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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005, Cross Heading: Dependants' scheme pensions. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 10

#### PENSION SCHEMES ETC.

##### *Dependants' scheme pensions*

- 27 (1) Paragraph 16 of Schedule 28 (dependants' scheme pension) is amended as follows.
- (2) Omit sub-paragraph (1) (special provisions for pension scheme with fewer than 50 members).
- (3) In sub-paragraph (2) (pension scheme with 50 or more members)—
- (a) for “In the case of a pension scheme with 50 or more members, a” substitute “ A ”, and
- (b) omit sub-paragraph (2)(b) and the word “and” before it.
- (4) After that sub-paragraph insert—
- “(2A) The Board of Inland Revenue may by regulations make provision in relation to cases in which a dependants' scheme pension payable to a dependant of a member of a registered pension scheme by an insurance company (“the original dependants' scheme pension”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another dependants' scheme pension (a “new dependants' scheme pension”) or a scheme pension, lifetime annuity, short-term annuity, dependants' annuity or dependants' short-term annuity by the other insurance company, or
- (b) sums or assets are transferred to the relevant registered pension scheme.
- (2B) The regulations may provide that—
- (a) in a case where a new dependants' scheme pension becomes payable, the new dependants' scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original dependants' scheme pension, and
- (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.
- (2C) For the purposes of sub-paragraphs (2A) and (2B) a registered pension scheme is the relevant registered pension scheme if the original dependants' scheme pension was acquired using sums or assets held for the purposes of the pension scheme.”

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(5) Omit sub-paragraphs (3) to (6) (condition to be satisfied).

**Commencement Information**

**II** Sch. 10 para. 27 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 28 In Schedule 28 (authorised pensions), after paragraph 16 insert—
- “16A (1) Paragraphs 16B and 16C apply where—
- (a) the member dies after 5th April 2006,
  - (b) he has reached the age of 75 before his death, and
  - (c) at the time of his death he is actually or prospectively entitled to one or more scheme pensions under the pension scheme.
- (2) References in this paragraph and paragraph 16B to a scheme pension include a pension payable before 6th April 2006 which would be a scheme pension if payable after that date.
- 16B (1) Where a pension is payable under the pension scheme to a dependant of the member in the period of 12 months beginning with the date of the member's death (“the post-death year”), so much of the pension as exceeds the initial member pension limit is not a dependants' scheme pension.
- (2) But if—
- (a) more than one pension is so payable to one of the dependants of the member in the post-death year, or
  - (b) pensions are so payable to more than one dependant of the member in the post-death year,
- (or both), so much of any of the pensions as exceeds the appropriate portion of the initial member pension limit is not a dependants' scheme pension.
- (3) The “initial member pension limit” is (subject to sub-paragraph (4)) the sum of—
- (a) the aggregate of the amounts of the scheme pensions to which the member is actually entitled under the pension scheme immediately before his death payable to the member in the period of 12 months ending with the date of his death (“the pre-death year”),
  - (b) the aggregate of the amounts of the scheme pensions to which the member is prospectively entitled under the pension scheme at that time which would have been so payable if he had been actually entitled to the pensions throughout the pre-death year, and
  - (c) 5% of the aggregate of the amounts of the lump sums on which there is no liability to income tax to which the member has become entitled in connection with scheme pensions under the pension scheme before his death.
- (4) But if the member became (actually) entitled to a scheme pension under the pension scheme during the pre-death year, sub-paragraph (3)(a) has effect as if the amount of that scheme pension which was payable to

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the member under the pension scheme in the pre-death year were the amount which would have been payable to him in the period of 12 months beginning with the date on which he became entitled to it had he not died.

- (5) The “appropriate portion” of the initial member pension limit, in relation to any pension payable under the pension scheme to a dependant of the member in the post-death year, is—

$$\frac{P}{AP}$$

where—

P is the amount of that pension payable in the post-death year, and

AP is the aggregate of the amounts of each of the pensions payable under the pension scheme to dependants of the member in the post-death year.

- 16C (1) Where a pension is payable under the pension scheme to a dependant of the member, otherwise than in excepted circumstances, in—
- (a) the period of 12 months beginning with the end of the post-death year, or
  - (b) any succeeding period of 12 months,
- (“the 12 months in question”), so much of the pension as exceeds the current member pension limit is not a dependants' scheme pension.
- (2) But if—
- (a) more than one pension is so payable to one of the dependants in the 12 months in question, or
  - (b) pensions are so payable to more than one dependant of the member in the 12 months in question,
- (or both), so much of any of the pensions as exceeds the appropriate portion of the current member pension limit is not a dependants' scheme pension.
- (3) “Excepted circumstances” means—
- (a) that at the beginning of the period of 12 months in question there are at least 50 pensioner members of the pension scheme, and
  - (b) that the condition in subsection (4) is met.
- (4) The condition in this subsection is met if —
- (a) the difference between CYP and PYP in the case of each relevant existing pension is the same amount,
  - (b) the difference between CYP and PYP in the case of each relevant existing pension is the same percentage of PYP, or
  - (c) in the case of each relevant existing pension the difference between CYP and PYP is the aggregate of a percentage of PYP and an amount which are both the same as those the aggregate of which make up the difference between CYP and PYP in the case of each other relevant existing pension.

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(5) In this section—

“relevant existing pension” means a pension payable to any dependant of any member under the pension scheme throughout the 12 months in question and the immediately preceding period of 12 months,

“CYP”, in relation to a relevant existing pension, is the current year pension, that is the amount of the pension payable in the 12 months in question, and

“PYP”, in relation to a relevant existing pension, is the previous year pension, that is the amount of the pension payable in the immediately preceding period of 12 months.

(6) The “current member pension limit”, in relation to the 12 month period in question, is the initial member pension limit increased by the aggregate of—

- (a) the permitted margin, and
- (b) the excepted circumstances amount.

(7) The “permitted margin” is the amount by which the initial member pension limit would be greater if it had been increased by whichever of calculation A and calculation B gives the greater amount.

(8) Calculation A involves increasing the initial member pension limit by the relevant annual percentage rate for the whole of the period—

- (a) beginning with the first month beginning after the end of the post-death year (“the opening month”), and
- (b) ending with the first month of the 12 months in question (“the closing month”).

(9) The relevant annual percentage rate is—

- (a) if the relevant valuation factor in relation to the pension scheme is a number greater than 20, the annual rate agreed by the Inland Revenue and the scheme administrator, and
- (b) otherwise, 5% per annum.

(10) Calculation B involves increasing the initial member pension limit by the relevant indexation percentage.

(11) If the retail prices index for the closing month is higher than it was for the opening month, the relevant indexation percentage is the percentage increase in the retail prices index.

(12) If it is not, the relevant indexation percentage is 0%.

(13) The “excepted circumstances amount” is the aggregate of the amounts of the relevant increases in pensions which were payable under the pension scheme to dependants of the member in excepted circumstances in any period or periods within subsection (1)(a) or (b).

(14) The relevant increase in the case of any pension payable in relation to any 12 month period under the pension scheme to a dependant of the member is the difference between CYP and PYP (for this purpose reading the references in subsection (5) to the 12 months in question as references to the 12 month period).

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- (15) The “appropriate portion” of the current member pension limit, in relation to any pension payable under the pension scheme to a dependant of the member in the 12 months in question, is—

$$\frac{P}{AP}$$

where—

P is the amount of that pension payable in the 12 months in question, and

AP is the aggregate of the amounts of each of the pensions payable under the pension scheme to one or more dependants of the member in the 12 months in question.”

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**Commencement Information**

**I2** Sch. 10 para. 28 in force at 6.4.2006, see Sch. 10 para. 64(1)

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