SCHEDULES

SCHEDULE 36

PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

Modifications etc. (not altering text)

C1 Sch. 36 modified by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), art. 23D (as inserted (1.6.2009) by S.I. 2009/1172, arts. 1, **3**)

C1 Sch. 36 applied (1.6.2018) by The Local Government Pension Scheme (Scotland) Regulations 2018 (S.S.I. 2018/141), regs. 1(1), **48(2)**

PART 3

PRE-COMMENCEMENT BENEFIT RIGHTS

Modifications etc. (not altering text)

C1 Sch. 36 Pt. 3 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **31(1)**

Rights to take [[F1]benefit] before normal minimum pension age

Textual Amendments

F1 Word in Sch. 36 para. 21 heading substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 54(3)**, 64(1)

21 (1) If paragraph 22 **[**[F2], 23 or 23ZB**]** applies in relation to a registered pension scheme and a member of the pension scheme, this Part of this Act (except for section 218(6) and paragraph 19) has effect in relation to the member and the pension scheme as if references to normal minimum pension age were to the member's protected pension age.

(2) Paragraphs 22(8) **[**[F3], 23(8) and 23ZB(7)**]** define the member's protected pension age.

Textual Amendments

F2 Words in Sch. 36 para. 21(1) substituted (24.2.2022) by Finance Act 2022 (c. 3), **s. 10(4)(a)**

F3 Words in Sch. 36 para. 21(2) substituted (24.2.2022) by Finance Act 2022 (c. 3), **s. 10(4)(b)**

Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Rights to take benefit before normal minimum pension age. (See end of Document for details)*

[F4 Protected pension age: scheme rights existing before 6 April 2006]

Textual Amendments

F4 Sch. 36 para. 22 cross-heading inserted (24.2.2022) by Finance Act 2022 (c. 3), **s. 10(6)(a)**

22 (1) This paragraph applies in relation to a registered pension scheme and a member of the pension scheme if—

(a) the pension scheme is a protected pension scheme, and

(b) the retirement condition is met in relation to the member and the pension scheme.

(2) A pension scheme is a protected pension scheme if condition A or condition B is met.

(3) Condition A is met if—

(a) the pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1), and

(b) the entitlement condition is met in relation to the member and the pension scheme.

(4) The entitlement condition is met in relation to the member and the pension scheme if—

(a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to **[**F5any benefit**]** from an age of less than 55,

(b) the rules of the pension scheme on 10th December 2003 included provision conferring such a right on some or all of the persons who were then members of the pension scheme, and

(c) such a right either was then conferred on the member or would have been had the member been a member of the scheme on that date.

(5) Condition B is met if the member is a member of the pension scheme **[**F6("a transferee pension scheme") as a result of—

(a) a block transfer from the pension scheme ("the original pension scheme") in relation to which condition A is met to the transferee pension scheme, or

(b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.**]**

(6) A transfer is a block transfer if—

(a) it involves the transfer in a single transaction of all the sums and assets held for the purposes of, or representing accrued rights under, the arrangements under the pension scheme from which the transfer is made which relate to the member and at least one other member of that pension scheme, and

[F7(b) either the member was not a member of the pension scheme to which the transfer is made before the transfer or he has been a member of that pension scheme for no longer than such period as is prescribed by regulations made by the Board of Inland Revenue.**]**

[F8(6A) A transfer is also a block transfer if—

(a) it involves the transfer in a single transaction of all the sums and assets held for the purposes of, or representing accrued rights under, the arrangements

under the pension scheme from which the transfer is made which relate to the member,

(b) the transfer takes place—

(i) on or after 19 March 2014, and

(ii) before 6 April 2015, and

(c) the date mentioned in sub-paragraph (7)(a) is before 6 October 2015.**]**

(7) The retirement condition is met in relation to the member and the pension scheme if—

(a) the member becomes entitled to all the **[**[F9]benefits**]** payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date, and

[[F10](b) in a case where on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 50, Condition 1 is met or, in any other case, Condition 2 or 3 is met.**]**

[[F11](7A) Condition 1 is met if—

(a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected, and

(b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

(7B) Condition 2 is met if—

(a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person specified in sub-paragraph (7C), and

(b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

(7C) The persons referred to in sub-paragraph (7B)(a) are—

(a) any person who was a sponsoring employer in relation to the pension scheme at any time during the period of six months ending with the day on which the member became entitled to the benefits mentioned in sub-paragraph (7)(a) and by whom the member was employed at any time during that period,

(b) any person who is connected with any such person, or

(c) any person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected.

(7D) If the member has become entitled to the benefits payable under arrangements under the pension scheme by reason of service in the armed forces of the Crown, any employment on compulsory recall is to be disregarded for the purposes of sub-paragraph (7B)(a).

(7E) Condition 3 is met if —

(a) paragraph (a) of sub-paragraph (7B) is not satisfied but one of the re-employment conditions is met, and

(b) paragraph (b) of that sub-paragraph is satisfied.

(7F) The re-employment conditions are—

Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Rights to take benefit before normal minimum pension age. (See end of Document for details)*

(a) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of six months beginning with the day on which the member becomes entitled to the benefits mentioned in sub-paragraph (7)(a), and

(b) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of one month beginning with that day, but is so employed during the period of five months beginning at the end of that period, and either the pension abatement condition or the materially different employment condition is met **[**[F12], and

(c) that the member is or was employed as mentioned in sub-paragraph (7B)(a) where—

(i) the employment began at any time during the coronavirus period, and

(ii) the only or main reason that the member was taken into employment was to help the employer to respond to the public health, social, economic or other effects of coronavirus.**]**

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

(a) the pension scheme is a public service pension scheme, and

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

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

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

(b) otherwise, if the employment in which the member is so employed during that period,

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

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

(a) under Part 4 of the Reserve Forces Act 1996,

(b) under Part 5 of that Act,

(c) under a call-out or recall order made under that Act,

(d) having been called out or recalled under the Reserve Forces Act 1980, or

(e) because of any other call-out or recall obligation of an officer.

(7J) **[**[F13]Section 1122 of the Corporation Tax Act 2010**]** (connected persons) applies for the purposes of this paragraph.**]**

[[F14](7K) In sub-paragraph (7F)(c)—

"coronavirus" has the same meaning as in the Coronavirus Act 2020 (see section 1(1) of that Act);

"the coronavirus period" means the period beginning with 1 March 2020 and ending with 1 November 2020.

(7L) The Treasury may by regulations amend the definition of "the coronavirus period" in sub-paragraph (7K) so as to replace the later of the dates specified in it with another date falling before 6 April 2021.

(7M) The power in sub-paragraph (7L) may be exercised on more than one occasion.**]**

(8) The member's protected pension age is the age from which the member had an actual or prospective right to **[**[F15]any benefit**]** under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).

(9) But this paragraph does not have effect so as to give the member a protected pension age of more than 50 at any time before 6th April 2010.

Textual Amendments

F5 Words in Sch. 36 para. 22(4)(a) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 54(5)**, 64(1)

F6 Words in Sch. 36 para. 22(5) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 55(3)**, 64(1)

F7 Sch. 36 para. 22(6)(b) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 55(4)**, 64(1)

F8 Sch. 36 para. 22(6A) inserted (19.3.2014) by Finance Act 2014 (c. 26), **Sch. 5 paras. 7(1)**, 15

F9 Word in Sch. 36 para. 22(7)(a) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 54(6)(a)**, 64(1)

F10 Sch. 36 para. 22(7)(b) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 43(2)**

F11 Sch. 36 para. 22(7A)-(7J) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 43(3)**

F12 Sch. 36 para. 22(7F)(c) and word inserted (retrospective to 1.3.2020) by Finance Act 2020 (c. 14), **s. 108(2)**(4)

F13 Words in Sch. 36 para. 22(7J) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 432(3)** (with Sch. 2)

F14 Sch. 36 para. 22(7K)-(7M) inserted (retrospective to 1.3.2020) by Finance Act 2020 (c. 14), **s. 108(3)**(4)

F15 Words in Sch. 36 para. 22(8) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 54(7)**, 64(1)

Modifications etc. (not altering text)

C1 Sch. 36 para. 22(7)(a) modified by S.I. 2006/572, art. 43(3) (as inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2011 (S.I. 2011/732), arts. 1(1), **4**)

C2 Sch. 36 para. 22(7)(a) modified by S.I. 2006/572, art. 42(3) (as inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2011 (S.I. 2011/732), arts. 1(1), **4**)

23 (1) This paragraph applies in relation to a registered pension scheme and a member of the pension scheme if—

(a) the pension scheme is a protected pension scheme, and

(b) the retirement condition is met in relation to the member and the pension scheme.

(2) A pension scheme is a protected pension scheme if condition A or condition B is met.

(3) Condition A is met if—

(a) the pension scheme was within paragraph (f) or (g) of paragraph 1(1), and

(b) the entitlement condition is met in relation to the member and the pension scheme.

Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Rights to take benefit before normal minimum pension age. (See end of Document for details)*

(4) The entitlement condition is met in relation to the member and the pension scheme if—

(a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to a pension from an age of less than 50, and

(b) the member's occupation was on that date (or had been) one prescribed by regulations made by the Board of Inland Revenue.

(5) Condition B is met if the member is a member of the pension scheme **[**[F16]("a transferee pension scheme") as a result of—

(a) a block transfer from the pension scheme ("the original pension scheme") in relation to which condition A is met to the transferee pension scheme, or

(b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.**]**

(6) "Block transfer" has the same meaning as in paragraph 22(6) **[**[F17]and (6A), but for this purpose paragraph 22(6A)(c) is to be read as if its reference to paragraph 22(7)(a) were a reference to sub-paragraph (7) of this paragraph**]**.

(7) The retirement condition is met in relation to the member and the pension scheme if the member becomes entitled to all the pensions payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date.

(8) The member's protected pension age is the age from which the member had an actual or prospective right to a pension under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).

Textual Amendments

F16 Words in Sch. 36 para. 23(5) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 55(5)**, 64(1)

F17 Words in Sch. 36 para. 23(6) inserted (19.3.2014) by Finance Act 2014 (c. 26), **Sch. 5 paras. 7(2)**, 15

Modifications etc. (not altering text)

C3 Sch. 36 para. 23(7) modified by S.I. 2006/572, art. 42(3) (as inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2011 (S.I. 2011/732), arts. 1(1), **4**)

C4 Sch. 36 para. 23(7) modified by S.I. 2006/572, art. 43(4) (as inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2011 (S.I. 2011/732), arts. 1(1), **4**)

[[F18]23Z(1) Sub-paragraph (2) applies if—

(a) there is a recognised transfer from one registered pension scheme ("the old scheme") to another registered pension scheme ("the new scheme"), and

(b) as a result of paragraph 21 or the previous operation of sub-paragraph (2), immediately before the transfer this Part (except for section 218(6) and paragraph 19) applied in relation to all of the transferred sums or assets as if references to normal minimum pension age were to the member's protected pension age as defined by paragraph 22(8) or, as the case may be, paragraph 23(8).

(2) This Part **[**[F19]of this Act**]** (except for section 218(6) and paragraph 19) applies in relation to—

(a) the transferred sums or assets while held for the purposes of an arrangement under the new scheme, and

(b) any sums or assets held for the purposes of such an arrangement that arise, or (directly or indirectly) derive, from—

(i) any of the transferred sums or assets, or

(ii) sums or assets which so arise or derive,

as if references to normal minimum pension age were to the member's protected pension age as defined by paragraph 22(8) or, as the case may be, paragraph 23(8).

(3) Paragraphs 22(7)(a) and 23(7) have effect as if the benefits or pensions to which they refer do not include any that are in respect of sums or assets within sub-paragraph (2)(a) or (b) of this paragraph.**]**

Textual Amendments

F18 Sch. 36 para. 23ZA inserted (17.12.2014) (with effect in accordance with Sch. 1 para. 78(2) of the amending Act) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 78(1)**

F19 Words in Sch. 36 para. 23ZA(2) inserted (24.2.2022) by Finance Act 2022 (c. 3), **s. 10(6)(b)**

Protected pension age: scheme rights existing before 4 November 2021

[[F20]23ZB (1) This paragraph applies in relation to a relevant registered pension scheme and a member of the pension scheme if—

(a) neither paragraph 22 nor 23 applies in relation to them, and

(b) the entitlement condition or the block transfer condition is met in relation to the scheme and the member.

(2) A registered pension scheme is "relevant" if it is not a uniformed services pension scheme (as defined in section 279(4)).

(3) The entitlement condition is met if—

(a) immediately before 4 November 2021 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 57,

(b) the rules of the pension scheme on 11 February 2021 included provision conferring such a right on some or all of the persons who were then members of the pension scheme, and

(c) the member either had such a right under the scheme on 11 February 2021 or would have had such a right had the member been a member of the scheme on 11 February 2021.

(4) Where—

(a) a recognised transfer is made on or after 4 November 2021 in execution of a request made before that date, and

(b) that transfer would, if executed before that date, have resulted in the member having an actual or prospective right under a pension scheme to any benefit from the age of less than 57 immediately before that date,

Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Rights to take benefit before normal minimum pension age. (See end of Document for details)*

the member is, for the purposes of this paragraph, to be treated as having that right under that scheme at that time.

(5) The block transfer condition is met if the member is a member of the pension scheme (the "transferee pension scheme") as a result of—

(a) a block transfer to the transferee pension scheme on or after 4 November 2021 from a pension scheme (the "original pension scheme") where the entitlement condition is met in relation to the original scheme and the member,

(b) a block transfer to the transferee pension scheme from a pension scheme (the "original pension scheme") on or before 3 November 2021 where—

(i) immediately before the transfer the member had an actual or prospective right under the original pension scheme to any benefit from an age of less than 57,

(ii) the rules of the original pension scheme met paragraph (b) of the entitlement condition, and

(iii) paragraph (c) of that condition is met in relation to the original pension scheme and the member, or

(c) a block transfer to the transferee pension scheme from a pension scheme (the "transferor pension scheme") that was a transferee pension scheme in relation to an original pension scheme or another transferor pension scheme by virtue of the previous application of paragraph (a) or (b) or the previous application (on one or more occasions) of this paragraph.

(6) For the purposes of sub-paragraph (5), a transfer is a "block transfer", if it involves the transfer, in a single transaction, of all of the sums and assets held for the purposes of, or representing accrued rights under, the arrangements under a pension scheme which relate to the member and at least one other member of the scheme.

(7) The member's protected pension age is the higher of 55 and the age from which the member had an actual or prospective right to any benefit immediately before 4 November 2021 under—

(a) in a case where the entitlement condition is met in relation to the member and the scheme, that scheme, or

(b) in a case where the block transfer condition is met in relation to the member and the scheme and the entitlement condition is not so met, whichever of that scheme, the original scheme or the transferor scheme that the member was a member of at that time.

(8) But this paragraph does not have effect so as to give the member a protected pension age of more than 55 at any time before 6 April 2028.

Textual Amendments

F20 Sch. 36 paras. 23ZB, 23ZC and cross-headings inserted (24.2.2022) by Finance Act 2022 (c. 3), **s. 10(5)**

[F20 23ZC (1) This paragraph applies in relation to sums or assets of a relevant registered pension scheme and the member of the scheme to which those sums and assets relate if—

(a) none of paragraphs 22, 23 or 23ZB apply in relation to the scheme and the member, and

(b) those sums or assets were subject to a relevant transfer to the scheme.

(2) Sums or assets relate to a member of a pension scheme if they are held by that scheme for the purposes of, or represent accrued rights under, an arrangement relating to the member under the pension scheme.

(3) Sums or assets were subject to a relevant transfer to a relevant registered pension scheme if they were transferred to that scheme from another relevant registered pension scheme ("the transferor scheme") as a result of a recognised transfer and, immediately before the transfer—

(a) they were sums or assets held by the transferor scheme for the purposes of, or representing accrued rights under, an arrangement relating to a member of the transferor scheme, and

(b) paragraph 23ZB applied in relation to the transferor scheme and that member or this paragraph applied to those sums or assets and that member as a result of a relevant transfer to the transferor scheme.

(4) If this paragraph applies in relation to sums or assets ("transferred sums or assets") and a member of a relevant registered pension scheme, this Part of this Act (except for section 218(6) and paragraph 19) applies in relation to—

(a) the transferred sums or assets while held for the purposes of, or representing accrued rights under, an arrangement under the scheme, and

(b) any sums or assets held for the purposes of, or representing accrued rights under, such an arrangement that arise, or (directly or indirectly) derive, from—

(i) any of the transferred sums or assets, or

(ii) sums or assets which so arise or derive,

as if references to normal minimum pension age were to the member's protected pension age under the first relevant registered pension scheme from which there was a relevant transfer of the sums or assets (see paragraph 23ZB(7)).

(5) In this paragraph "relevant registered pension scheme" means a pension scheme that is not a uniformed services pension scheme (as defined in section 279(4)).**]**

Textual Amendments

F20 Sch. 36 paras. 23ZB, 23ZC and cross-headings inserted (24.2.2022) by Finance Act 2022 (c. 3), **s. 10(5)**

[F21]23A . . . . . .

Textual Amendments

F21 Sch. 36 para. 23A and cross-heading omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 80, **124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, **4**)

Textual Amendments

F20 Sch. 36 paras. 23ZB, 23ZC and cross-headings inserted (24.2.2022) by Finance Act 2022 (c. 3), **s. 10(5)**

F21 Sch. 36 para. 23A and cross-heading omitted (6.4.2024 for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2024 (c. 3), Sch. 9 paras. 80, **124** (with Sch. 9 paras. 125-132A) (as amended by S.I. 2024/356, regs. 1, **4**)

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Rights to take benefit before normal minimum pension age.