within sub-paragraph (2) taking the form of income drawdown, the annual rate at which the pension is payable on 5th April 2006 is the amount which, on that date, is the maximum annual amount that may be drawn down by the individual as income in accordance with the pension scheme or contract concerned.
- (5) In the case of a right which is a relevant existing pension by virtue of sub-paragraph (2)(h), the annual rate at which the pension is payable on 5th April 2006

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is the maximum amount of income withdrawals that may be made by the individual in the period of 12 months referred to in section 634A(4) of ICTA during which 5th April 2006 falls.

- 11 (1) This paragraph applies where—
- (a) paragraph 7 makes provision for the operation of a lifetime allowance enhancement factor in relation to an individual, and
  - (b) on or after 6th April 2006, the rights of the individual under a relevant pension arrangement (see paragraph 8(2)) relating to the individual are reduced by becoming subject to a pension debit.
- (2) The primary protection factor (see paragraph 7(3)) is to be recalculated.
- (3) The recalculation involves reducing RR (see paragraph 7(3)) by the amount by which the individual's rights are reduced and arriving at a revised primary protection factor.
- (4) The revised primary protection factor operates in relation to any benefit crystallisation event occurring in relation to the individual after the time when the individual's rights are reduced by becoming subject to the pension debit.

*“Enhanced protection”*

- 12 (1) This paragraph applies on and after 6th April 2006 in the case of an individual who has one or more relevant existing arrangements 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.
- (2) But this paragraph ceases to apply if—
- (a) relevant benefit accrual occurs under the arrangement, or any of the arrangements (see paragraph 13),
  - (b) a transfer of sums or assets held for the purposes of, or representing accrued rights under, the arrangement or any of the arrangements is made that is not a permitted transfer, or
  - (c) an arrangement relating to the individual is made under a registered pension scheme otherwise than solely for the purposes of a permitted transfer.
- (3) Where this paragraph applies in the case of an individual there is no liability to the lifetime allowance charge in respect of the individual.
- (4) An individual has a relevant existing arrangement if—
- (a) before 6th April 2006 an arrangement relating to the individual has been made under a pension scheme within paragraph 1(1), and
  - (b) the pension scheme becomes a registered pension scheme on that date.
- (5) Notice of intention to rely on this paragraph in relation to the individual may not be given in a case where—
- (a) the value of the uncrystallised rights of the individual on 5th April 2006 under an arrangement, or
  - (b) the aggregate of the values of the uncrystallised rights of the individual on 5th April 2006 under arrangements,
- is arrived at in accordance with paragraph 9 unless such rights as, in accordance with regulations made by the Board of Inland Revenue, are to be treated as representing the relevant excess have been surrendered.

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- (6) In sub-paragraph (5) “the relevant excess” means the amount by which the value of—
- (a) the individual’s uncrystallised rights, or
  - (b) the aggregate of the values of the individual’s uncrystallised rights,
- as arrived at in accordance with paragraph 8 exceeds what it would be if arrived at under paragraph 9.
- (7) For the purposes of this paragraph and paragraphs 13 and 15, a transfer of sums or assets held for the purposes of, or representing accrued rights under, an arrangement is a permitted transfer if—
- (a) all sums and assets held for the purposes of, or representing rights under, the arrangements relating to the individual under the pension scheme under which the arrangement is made are transferred by the transfer,
  - (b) the sums or assets held for the purposes of, or representing accrued rights under, the arrangement are transferred so that sub-paragraph (8) applies in relation to them, and
  - (c) the aggregate of the amount of those sums and the market value of those assets is, applying normal actuarial practice, equivalent before and after the transfer.
- (8) This sub-paragraph applies in relation to sums or assets held for the purposes of, or representing accrued rights under, the arrangement if—
- (a) they are transferred so as to become held for the purposes of a money purchase arrangement that is not a cash balance arrangement, or two or more money purchase arrangements that are not cash balance arrangements, under a registered pension scheme or recognised overseas pension scheme, or
  - (b) where the transfer occurs in connection with the winding up of the pension scheme under which the arrangement is made and the arrangement is a cash balance arrangement or a defined benefits arrangement, they are transferred so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement relating to the same employment as the arrangement and made under a registered pension scheme or recognised overseas pension scheme.
- (9) Where there is a permitted transfer—
- (a) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(a), this paragraph (and paragraphs 13 and 14) apply in relation to the arrangement, or each of the arrangements, to which the transfer is made, and
  - (b) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(b), this paragraph (and paragraphs 13 and 15) apply as if the arrangement to which the transfer is made were the same as that from which it is made.
- 13 Relevant benefit accrual occurs in relation to an individual under an arrangement—
- (a) in the case of a money purchase arrangement that is not a cash balance arrangement, if a relevant contribution is paid under the arrangement (see paragraph 14), and
  - (b) in the case of a cash balance arrangement or defined benefits arrangement, if, when a benefit crystallisation event or transfer that is a permitted transfer by virtue of paragraph 12(8)(a) (a “relevant event”) occurs in relation to the individual and the arrangement, the relevant crystallised amount exceeds the appropriate limit (see paragraph 15).

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- 14 (1) For the purposes of paragraph 13(a) a relevant contribution is paid under the arrangement if—
- (a) a relievable pension contribution is paid by or on behalf of the individual under the arrangement,
  - (b) a contribution is paid in respect of the individual under the arrangement by an employer of the individual, or
  - (c) a contribution paid by an employer of the individual otherwise than in respect of the individual subsequently becomes held for the purposes of the provision under the arrangement of benefits to or in respect of the individual.
- (2) But the following are not relevant contributions for the purposes of paragraph 13(a)
- (a) contributions which may be applied only for the provision of benefits in respect of the individual after the individual's death, and
  - (b) minimum payments under section 8 of the Pension Schemes Act 1993 (c. 48) or 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.
- 15 (1) For the purposes of paragraph 13(b) “the relevant crystallised amount” is—
- (a) if the relevant event is the first relevant event occurring in relation to the individual and to the arrangement or any other cash balance arrangement or defined benefits arrangement related to the arrangement (“the first relevant event”), the amount crystallised by that event, and
  - (b) otherwise, the aggregate of the amount crystallised by the relevant event and the amount crystallised by the relevant event, or by each of the relevant events, which has or have previously occurred in relation to the individual and to the arrangement or any other cash balance arrangement or defined benefits arrangement related to the arrangement.
- (2) If the relevant event is a permitted transfer which is not a benefit crystallisation event, sub-paragraph (1) applies as if the amount crystallised by the event were the aggregate of—
- (a) the amount of any sums held for the purposes of, or representing accrued rights under, the arrangement, and
  - (b) the market value of any assets held for the purposes of, or representing accrued rights under, the arrangement.
- (3) For the purposes of this paragraph (and paragraph 16) another arrangement is related to the arrangement if—
- (a) the other arrangement relates to the individual, and
  - (b) both the arrangement and the other arrangement relate to the same employment;
- and whether an arrangement relates to an employment is to be determined in accordance with paragraph 9(6).
- (4) For the purposes of paragraph 13(b) “the appropriate limit”, in relation to a relevant event, is the greater of—
- (a) the value of the individual's rights on 5th April 2006 under the arrangement, or (where there is or are one or more other cash balance arrangements or defined benefits arrangements related to the arrangement) the aggregate of the value of the individual's rights under the arrangement and the other

- arrangement or arrangements, arrived at in accordance with paragraphs 8 and 9, as increased by the relevant indexation percentage (see sub-paragraph (5)), and
- (b) what would be the value of those rights, so arrived at, on the assumptions specified in sub-paragraph (6).
- (5) For the purposes of sub-paragraph (4)(a) “the relevant indexation percentage”, in relation to a relevant event, means whichever is the greatest of—
- (a) the percentage by which an amount would be increased if it were increased for the period beginning with 6th April 2006 and ending with the date on which the relevant event occurs at an annual rate of 5%,
- (b) the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, and
- (c) the percentage by which the retail prices index for the month in which the relevant event occurs is higher than that for April 2006.
- (6) The assumptions referred to in sub-paragraph (4)(b) are—
- (a) that the individual’s age on 5th April 2006 were what it is at the time of the first relevant event (so that neither paragraph 8(6) nor section 277(a) applies in arriving at what would be the value of the rights under paragraph 8), and
- (b) that the amount of the earnings which would have fallen to be taken into account under the arrangement for calculating the amount of benefits payable to or in respect of the individual (if the individual became entitled to the present payment of benefits in respect of the rights under the arrangement on that date) were the lesser of the two amounts specified in sub-paragraph (7).
- (7) The amounts referred to in sub-paragraph (6)(b) are—
- (a) the current amount of the relevant pensionable earnings immediately before the first relevant event, and
- (b) the post-commencement earnings limit (see paragraphs 16 and 17).
- (8) But sub-paragraph (6)(b) applies in relation to an arrangement under a pension scheme within paragraph 1(1)(c) or (e) as if for “the lesser of the two amounts specified in sub-paragraph (7)” there were substituted “the amount specified in sub-paragraph (7)(a)”.
- (9) In this paragraph “the relevant pensionable earnings” means the description of earnings (or the portion of the description of earnings) of the individual by reference to which the amount of benefits payable to or in respect of the individual would have fallen to be calculated if the individual became entitled to the present payment of benefits in respect of the rights under the arrangement on 5th April 2006.
- (10) For the purposes of sub-paragraph (7)(a) “the current amount” of the relevant pensionable earnings immediately before the first relevant event is the amount of the relevant pensionable earnings which, at that time, would fall to be taken into account in calculating the amount of benefits payable to or in respect of the individual under the arrangement if the individual became entitled to the present payment of benefits at that time (but subject to sub-paragraph (11)).
- (11) If at that time the individual is absent from work in connection with pregnancy, maternity, paternity or adoption, the current amount of the relevant pensionable

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earnings at that time includes what would be likely to be included in that amount if the individual were not so absent.

- 16 (1) This paragraph specifies the post-commencement earnings limit if the individual was on 5th April 2006 a person in relation to whom section 590C of ICTA (earnings cap) had effect in relation to any pension scheme under which the arrangement or any other arrangement related to the arrangement was made.
- (2) The post-commencement earnings limit is the lesser of amount A and amount B.
- (3) Amount A is 7.5% of the standard lifetime allowance when the first relevant event occurs.
- (4) Amount B is the amount of the individual's employment income from the employment to which the arrangement relates for the best period of 12 months during the appropriate three year period.
- (5) The appropriate three year period is the period of three years ending with the time when the first relevant event occurs.
- (6) A period of 12 months during the appropriate three year period is the best period of 12 months during the appropriate three year period if the amount of the individual's employment income from the employment to which the arrangement relates is greater for that period of 12 months than for any other period of 12 months during the appropriate three year period.
- (7) For the purposes of this paragraph and paragraph 17 the amount of the individual's employment income includes, in relation to any time when the individual is absent from work in connection with pregnancy, maternity, paternity or adoption, what would be likely to be included in that amount if the individual were not so absent.
- 17 (1) This paragraph specifies the post-commencement earnings limit in any other case.
- (2) The post-commencement earnings limit is—
- (a) if amount B is not greater than amount A, amount B, and
- (b) otherwise, amount C.
- (3) Amount A and amount B have the same meanings as in paragraph 16.
- (4) Amount C is the greater of—
- (a) amount A, and
- (b) amount D.
- (5) Amount D is—

$$\frac{ETY}{3}$$

where ETY is the amount of the individual's employment income from the employment to which the arrangement relates for the appropriate three year period (within the meaning of paragraph 16).

*Pre-commencement pension credits*

- 18 (1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where before 6th April 2006 the individual has acquired



rights under a pension scheme within paragraph 1 (1) by virtue of having become entitled to a pension credit.

- (2) The lifetime allowance enhancement factor is the pre-commencement pension credit factor.
- (3) The pre-commencement pension credit factor is—

$$\frac{IAPC}{SLA}$$

where—

IAPC 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, as increased by the percentage specified in sub-paragraph (4), and

SLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (4) The percentage is the percentage by which the retail prices index for April 2006 is greater than that for the month in which the rights were acquired.
- (5) This paragraph does not apply in the case of an individual if paragraph 7 (primary protection) applies in relation to the individual.
- (6) This paragraph only applies if notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

*Individuals permitted to take pension before normal minimum pension age*

- 19 (1) This paragraph applies where a benefit crystallisation event occurs in relation to an individual who is a member of a registered pension scheme—
- (a) in protected circumstances, and
- (b) before the individual reaches normal minimum pension age.

(2) What would otherwise be the individual's lifetime allowance is to be reduced by the relevant percentage.

- (3) A benefit crystallisation event occurs in protected circumstances if—
- (a) paragraph 22 or 23 (right to take pension before normal minimum pension age) applies to the individual and the pension scheme,
- (b) the individual's protected pension age (see paragraph 22(8) or 23(8)) is less than 50, and
- (c) the pension scheme is not prescribed by regulations made by the Board of Inland Revenue.

(4) The relevant percentage is—

$$Y \times 2.5$$

where Y is the number of complete years falling between the date on which the benefit crystallisation event occurs and the date on which the individual will reach normal minimum pension age.

- (5) Sub-paragraph (6) applies where, after the occurrence in relation to the individual of a benefit crystallisation event in relation to which this paragraph has had effect, another

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benefit crystallisation event occurs in relation to the individual and the pension scheme.

- (6) If the amount crystallised on the previous benefit crystallisation event exceeded the available amount of the individual's lifetime allowance at the time of that benefit crystallisation event, section 219 (availability of individual's lifetime allowance) applies as if the amount crystallised were the available amount of the individual's lifetime allowance at that time.

*Pre-commencement pensions*

- 20 (1) This paragraph makes provision about an individual who, on 5th April 2006, has an actual (rather than a prospective) right to the payment of one or more relevant existing pensions.
- (2) Section 219 (availability of individual's lifetime allowance) applies as if, immediately before the first benefit crystallisation event occurring in relation to the individual—
- (a) a benefit crystallisation event had occurred in relation to the individual, and
  - (b) the amount crystallised was the value of the individual's pre-commencement pension rights immediately before the benefit crystallisation event.
- (3) The value of the individual's pre-commencement pension rights at any time is—
- 25 × ARP**

where (subject to sub-paragraph (4)) ARP is an amount equal to—

- (a) the annual rate at which the relevant existing pension is payable to the individual at that time, or
  - (b) if more than one relevant existing pension is payable to the individual at that time, the aggregate of the annual rates at which each of the relevant existing pensions is so payable.
- (4) In the case of unsecured pension or alternatively secured pension ARP is the maximum amount that may be paid in the unsecured pension year or alternatively secured pension year in which the time falls in accordance with pension rule 5 or pension rule 7 (see section 165).
- (5) In this paragraph “relevant existing pension” has the same meaning as in paragraph 10(2); and paragraph 10(4) and (5) operates for the purposes of this paragraph for determining the annual rate at which a relevant existing pension is payable at any time (treating the references there to 5th April 2006 as to that time).