
STATUTORY INSTRUMENTS

2006 No. 572

INCOME TAX

**The Taxation of Pension Schemes
(Transitional Provisions) Order 2006**

<i>Made</i>	- - - -	<i>9th March 2006</i>
<i>Laid before the House of Commons</i>	- - - -	<i>10th March 2006</i>
<i>Coming into force</i>	- -	<i>6th April 2006</i>

The Treasury make the following Order in exercise of the powers conferred upon them by section 283(2) of the Finance Act 2004⁽¹⁾.

Citation and commencement

1.—(1) This Order may be cited as the Taxation of Pension Schemes (Transitional Provisions) Order 2006 and shall come into force on 6th April 2006.

(2) In this Order—

“Revenue and Customs” means Her Majesty’s Revenue and Customs (see section 4 of the Commissioners for Revenue and Customs Act 2005⁽²⁾);

“the 2004 Act” means the Finance Act 2004;

“Part 4” means Part 4 of the Finance Act 2004;

a reference to a numbered section or Schedule (without more) is a reference to the section or Schedule bearing that number in Part 4; and

expressions which are defined, or are otherwise explained, in section 280 have the same meaning in this Order as they have in Part 4.

Payments made from annuities

2.—(1) In its application to any pension scheme which by virtue of paragraph 1(1) of Schedule 36 (pension schemes: transitional provisions and savings)—

(a) is to be treated as becoming a registered pension scheme on 6th April 2006;

(b) would have been so treated had it not been wound up before that date; or

(1) 2004 c. 12.
(2) 2005 c. 11.

(c) would have been so treated if the scheme administrator had not notified Revenue and Customs under paragraph 2 of Schedule 36 (opting out of deemed registration) that the pension scheme was not to become a registered pension scheme on that date, section 161 (meaning of “payment” etc) is modified as follows.

(2) In subsection (3) after the words “of a registered pension scheme” add—

“or, if the purchase took place before 6th April 2006, a pension scheme which at the time of purchase fell within one of the categories set out in paragraph 1(1)(a) to (g) of Schedule 36.”.

(3) After subsection (3) add—

“(3A) But subsection (4) does not apply to a payment made or benefit provided under or in connection with an annuity which fulfils the following conditions.

Condition 1

The annuity was purchased from an insurance company.

Condition 2

The annuity was purchased by a pension scheme which at the time of purchase fell within one of the categories set out in paragraph 1(1)(a) to (g) of Schedule 36.

Condition 3

The annuity was purchased in order to secure or provide benefits under the scheme referred to in Condition 2.

Condition 4

The terms of the annuity, or of any arrangement or agreement made in connection with that annuity do not permit a payment, the making of which would have given the Board (3) grounds for withdrawing approval of the pension scheme under section 591B of ICTA if it had been made before 6th April 2006.

Condition 5

The terms of the annuity contract have not been altered on or after 6th April 2006 to allow a payment that would be an unauthorised payment if it had been made by a registered pension scheme.”.

(4) In its application to any pension scheme which falls within sub-paragraph (1)(b) section 161(4) is modified as follows.

(5) For the words “held for the purpose of the pension scheme” substitute “held for the purposes of a registered pension scheme”.

Commencement provisions for unsecured pension funds

3. Part 4 of the 2004 Act shall be modified as set out in articles 4 and 5 in its application to any pension which—

- (a) was paid by way of income withdrawal, income drawdown or annuity purchase deferral from a retirement benefits scheme, or a personal pension scheme approved under Part 14 of ICTA immediately before 6th April 2006; and
- (b) on 6th April 2006 becomes an unsecured pension or a dependant’s unsecured pension by virtue of a scheme which is treated as becoming a registered pension scheme on that date (see paragraph 1 of Schedule 36).

(3) The Board is defined in section 832 of ICTA as the Commissioners of Inland Revenue.

Modification of section 165

4.—(1) Section 165(1) (pension rules) shall be modified as follows.

(2) In pension rule 5 after “basis amount for the unsecured pension year” add “or 100% of that amount during the first reference period as defined in paragraph 10(1A) of Schedule 28.”.

(3) Section 167(1) (pension death benefit rules) shall be modified as follows.

(4) In pension death benefit rule 4 after “basis amount for the unsecured pension year” add “or 100% of that amount during the first reference period as defined in paragraph 24(1A) of Schedule 28.”.

Modification of Schedule 28

5.—(1) Schedule 28 (registered pension schemes: authorised pensions—supplementary) shall be modified as follows.

(2) In paragraph 10—

(a) in sub-paragraph (1) for “The period of five unsecured pension years” substitute “The first reference period as defined in sub-paragraph (1A) below”;

(b) after sub-paragraph (1) insert a new sub-paragraph as follows—

“(1A) The “first reference period” is the period commencing on 6th April 2006 and terminating on the earliest of—

(a) the day immediately before the day fixed by the scheme administrator on which to recalculate the basis amount;

(b) the day immediately before the day on which the basis amount was recalculated following an annuity purchase;

(c) 6th April 2008.”;

(c) in sub-paragraph (2) for “sub-paragraph (5)” substitute “sub-paragraphs (2A) and (5).”;

(d) after sub-paragraph (2) insert the following sub-paragraph—

“(2A) For the first reference period as defined in sub-paragraph (1A), the basis amount is—

(a) the annual amount of the annuity calculated pursuant to section 630 of ICTA;

(b) the maximum annual pension calculated in accordance with the rules set out in Appendix XII Part I of the Occupational Pension Schemes Practice Notes (IR12) published by the Board on 22nd January 2001 (“the Notes”);

(c) the annual amount of pension income which has been paid in accordance with paragraph 20.41 of the Notes in respect of a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA, being paid as a small self-administered pension pursuant to the terms of Memorandum 119 issued on 6th May 1994 by the Board(4).

which could have been purchased by the application of the sums and assets which then represented the member’s pension fund on the nominated date.”;

(e) in sub-paragraph (3)(a) for “the reference date” substitute “the applicable reference date”;

(f) after sub-paragraph (3) insert—

“(3A) “The applicable reference date” is the date on which the pension fund was last valued —

(4) i.e. by the Commissioners of Inland Revenue. For the construction of references to the Board in relation to pensions on or after 18 April 2001 see section 50 of the Commissioners for Revenue and Customs Act 2005 c. 11.

- (a) in the case of a personal pension fund, pursuant to section 634A of ICTA (income withdrawal by member),
 - (b) in the case of a retirement benefits scheme (other than one falling within paragraph (c) below), pursuant to the rules set out in the Notes, or
 - (c) in the case of a retirement benefits scheme referred to in sub-paragraph (2A) (c), the date of the scheme's last triennial report as required by paragraph 20.41 of the Notes.”.
- (3) In paragraph 24—
- (a) in sub-paragraph (1) for the words “The period of five unsecured pension years” substitute “The first reference period as defined in sub-paragraph (1A) below”;
 - (b) after sub-paragraph (1) insert a new sub-paragraph as follows—
 - “(1A) The “first reference period” is the period commencing on 6th April 2006 and terminating on the earliest of—
 - (a) the day immediately before the day fixed by the scheme administrator on which to recalculate the basis amount;
 - (b) the day immediately before the day on which the basis amount was recalculated following an annuity purchase;
 - (c) 6th April 2008.”;
 - (c) in sub-paragraph (2) for “sub-paragraph (5)” substitute “sub-paragraphs (2A) and (5).”;
 - (d) after sub-paragraph (2) insert the following sub-paragraph—
 - “(2A) For the first reference period as defined in sub-paragraph (1A), the basis amount is—
 - (a) the annual amount of the annuity calculated pursuant to section 630 of ICTA,
 - (b) the maximum annual pension calculated in accordance with the rules set out in Appendix XII Part I of the Occupational Pension Schemes Practice Notes (IR12) published by the Board on 22nd January 2001 (“the Notes”) or,
 - (c) the annual amount of pension income that has been paid in accordance with paragraph 20.41 of the Notes in respect of a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA, being paid as a small self-administered pension calculated pursuant to the terms of Memorandum 119 issued by the Board on 6 May 1994
 which could have been purchased by the application of the sums and assets which then represented the member's pension fund on the nominated date.”;
 - (e) in sub-paragraph (3)(a) for “the reference date” substitute “the applicable reference date”;
 - (f) after sub-paragraph (3) insert—
 - “(3A) “The applicable reference date” is the date on which the pension fund was last valued—
 - (a) in the case of a personal pension fund, pursuant to section 636A of ICTA (income withdrawal after the death of member),
 - (b) in the case of a retirement benefits scheme (other than one falling within paragraph (c) below), pursuant to the rules set out in the Notes, or
 - (c) in the case of a retirement benefits scheme referred to in sub-paragraph (2A) (c), the date of the scheme's last triennial report as required by paragraph 20.41 of the Notes.”.

Transitional protection for continued life cover (75+)

6. The modifications in articles 7 and 8 apply in the case of a member of a registered pension scheme who satisfies the following conditions.

Condition A

The registered pension scheme was, immediately before 6th April 2006, a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA (retirement benefits schemes).

Condition B

The member had a right under the pension scheme to a life cover lump sum on 5th April 2006.

Condition C

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

Condition D

The rules of the scheme in relation to life cover lump sums have not been changed since 10th December 2003.

Condition E

The member was—

- (a) in receipt of benefits from the scheme on or before 5th April 2006, or
- (b) entitled to one or more life cover lump sums, amounting in the aggregate, to £2,500 or less.

Modification of section 636A ITEPA 2003

7.—(1) ITEPA 2003(5) is modified as follows.

(2) In section 636A(1) (exemption for certain lump sums under registered pension schemes)(6)—

- (a) at the end of paragraph (e) omit “or”;
- (b) at the end of paragraph (f) add “or”; and
- (c) after paragraph (f) insert—

“(g) a life cover lump sum.”.

(3) In section 636A(7) after “unsecured pension fund lump sum death benefit” insert “life cover lump sum”.

Modification of section 168 and Schedule 29

8.—(1) The 2004 Act is modified as follows.

(2) In section 168(1) (lump sum death benefit rule) after paragraph (i) insert—

“(j) a life cover lump sum.”.

(3) In Part 2 of Schedule 29 (registered pension schemes: supplementary provisions about lump sums) after paragraph 21 insert—

(5) 2003 c. 12.

(6) Section 636A is inserted by paragraph 11 of Schedule 31 to the Finance Act 2004.

“Life cover lump sum

- 21A.** For the purposes of this Part a lump sum death benefit is a life cover lump sum if—
- (a) the member had reached the age of 75 before he died;
 - (b) payment of the sum would not have prejudiced approval of the scheme for the purposes of Chapter 1 of Part 14 of ICTA if it had been made on 5th April 2006.”.

Valuation of “primary protection” – compensation for poorly performing investments

9. Part 4 of 2004 Act shall be modified as set out in articles 10 and 11 in its application to any individual who has given notice of intention to rely on paragraph 7 Schedule 36 where the following conditions are met—

Condition A

The pension scheme in respect of which the individual has given notice is either—

- (a) a money purchase arrangement that is not a cash balance arrangement; or
- (b) a hybrid arrangement where the benefits that may be provided include money purchase benefits that are not cash balance benefits.

Condition B

An amount is paid into the pension scheme, or is determined as being so payable, between 6th April 2006 and 5th April 2009, in respect of compensation for the poor performance of an investment owned by that scheme.

Condition C

The investment in respect of which the compensation is payable was owned by the pension scheme at any time before 6th April 2006 and was offered for sale to the public on the open market.

Condition D

The amount of compensation paid, or determined as being so payable, is an amount which might reasonably have been expected to be paid between two parties in the same position as the payer and the scheme administrator acting at arm’s length.

Modification of section 212

10.—(1) Section 212 (valuation of uncrystallised rights for the purposes of section 210) is modified, for the purposes of calculating the value of *RR* in paragraph 7(3) of Schedule 36, as follows.

(2) In subsection (5) (valuation of money purchase arrangements other than cash balance arrangements) after paragraphs (a) and (b) add—

“together with the value, if any, of any relevant compensation on 5th April 2006.”.

(3) After subsection (5) add—

“(5A) For the purposes of subsections (5) and (7) relevant compensation is the market value, calculated in accordance with section 278, of any compensation paid or payable in respect of the poor performance of an investment owned by the pension scheme on the earlier of the date of payment of the compensation or 5th April 2009.”.

(4) In subsection (7) (valuation of hybrid arrangements) after paragraphs (a) and (b) add—

“together with any hybrid compensation as defined in subsection (7A) below.”.

(5) After subsection (7) add—

“(7A) For the purposes of subsection (7) hybrid compensation is—

- (a) any relevant compensation payable in respect of a money purchase arrangement which forms part of the hybrid arrangement calculated in accordance with subsection (5A); less
- (b) the value of the hybrid arrangement calculated in accordance with subsection (7) less the value of any sums or assets representing other money purchase benefits calculated in accordance with subsection (5).

If this calculation results in a negative amount, the amount of relevant compensation to be added to the value of the member's uncrystallised rights under this subsection is nil.”.

Modification of paragraph 8 of Schedule 36

11.—(1) Part 2 of Schedule 36 (pre-commencement rights: lifetime allowance charge) is modified as follows.

(2) In paragraph 8(5) after the words “(valuation of uncrystallised rights for the purposes of section 210)” add—

“(as modified by article 10 of The Taxation of Pension Schemes (Transitional Provisions) Order 2006)”.

“Primary protection” and non residents

12.—(1) Part 4 of the 2004 Act shall have effect subject to the modifications set out in articles 13 and 14 below in its application to any individual to whom either paragraph (2) or (3) applies

(2) This paragraph applies if the following conditions are met—

Condition A

The individual has given the Inland Revenue a notice under section 221(6) of his intention to rely on that section where the active membership period in relation to the arrangement in respect of which the notice was given commenced on 6th April 2006

Condition B

The individual would have been a relevant overseas individual in the tax year 2005-06 pursuant to section 221(3) had that subsection been in force during that year.

Condition C

The individual gives or has already given notice to the Inland Revenue pursuant to paragraph 7(1)(b) of Schedule 36 that he intends to rely on that paragraph.

(3) This paragraph applies if the following conditions are met—

Condition A

The individual has given the Inland Revenue a notice under paragraph 7(1)(b) of Schedule 36 of his intention to rely on that paragraph.

Condition B

The individual gives or has already given notice to the Inland Revenue pursuant to section 221(6) that he intends to rely on that section where the active membership period in relation to the arrangement in respect of which the notice was given commenced on 6th April 2006.

Condition C

The individual would have been a relevant overseas individual in the tax year 2005-06 pursuant to section 221(3) had that subsection been in force during that year.

Modification of section 222

13.—(1) In subsection 222(4) (non residence: money purchase arrangements) after “OV is” for the words “the opening value of the individual’s rights under the arrangement” substitute “calculated in accordance with subsection (4A).”.

(2) After subsection (4) add subsection (4A)—

“(4A) For the purposes of subsection (4)—

$$OV = OVA \times \frac{SLA}{CSLA}$$

Here—

OVA is the value of the individual’s rights under the arrangement on 5th April 2006 calculated in accordance with subsection (5)(b).

SLA is the standard lifetime allowance at the time when the part of the active membership period referred to in subsection (4) ended and

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

(3) For subsection (5)(b) substitute—

“(b) the value of the individual’s rights under the arrangement on 5th April 2006 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 on 5th April 2006.”.

Modification of section 223

14.—(1) Section 223 (non-residence: other arrangements) is modified as follows.

(2) In subsection (4) in the definitions of PB and LSB for “at the beginning of that part of that period” substitute “on 5th April 2006 indexed in accordance with subsection (4A).”.

(3) After subsection (4) insert—

“(4A) PB and LSB shall be increased by multiplying the appropriate figure by—

$$\frac{SLA}{CSLA}$$

Here—

SLA is the standard lifetime allowance at the time when the part of the active membership period referred to in subsection (4) ended and

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

Employers or employees with pre-commencement entitlement to corresponding relief

15.—(1) This article applies where Revenue and Customs allow contributions made between 1st April 2005 and 5th April 2006 by an employer under a pension scheme for the benefit of an employee (a “qualifying employee”) to be deducted in accordance with section 76(6A) and (6C) of the Finance Act 1989(7)—

(a) for the purposes of Case I or Case II of Schedule D;

(b) in respect of management expenses under section 75 of ICTA(8); or

(7) 1989 c. 26. Section 76(6A) and (6C) was inserted by paragraph 2 of Schedule 39 to the FA 1996 and was prospectively repealed by Schedule 42, Part 1 to the FA 2004.

(8) as substituted by section 38 of FA 2004.

- (c) in respect of the expenses of an insurance company under section 76 of ICTA⁽⁹⁾;
- (d) in respect of profits of a trade, profession or vocation chargeable under section 5 of the Income Tax (Trading and Other Income) Act 2005⁽¹⁰⁾.

(2) Where, at any time on or after 6th April 2006, the employer makes contributions under the pension scheme referred to in paragraph (1) for the benefit of the qualifying employee, Revenue and Customs may allow the contributions to be treated as if they were relevant migrant member contributions under paragraph 2 of Schedule 33 if—

- (a) they are satisfied that the conditions in paragraph (3) are met, and
- (b) the scheme manager complies with any prescribed benefit crystallisation information requirements imposed on the scheme manager.

(3) The conditions are that—

- (a) the contribution consists of the expenses of paying any sum, or of providing benefits, pursuant to a pension scheme which is established outside the United Kingdom; and
- (b) Revenue and Customs are satisfied that that scheme corresponds to such a scheme as is registered under Part 4 of the 2004 Act.

(4) For the purposes of this article and article 17, “Prescribed benefit crystallisation information requirements” means requirements imposed by regulation 2 of the Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006⁽¹¹⁾ (“the Overseas Information Requirements Regulations”).

For the purposes of this article, the provisions of regulation 2 of the Overseas Information Requirements Regulations shall apply to qualifying employees.

(5) The references in paragraphs (2), (3) and (4) to a pension scheme include a pension scheme to which there has been a block transfer on or after 6th April 2006 from a pension scheme to which paragraph (2) applies.

(6) In this article “block transfer” has the same meaning as in paragraph 22(6) of Schedule 36 but treating the references there to “the member” as references to the qualifying employee.

Modification of section 245

16.—(1) In a case falling within article 15, section 245 (restriction of deduction for contributions by employer) is modified as follows.

(2) In subsection (5)—

- (a) after the words “(deductions to which Schedule does not apply)” insert “(a)”; and
- (b) after the words “relevant migrant member of the pension scheme in relation to the contributions,” insert—

“and

(b) after paragraph (g) insert—

“(h) in respect of contributions which have been given relief under section 196 as applied by paragraph 2 of Schedule 33 and modified by article 15 of The Taxation of Pension Schemes (Transitional Provisions) Order 2006.””.

⁽⁹⁾ as substituted by section 40 of FA 2004.

⁽¹⁰⁾ 2005 c. 5.

⁽¹¹⁾ S.I. 2006/208.

Application of 308A ITEPA 2003

17.—(1) This article applies where—

- (a) Revenue and Customs allow an employee (an “exempt employee”) to be exempted from income tax under section 390 ITEPA 2003 in relation to contributions made between 6th April 2005 and 5th April 2006 by his employer under a pension scheme; and
- (b) the conditions in paragraph (2) are met.

(2) The conditions are

Condition A

The scheme manager of the pension scheme referred to in paragraph (1)(a) complies with any prescribed benefit crystallisation information requirements imposed on the scheme manager.

Condition B

Revenue and Customs are satisfied that the pension scheme corresponds to such a scheme as is registered under Part 4 of this Act.

(3) For the purposes of this article, the provisions of regulation 2 of the Overseas Information Requirements Regulations shall apply to exempt employees.

(4) Section 308A of ITEPA 2003(12) (exemption of contributions to overseas pension scheme) shall apply in relation to any contributions made on or after 6th April 2006 for the benefit of the employee by an employer under the pension scheme as if—

- (a) the pension scheme were a qualifying overseas pension scheme, and
- (b) the contributions were relevant migrant member contributions.

(5) The references in paragraphs (1) and (2) to a pension scheme include a pension scheme to which there has been a block transfer on or after 6th April 2006 from a pension scheme to which paragraphs (1) and (2) apply.

(6) In this article “block transfer” has the same meaning as in paragraph 22(6) of Schedule 36 but treating the references there to “the member” as references to the exempt employee.

“Enhanced protection” and pension commencement lump sums

18. If (and for so long) as paragraph 27 or 29 of Schedule 36 applies in relation to an individual, paragraph 1(1) of Schedule 29 (supplementary provision about authorised lump sums: meaning of “pension commencement lump sum”) shall have effect, in relation to that individual, with the omission of paragraph (b) (requirement that lump sum payable only when lifetime allowance available).

Pre-commencement pension and calculation of the “permitted maximum” pension commencement lump sum

19.—(1) In the case of an individual who falls within paragraph 20(1) of Schedule 36 (pre-commencement pensions) paragraph (2) applies.

(2) In paragraph 2(6) of Schedule 29 after the words “AAC is the aggregate of the amounts crystallised by each benefit crystallisation event which has occurred in relation to the member” insert “(including any pre-commencement pension rights valued under paragraph 20 of Schedule 36) and the amount of any lump sum deemed to have been crystallised under paragraph 1(1A) of Schedule 29”.

(12) 2003 c. 1. Section 308A was inserted by paragraph 3 of Schedule 33 to the Finance Act 2004.

Pre-commencement lump sum death benefits

20.—(1) In the case of an individual who dies on or after 6th April 2006 and meets the conditions in paragraph (2) paragraph (3) applies.

(2) The conditions are—

Condition A

The individual had an actual right to one or more pre-commencement pensions immediately before his death.

Condition B

No benefit crystallisation event has occurred in relation to the individual before his death.

Condition C

After the individual's death a single benefit crystallisation event occurs in relation to that individual by reason of the payment of a lump sum death benefit in respect of that individual.

(3) Paragraph 20(2)(b) of Schedule 36 is to be treated as providing that the amount crystallised was the value of the individual's pre-commencement pension rights immediately before the individual's death.

Transfers and entitlement to lump sums exceeding 25% of uncrystallised rights

21.—(1) Articles 22 and 23 apply if—

(a) a person was a member of a pension scheme—

(i) which was in existence on 5th April 2006; and

(ii) which is treated as becoming a registered pension scheme within Part 4 of the Finance Act 2004 on 6th April 2006 (see paragraph 1 of Schedule 36 to that Act); and

(b) on or after 6th April 2006 sums and assets held for the purposes of, or representing accrued rights, under the registered pension scheme are transferred, otherwise than by a block transfer—

(i) to another registered pension scheme; or

(ii) to a registered pension scheme from a registered pension scheme which has received a block transfer of the sums and assets referred to in sub-paragraph 1(b) of this article.

(2) In this article “block transfer” has the meaning given in paragraph 31(8) of Schedule 36 (entitlement to lump sums exceeding 25% of uncrystallised rights).

Modification of paragraph 31 of Schedule 36

22.—(1) In a case to which this article applies, paragraph 31 of Schedule 36 is modified as follows.

(2) In sub-paragraph (1) for “sub-paragraph (2)” substitute “sub-paragraphs (2) and (2A)”.

(3) After sub-paragraph (2) insert—

“(2A) Those provisions apply with the further modifications prescribed by Article 23 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 in the case of a person satisfying sub-paragraph (1) above—

(a) who was a member of a pension scheme which—

(i) was in existence on 5th April 2006; and

(ii) is treated as becoming a registered pension scheme within Part 4 of the Finance Act 2004 on 6th April 2006 (see paragraph 1 of Schedule 36 to that Act); and

- (b) in respect of whom sums and assets held for the purposes of, or representing accrued rights under, the registered pension scheme are transferred, otherwise than by a block transfer—
- (i) to another registered pension scheme, or
 - (ii) to another registered pension scheme from a registered pension which has received a block transfer of the sums and assets referred to in paragraph (b) of this sub-paragraph.”.

Modification of paragraph 34 of Schedule 36

23.—(1) In a case to which this article applies, paragraph 34 of Schedule 36 is modified as follows.

(2) In sub-paragraph (2) for the words from “pension scheme and for” to the end of the paragraph (7) (as substituted) substitute—

“pension scheme and for sub-paragraphs (5) to (8) there were substituted—

“(5) If paragraph 2(2) does not apply, relevant benefit accrual has occurred in relation to the individual after 5th April 2006 and there has been a transfer of part or all of the sums and assets held for the purposes of, or representing accrued rights under, the registered pension scheme in relation to the individual, the permitted maximum is the greater of—

$$\left(\text{VULSR} \times \left(\frac{\text{CLSA}}{\text{FLSA}} \right) \right) + \text{ALSA} - \frac{\text{TV}}{4}$$

4

and nil.

(6) If paragraph 2(2) does not apply and relevant benefit accrual has not occurred under the pension scheme in relation to the individual after 5th April 2006 and there has been a transfer of part or all of the sums and assets held for the purposes of, or representing accrued rights under, the registered pension scheme in relation to the individual, the permitted maximum is the greater of—

$$\left(\text{VULSR} \times \frac{\text{CLSA}}{\text{FLSA}} \right) - \frac{\text{TV}}{4}$$

and nil.

(7) In this paragraph—

VULSR is the value of the individual’s uncrystallised lump sum rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 32 of Schedule 36,

CSLA is the current standard lifetime allowance,

FLSA is £1,500,000 (the standard lifetime allowance for the tax year 2006–07),

ALSA is the greater of the additional lump sum amount and nil; and

TV is the value of all sums and assets held for the purposes of, or representing accrued rights under the registered pension scheme transferred from the scheme on or after 6th April 2006.”.”.

Dependant’s scheme pension limit

24.—(1) Paragraph (2) applies where the member in respect of whom the dependant’s scheme pension is payable was actually entitled to one or more relevant existing pensions (as defined in paragraph 10(2) of Schedule 36) on 5th April 2006.

(2) Paragraph 16A(13) of Schedule 28 shall be modified as follows.

(3) After sub-paragraph (2) add—

“(3) This paragraph shall not apply to a scheme pension where the member was actually entitled to that pension on 5th April 2006.”.

Lump sums with no connected pension

25.—(1) In the case of an individual who meets one of the conditions set out in paragraph (2) paragraphs (3) to (5) apply.

(2) The conditions are —

Condition A

Relevant benefit accrual as defined in paragraph 13 of Schedule 36 has not occurred under the pension scheme in relation to the individual on or after the 6th April 2006, and the individual’s rights under the pension scheme on 6th April 2006 consist only of—

- (a) uncrystallised lump sum rights or
- (b) uncrystallised pension rights where *VULSR* and *VUR* referred to in paragraph 31(6) of Schedule 36 have the same value.

Condition B

Paragraph 28 of Schedule 36 applies in relation to the individual, and all of the individual’s uncrystallised rights under the scheme will come into payment at a single benefit crystallisation event.

Condition C

Paragraph 29 of Schedule 36 applies in relation to the individual, all of the individual’s uncrystallised rights under the scheme will come into payment at a single benefit crystallisation event and at that time, *VULSR* and *VUR*, referred to in sub-paragraph (2) of that paragraph, have the same value.

(3) In section 166(1) (lump sum rule) after paragraph (a) insert—

“(aa) a stand-alone lump sum;”.

(4) In Part 1 of Schedule 29 after paragraph 3 insert—

“Stand-alone lump sum

3A. For the purposes of this Part a lump sum is a stand-alone lump sum if—

- (a) relevant benefit accrual (as defined in paragraph 13 of Schedule 36) has not occurred under the pension scheme in relation to the individual on or after the 6th April 2006, and the individual’s rights under the pension scheme on 6th April 2006 consist only of—
 - (i) uncrystallised lump sum rights or
 - (ii) uncrystallised pension rights where *VULSR* and *VUR* referred to in paragraph 31(6) of Schedule 36 have the same value;
- (b) paragraph 28 of Schedule 36 (modification of paragraph 2 of Schedule 29 in the case of an individual to whom enhanced protection does not apply) applies in relation to the individual, and all of the individual’s uncrystallised rights under the scheme will come into payment at a single benefit crystallisation event; or

- (c) paragraph 29 of Schedule 36 (modification of applicable amount in the case of an individual to whom enhanced protection applies) applies in relation to the individual, all of the individual's uncrystallised rights under the scheme will come into payment at a single benefit crystallisation event and at that time, *VULSR* and *VUR*, referred to in sub-paragraph (2) of that paragraph, have the same value."

(5) In Schedule 32 (registered pension schemes: benefit crystallisation events — supplementary) in paragraph 15 after sub-paragraph (a) insert—

“(aa) a stand-alone lump sum;”.

Application of paragraph 31 of Schedule 36

26.—(1) In the case of an individual who meets the conditions set out in paragraph (2), paragraph (3) applies.

(2) The conditions are—

Condition A

Relevant benefit accrual as defined in paragraph 13 of Schedule 36 has not occurred under the pension scheme in relation to the individual on or after the 6th April 2006, and the individual's rights under the pension scheme on 6th April 2006 consist only of—

- (a) uncrystallised lump sum rights or
(b) uncrystallised pension rights where *VULSR* and *VUR* referred to in paragraph 31(6) of Schedule 36 have the same value.

Condition B

All of the individual's uncrystallised rights under the scheme will come into payment at a single benefit crystallisation event.

(3) Paragraph 31 (3) of Schedule 36 shall apply to the individual referred to in paragraph (2) as if for “all the pensions” there were substituted “and is paid any lump sum”.

Contracts approved under section 621(1)(b) of ICTA

27.—(1) This article applies in the case of an individual who, immediately before 6th April 2006, had rights under a contract which had been approved under section 621(1)(b) of ICTA.

(2) Schedule 36 shall be modified as follows.

(3) In paragraph 1(1) (deemed registration of existing schemes) after paragraph (e) insert—

“(ea) a contract approved under section 621(1)(b) of ICTA;”.

(4) In paragraph 4 after sub-paragraph (4) add

“(4A) If the pension scheme is within paragraph 1(1)(ea) immediately before that date, the trustee or trustees of the pension scheme, or the insurance company which is party to the contract in which the pension scheme is comprised, is or are to be treated as becoming the scheme administrator.”.

(5) In paragraph 40(3) (members' contributions to pre-commencement retirement annuity contracts) after paragraph (a) insert—

“(aa) a contract approved under section 621(1)(b) of ICTA, where article 27(2) of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 applies to the individual in question, or”.

Pre-existing entitlement to lump sums and deferment

28.—(1) In the case of an individual who meets the conditions set out in paragraph (2), paragraph (3) applies.

(2) The conditions are as follows.

Condition A

The individual is a member of a scheme which falls within paragraph 1(1)(a), (c), (d) or (e) of Schedule 36.

Condition B

The individual has become entitled to a tax-free lump sum under that scheme on or before 5th April 2006.

Condition C

The individual would but for an election to defer entitlement made on or after 27 July 2004, have been entitled to all or part of the pension to which the lump sum in Condition B relates on or before 5th April 2006.

Condition D

A benefit crystallisation event occurs on or after 6th April 2006 in relation to any of the rights, sums and assets of the scheme in relation to the individual.

(3) Paragraph 1 of Schedule 29 shall be modified, as follows.

(a) After sub-paragraph (1) add—

“(1A) Where a member of a scheme has become entitled to a tax free lump sum on or before 5th April 2006, that lump sum is to be treated as if it were a pension commencement lump sum if—

(a) the member who became entitled to the lump sum is a member of a scheme which falls within paragraph 1(1)(a), (c), (d) or (e) of Schedule 36,

(b) the member has elected to defer entitlement to all or part of the pension to which the lump sum in sub-paragraph (a) relates until after 5th April 2006.

The lump sum shall be treated as if the member became entitled to it on 6th April 2006 and the amount to be treated as having been crystallised at that time shall be the amount of the lump sum to which the member became entitled.

(1AA) No lifetime allowance charge shall arise in respect of the amount deemed to have been crystallised in paragraph (1A).”.

(b) After sub-paragraph (3) add—

“(3A) But a pension —

(a) which becomes payable under a scheme which falls within paragraph 1(1)(a), (c), (d) or (e) of Schedule 36 in respect of which entitlement to a lump sum has already arisen prior to 6th April 2006, and

(b) entitlement to which has been deferred (in whole or in part) until after 5th April 2006,

is not a relevant pension.

(3B) Sub-paragraph (3A) also applies to a pension payable under any registered pension scheme which has received, (whether directly or through one or more intermediate schemes), a transfer of the sums or assets held for the purposes of the scheme referred to in that sub-paragraph to the extent that the pension is payable in respect of those sums or assets and any investment growth that has been made on them.”.

Member's unsecured pension funds

29.—(1) In the case of an individual who meets the conditions set out in paragraph (2), paragraphs (3) to (5) apply.

(2) The conditions are as follows.

Condition A

The individual had not reached the age of 75 on 6th April 2006.

Condition B

The individual is a member of a scheme which falls within paragraph 1(1) of Schedule 36.

Condition C

The individual was, on 5th April 2006 entitled to a pension which was not provided under a defined benefits arrangement and which—

- (a) took the form of income drawdown under a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA; or
- (b) was paid from the resources of—
 - (i) a small self-administered scheme as defined in the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-Administered Schemes) Regulations 1991⁽¹⁴⁾, or
 - (ii) a small self-administered scheme that had been approved under section 590 of ICTA,

and the rules of the scheme on 5th April 2006 did not require the purchase of an annuity in respect of the individual; or

- (c) took the form of income withdrawal under a personal pension scheme approved under Chapter 4 of Part 14 of ICTA pursuant to section 634A⁽¹⁵⁾ of that Act.

(3) Paragraph 8 of Schedule 28⁽¹⁶⁾ (member's unsecured pension fund) is modified as follows—

(a) for sub-paragraph (1A) substitute—

“(1A) For the purposes of this Part sums or assets held for the purposes of an arrangement are member-designated funds if they have at any time been applied to provide a pension which—

- (a) took the form of income drawdown under a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA;
- (b) was paid from the resources of—
 - (i) a small self-administered scheme as defined in the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-Administered Schemes) Regulations 1991, or
 - (ii) a small self-administered scheme that had been approved under section 590 of ICTA;

and the rules of scheme on 5th April 2006 did not require the purchase of an annuity in respect of the individual; or

⁽¹⁴⁾ S.I. 1991/1614. The definition of such a scheme was substituted by regulation 3 (b) of S.I. 1998/728.

⁽¹⁵⁾ Section 634A was inserted by paragraph 4 of Schedule 11 to the Finance Act 1995, amended by paragraphs 12(2) and 18(8) and (9) of Schedule 10 to the Finance Act 1999 and paragraphs 10 and 11 of Part 1 of Schedule 13 to the Finance Act 2000, and prospectively repealed by the relevant entry in Part 3 of Schedule 42 to the Finance Act 2004.

⁽¹⁶⁾ Paragraph 8(1A) of Schedule 28 was inserted by paragraph 18 of Schedule 10 to the Finance Act 2005.

- (c) took the form of income withdrawal under a personal pension scheme approved under Chapter 4 of Part 14 of ICTA pursuant to section 634A(17) of that Act.”.
- (b) after sub-paragraph (1A) insert—
- “(1AA) The sums or assets referred to in sub-paragraph (1A) shall be treated as comprising a separate arrangement and the deemed designation of those sums or assets does not constitute benefit crystallisation event 1.
- (1AB) Any sums or assets transferred from an arrangement referred to in sub-paragraph (1AA) shall be treated as comprising a separate arrangement.”.
- (4) For paragraph 9(1) of Schedule 28 substitute—
- “9.—(1) “Unsecured pension year” in relation to an unsecured pension referred to in paragraph 8(1A), means—
- (a) the period beginning on 6th April 2006 and ending on the earlier of—
- (i) 5th April 2007, or
- (ii) the date upon which the first reference period defined in paragraph 10(1A) treated as inserted by Article 5 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 terminates; and
- (b) each succeeding period of 12 months.”.
- (5) Section 216 (benefit crystallisation events and amounts crystallised) shall be modified as follows—
- (a) in BCE2, in column 1 of the table, after the words “under any of the relevant pension schemes” add—
- “except to the extent that, the scheme pension was funded by the surrender of—
- (a) sums or assets deemed to represent an arrangement pursuant to paragraph 8(1A) (a) to (c) of Schedule 28 as modified by article 29 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006; or
- (b) sums or assets which have been transferred from an arrangement referred to in sub-paragraph (a) to the extent that the scheme pension is payable in respect of those sums or assets and any investment growth that has been made on them.”;
- (b) in BCE4, in column 1 of the table, after the words “under any of the relevant pension schemes” add—
- “except to the extent that, the purchase of the lifetime annuity was funded by the surrender of—
- (a) sums or assets deemed to represent an arrangement pursuant to paragraph 8(1A) (a) to (c) of Schedule 28 as modified by article 29 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006; or
- (b) sums or assets which have been transferred from an arrangement referred to in sub-paragraph (a) to the extent that the lifetime annuity is payable in respect of those sums or assets and any investment growth that has been made on them.”;

(17) Section 634A was inserted by paragraph 4 of Schedule 11 to the Finance Act 1995, amended by paragraphs 12(2) and 18(8) and (9) of Schedule 10 to the Finance Act 1999 and paragraphs 10 and 11 of Part 1 of Schedule 13 to the Finance Act 2000, and prospectively repealed by the relevant entry in Part 3 of Schedule 42 to the Finance Act 2004.

- (c) in BCE8, in column 1 of the table, after the words “in connection with the individual’s membership of that pension scheme” add—
- “unless the sums or assets transferred were—
- (a) deemed to represent an arrangement pursuant to paragraph 8(1A) (a) to (c) of Schedule 28 as modified by article 29 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006; or
- (b) sums or assets which had been transferred from an arrangement referred to in sub-paragraph (a).”.

For the purposes of this paragraph references to “BCE” are references to a benefit crystallisation event as set out in section 216.

Dependant’s unsecured pension funds

30.—(1) In the case of an individual who meets the conditions set out in paragraph (2), paragraphs (3) and (4) apply.

(2) The conditions are as follows.

Condition A

The individual had not reached the age of 75 on the 6th April 2006.

Condition B

The individual is a dependant of a member who was a member of scheme which falls within paragraph 1(1) of Schedule 36.

Condition C

On 5th April 2006 the individual was, under an arrangement which was not a defined benefits arrangement—

- (a) entitled to a pension which took the form of income drawdown under a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA;
- (b) entitled to a pension that was paid from the resources of—
- (i) small self-administered scheme as defined in the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991, or
- (ii) a small self-administered scheme that had been approved under section 590 of ICTA,
and the rules of the scheme on 5th April 2006 did not require the purchase of an annuity in respect of the individual;
- (c) entitled to a pension which took the form of income withdrawal under a personal pension scheme approved under Chapter 4 of Part 14 of ICTA pursuant to section 636A(18) of that Act; or
- (d) prospectively entitled to an annuity payment of which has been deferred pursuant to section 636(5) of ICTA.

(3) Paragraph 22(19) of Schedule 28 (dependant’s unsecured pension fund) is modified as follows

- (a) at the end of sub-paragraph (1)(a) omit word “and”,

(18) Section 634A was inserted by paragraph 4 of Schedule 11 to the Finance Act 1995, amended by paragraphs 12(2) and 18(8) and (9) of Schedule 10 to the Finance Act 1999 and paragraphs 10 and 11 of Part 1 of Schedule 13 to the Finance Act 2000, and prospectively repealed by the relevant entry in Part 3 of Schedule 42 to the Finance Act 2004.

(19) Paragraph 22 was amended by paragraph 21 of Schedule 10 to the Finance Act 2005.

- (b) omit sub-paragraph (1)(b),
 - (c) in sub-paragraph (2)—
 - (i) for paragraphs (a) and (b) substitute—
 - “(a) have at any time been applied to provide a pension which —took the form of income drawdown under a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA;
 - (b) have at any time been applied to provide a pension which was paid from the resources of—
 - (i) a small self-administered scheme as defined in the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991, or
 - (ii) a small self-administered scheme that had been approved under section 590 of ICTA
 - and the rules of scheme on 5th April 2006 did not require the purchase of an annuity in respect of the individual;
 - (c) have at any time been applied to provide a pension which took the form of income withdrawal under a personal pension scheme approved under Chapter 4 of Part 14 of ICTA pursuant to section 636A(20) of that Act; or
 - (d) have, immediately before the coming into force of this Part, been held for the purpose of providing an annuity, payment of which has been deferred in accordance with section 636(5) of that Act..”.
- (4) For 23(1) (unsecured pension year and basis amount for unsecured pension year) of Schedule 28 substitute—

“23.—(1) “Unsecured pension year”, in relation to a dependant’s unsecured pension referred to in paragraph 22(2) as modified by article 30 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006, means—

- (a) the period beginning on 6th April 2006 and ending on the earlier of—
 - (i) 5th April 2007 or
 - (ii) the date that the first reference period defined in paragraph 24(1A), as modified by article 5 of the 2006 Order, terminates, and
- (b) each succeeding period of 12 months.”.

Individuals over the age of 75 and alternatively secured pension funds

31.—(1) In the case of an individual who meets the conditions set out in paragraph (2), paragraph (3) applies.

(2) The conditions are as follows.

Condition A

The individual had reached the age of 75 before 6th April 2006.

Condition B

The individual is a member of a scheme which falls within paragraphs 1(1)(a) to (d) of Schedule 36.

(20) Section 634A was inserted by paragraph 4 of Schedule 11 to the Finance Act 1995, amended by paragraphs 12(2) and 18(8) and (9) of Schedule 10 to the Finance Act 1999 and paragraphs 10 and 11 of Part 1 of Schedule 13 to the Finance Act 2000, and prospectively repealed by the relevant entry in Part 3 of Schedule 42 to the Finance Act 2004.

Condition C

The individual has a prospective right to receive a pension under that scheme on 5th April 2006.

(3) Paragraph 11 of Schedule 28 (member's alternatively secured pension fund)(**21**) is modified as follows—

(a) in sub-paragraph (1)(a) for “Condition A or Condition B” substitute “Condition A, Condition B or Condition C”.

(b) after sub-paragraph (3) add—

“(3A) Condition C is that immediately before the 6th April 2006 —

(a) the sums and assets were part of the member's pension fund which fell within sub-paragraphs 1(1)(a) to (d) of Schedule 36;

(b) the member had a prospective right to receive a pension under that scheme, and

(c) the member's pension fund was a money purchase arrangement that was not a cash balance arrangement immediately before 6th April 2006.”.

(4) In the case of an individual who meets the conditions set out in paragraph (5), paragraph (6) applies.

(5) The conditions are as follows.

Condition A

The individual had reached the age of 75 before 6th April 2006.

Condition B

The individual is a member of a scheme which falls within sub-paragraph 1(1)(a) of Schedule 36.

Condition C

On 5th April 2006, the individual was entitled to a pension which—

(a) was paid from the resources of—

(i) a small self-administered scheme as defined in regulation 2 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small self-administered Schemes) Regulations 1991, or

(ii) a small self-administered scheme that had been approved under section 590 of ICTA,

and the rules of the scheme on 5th April 2006 did not require the purchase of an annuity in respect of the individual; and

(b) is not provided under a defined benefits arrangement.

(6) Paragraph 11 of Schedule 28 (member's alternatively secured pension fund)(**22**) shall be modified as follows—

(a) after the words “held for the purposes of the arrangement as” add the words “meet condition A, B or C.”.

(b) omit sub-paragraphs (1)(a) and (b).

(c) after sub-paragraph (3) add—

“(3A) Condition C is that immediately before the 6th April 2006 —

(21) Paragraph 11 to Schedule 28 of the Finance Act 2004 was amended by paragraph 20 of Schedule 10 to the Finance Act 2005

(22) Paragraph 11 to Schedule 28 of the Finance Act 2004 was amended by paragraph 20 of Schedule 10 to the Finance Act 2005.

- (a) the sums and assets were part of the member's pension fund which fell within sub-paragraph 1(1)(a) of Schedule 36; and
- (b) the member was drawing a pension payable from the resources of—
 - (i) a small self-administered scheme as defined in the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991, or
 - (ii) a small self-administered scheme that had been approved under section 590 of ICTA,and the rules of scheme on 5th April 2006 did not require the purchase of an annuity in respect of the member.”.

Dependant's alternatively secured pension funds

32.—(1) In the case of an individual who meets the conditions set out in paragraph (2), paragraph (3) applies.

(2) The conditions are as follows.

Condition A

The individual had reached the age of 75 before 6th April 2006.

Condition B

The individual is a dependant of a member who was a member of a scheme which falls within sub-paragraph 1(1)(a) of Schedule 36.

Condition C

The individual was, on 5th April 2006, entitled to a pension which was not provided under a defined benefits arrangement and was payable from the resources of—

- (a) a small self-administered scheme as defined in regulation 2 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991, or
- (b) a small self-administered scheme that had been approved under section 590 of ICTA, and the rules of the scheme on 5th April 2006 did not require the purchase of an annuity in respect of the individual.

(3) Paragraph 25(1) of Schedule 28 (dependant's alternatively secured pension fund)(**23**) shall be modified as follows—

- (a) after the words “held for the purposes of the arrangement as” add the words “meet condition A, B or C.”.
- (b) omit sub-paragraphs (1)(a) and (b).
- (c) after sub-paragraph (3) add—

“(3A) Condition C is that immediately before the 6th April 2006 —

- (a) the sums and assets were part of the dependant's pension fund which fell within sub-paragraph 1(1)(a) of Schedule 36; and
- (b) the dependant was drawing a pension payable from the resources of—
 - (i) a small self-administered scheme as defined in regulation 2 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991, or

(ii) a small self-administered scheme that had been approved under section 590 of ICTA,
and the rules of the scheme on 5th April 2006 did not require the purchase of an annuity in respect of the dependant.”.

Serious ill-health lump sums, pension protection lump sum death benefits and annuity protection lump sum death benefits

33.—(1) In the case of an individual who meets the conditions set out in paragraph (2), paragraphs (3), (4) and (5) apply.

(2) The conditions are as follows.

Condition A

The individual is a member of a scheme which falls within sub-paragraphs 1(1)(a) to (g) of Schedule 36.

Condition B

The individual has an actual (rather than a prospective) right to the payment of one or more relevant existing pensions under that scheme on 6th April 2006.

(3) In paragraph 4(2) of Schedule 29 (serious ill-health lump sum) for the words “there has been no previous benefit crystallisation event” substitute—

“the member has a prospective (rather than an actual) right to the payment of one or more relevant existing pensions.”.

(4) In paragraph 14(3) of Schedule 29 (pension protection lump sum death benefit)—

(a) for “AC is the amount crystallised by reason of the member becoming entitled to the pension (see section 216)” substitute—

“AC is the value of the individual’s pre-commencement pension rights as defined in paragraph 20(3) to (5) of Schedule 36.”.

(b) in the definition of “AP” for the words after “paid in respect of the period” substitute—

“from the period from the 6th April 2006 and the date of the member’s death.”.

(5) In paragraph 16(3) of Schedule 29 (annuity protection lump sum death benefit)—

(a) for “AC is the amount crystallised by reason of the member becoming entitled to the pension or annuity” substitute—

“AC is the value of the individual’s pre-commencement pension rights as defined in paragraph 20(3) to (5) of Schedule 36.”.

(b) in the definition of “AP” for the words after “paid in respect of the period” substitute—

“from the period from the 6th April 2006 and the date of the member’s death.”.

Payments to dependants over the age of 23

34.—(1) Paragraph (2) applies in the case of a payment of a pension death benefit by a registered pension scheme which—

(a) meets the conditions set out in paragraph (4), (5) or (6) below, and

(b) falls within paragraph 1(1) of Schedule 36.

(2) Paragraph 15(2) of Schedule 28 shall be modified, in a case to which this paragraph applies, as follows.

(3) At the end of paragraph (a) omit the word “or” and after paragraph (b) insert—

- “(c) has reached that age and is in full time education or undertaking vocational training, or
(d) on reaching that age or, if later, on ceasing full time education or vocational training is, in the opinion of the scheme administrator, suffering from physical or mental deterioration which is sufficiently serious to prevent the individual from following a normal employment or which would seriously impair his earning capacity.”.

- (4) The conditions are as follows.

Condition A

The pension was in payment to a child of the member (“the child”) on 5th April 2006 or the member had died on or before that date and a pension was due to come into payment to the child.

Condition B

The rules of the pension scheme allowed a pension to be paid to a child of the member following the death of that member until the child ceased full-time education or vocational training or reached a specified age before completing full-time education or vocational training.

- (5) The conditions are as follows.

Condition A

The pension was in payment to a member on 5th April 2006.

Condition B

The rules of the pension scheme allowed a pension to be paid to a child of the member following the death of that member until the child ceased full-time education or vocational training or reached a specified age before completing full-time education or vocational training.

Condition C

The child was born on or before 5th April 2007.

- (6) The conditions are as follows.

Condition A

The rules of the pension scheme on 10 December 2003, allowed an irrevocable election to be made designating part of the sums or assets representing the member’s rights as available for the payment of a pension to a child of the member following the death of that member until the child ceased full-time education or vocational training.

Condition B

Such an election had been made by the member and accepted by the scheme administrator on or before 5th April 2006.

- (7) In this Article “pension” has the meaning given in section 165(2).

Enhanced protection and transfers made in connection with the winding up of a pension scheme

35.—(1) In the case of an individual who meets the conditions in paragraph (2), paragraph 12 of Schedule 36 (transitional provisions — “enhanced protection”) is modified in accordance with paragraph (3).

- (2) The conditions are—

Condition A

The individual is one to whom paragraph 12 of Schedule 36 applies.

Condition B

The pension scheme of which the individual is a member makes a recognised transfer of sums or assets to an insurance company pursuant to section 169(1A)(24) (permitted transfers).

Condition C

The transfer is made in connection with the winding up of the pension scheme from which the transfer is made.

- (3) Paragraph 12(8) is modified as follows—
- (a) after paragraph (a) delete the word “or”; and
 - (b) after paragraph (b) add—
 - “or;
 - (c) the transfer is a recognised transfer pursuant to section 169(1A).”.

Transfer of crystallised rights with enhanced protection

36.—(1) In the case of an individual who meets the conditions in paragraph (2), paragraph 15 of Schedule 36 (definition of the “relevant crystallised amount”) is modified in accordance with paragraph (3).

- (2) The conditions are—

Condition A

The individual is one to whom paragraph 12 of Schedule 36 applies.

Condition B

The individual is in receipt of a scheme pension.

Condition C

The pension scheme of which the individual is a member makes a recognised transfer of sums or assets in connection with the winding up of the pension scheme.

- (3) Paragraph 15 is modified as follows—
- (a) at the end of sub-paragraph (1) add—
 - “This paragraph is subject to sub-paragraph (1A).”; and
 - (b) after that sub-paragraph insert—
 - “(1A) If the relevant event is a transfer of sums or assets representing crystallised rights under a scheme pension and made in connection with the winding-up of the pension scheme under which the scheme pension is paid, the relevant crystallised amount shall be nil.”.

Modification of section 636B ITEPA 2003

37.—(1) Section 636B of ITEPA 2003(25) (trivial commutation and winding-up lump sums) is modified as follows in relation to an equivalent pension benefits commutation lump sum pursuant to regulation 2(1A) of—

- (a) the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997(26); or

(24) Section 169(1A) was inserted into the Finance Act 2004 by paragraph 6 of Schedule 10 to the Finance Act 2005 (c. 7).

(25) 2003 c. 1. Section 636B was inserted by paragraph 11 of Schedule 31 to the Finance Act 2004 (c. 12). Subsection (3) was amended by paragraph 59 of Schedule 10 to the Finance Act 2005 (c. 7).

(26) S.I. 1997/785. Paragraph (1A) was inserted by regulation 9 of S.I. 2002/681. There are other amending instruments but none is relevant.

- (b) the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations (Northern Ireland) 1997(27).

(2) For the heading substitute—

“Trivial commutation, winding-up lump sums etc.”

(3) In subsection (1)—

- (a) at the end of paragraph (a) omit “or”;
(b) at the end of paragraph (b) add “or”; and
(c) after that paragraph insert the following paragraph—

“(c) an equivalent pension benefits commutation lump sum,”

(4) In subsection (4) after “In this section—” insert the following definition—

“ “equivalent pension benefits commutation lump sum” means a lump sum payment arising from the commutation of equivalent pension benefits pursuant to regulation 2(1A) of—

- (a) the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997; or
(b) the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations (Northern Ireland) 1997.”.

Lump sum payments — general

38.—(1) This paragraph applies to a lump sum payment—

- (a) the entirety of which is made in accordance with the rules of the existing scheme as they stood immediately before the 6th April 2006;
(b) which is made on or after the 6th April 2006 but before 6th July 2006;
(c) to which the member became entitled before the 6th April 2006;
(d) which would not have given the Commissioners grounds for withdrawing approval of the scheme had it been made before the 6th April 2006; and
(e) which is not a lump sum paid in circumstances of the member’s serious ill-health.

(2) In this article and articles 39, 40 and 41—

“the 1995 Regulations” means the Retirement Benefits Schemes (Information Powers) Regulations 1995(28);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs and, in relation to times before 18th April 2005, includes the Commissioners of Inland Revenue;

“existing scheme” means a scheme which becomes a registered pension scheme by virtue of paragraph 1(1) of Schedule 36 (pension schemes etc.: transitional provisions and savings — deemed registration of existing schemes);

“lump sum paid in circumstances of the member’s serious ill-health” has the meaning given in article 39(3);

“member” means a member of an existing scheme;

(3) A payment to which paragraph (1) applies shall be chargeable to income tax in accordance with section 598, 599 or 599A of ICTA (which deal respectively with charges to tax on repayment

(27) S.R. 1997 No. 153. Paragraph (1A) was inserted by regulation 8 of S.R. 2002 No. 109. There are other amending instruments but none is relevant.

(28) S.I. 1995/3103: the relevant amendments are those made by regulation 8 of S.I. 2002/3006.

of employee's contributions, on the commutation of the entire pension in special circumstances and on payments out of surplus funds), or Chapter 13 of Part 9 of ITEPA 2003 (return of employee's additional voluntary contributions) (as the case requires) —

- (a) to the same extent as it would have been if the provision in question had not been repealed; and
- (b) as if the references in section 598(2), 599(3) and section 599A(2)(b) of ICTA to the administrator of the scheme were instead references to the scheme administrator (within the meaning of section 270) of the registered pension scheme which is treated as coming into being by virtue of paragraph 1(1) of Schedule 36.

(4) For the purposes of a lump sum payment to which paragraph (1) applies, regulations 10 and 11 of the 1995 Regulations (reporting of chargeable events) shall continue to have effect, subject to the following modifications—

- (a) in paragraph (1) for the words preceding sub-paragraph (a) substitute—

“The scheme administrator of the registered pension scheme which, immediately before the coming into force of Part 4 of the Finance Act 2004, was both a retirement benefits scheme and—”;
- (b) in paragraph (3) omit sub-paragraph (d); and
- (c) omit paragraph (4)(29).

(5) In section 98(5) of the Taxes Management Act 1970 the entry in Table 1 relating to regulations under section 605(1A) of ICTA shall continue to have effect so far as it relates to regulations 10 and 11 of the 1995 Regulations as saved, with modifications, by paragraph (4).

Lump sums — serious ill-health

39.—(1) This article applies to a lump sum—

- (a) paid to a member in circumstances of the member's serious ill-health; and
 - (b) which satisfies the requirements set out in sub-paragraphs (a) to (d) of article 38(1).
- (2) There is no charge to tax under Part 4 on a lump sum to which paragraph (1) applies.
- (3) A lump sum is paid in circumstances of the member's serious ill-health if—
- (a) before it is paid the scheme administrator, or the administrator of the scheme which became a registered pension scheme on the 6th April 2006, received evidence from a registered medical practitioner that the member is expected to live for less than one year; and
 - (b) all of the member's uncrystallised rights under the scheme making the payment, other than those which are—
 - (i) required to be maintained in order to meet contracted-out rights or safeguarded rights, or
 - (ii) retained by the scheme in accordance with its rules as they stood immediately before the 6th April 2006 to provide benefits for the member's dependants,
are paid out as a lump sum.
- (4) In paragraph (3)(b)(i)—
- “contracted-out rights” means—
- (a) entitlement to payment of, or accrued rights to—

(29) Paragraph (4) was inserted by regulation 8(b) of S.I. [2002/3006](#).

- (i) guaranteed minimum pensions within the meaning of section 8(2) of the Pension Schemes Act 1993(30); and
 - (ii) a pension in respect of protected rights within the meaning of section 10 of that Act(31);
 - (b) section 9(2B) rights within the meaning of regulation 1(2) of the Occupational Pension Schemes (Contracting-Out) Regulations 1996(32), or
 - (c) any of the rights in sub-paragraphs (a), (b) or (c) which themselves derive from any of those rights which have been the subject of a transfer payment; and
- “safeguarded rights” have the same meaning as in section 68A of the Pension Schemes Act 1993(33).

(5) In the application of this article to Northern Ireland, a reference to a provision applying only in Great Britain shall be construed as a reference to any provision having corresponding effect in Northern Ireland.

Lump sum death benefits— death of member

40.—(1) This paragraph applies to a lump sum paid—

- (a) in respect of the death, occurring before the 6th April 2006, of a member of a pension scheme;
- (b) within two years of the member’s death;
- (c) by a scheme which is treated as becoming a registered pension scheme on the 6th April 2006 by virtue of paragraph 1(1) of Schedule 36;
- (d) in accordance with the rules of that scheme as they stood—
 - (i) immediately before the death; or
 - (ii) immediately before the 6th April 2006; and
- (e) in circumstances which would not have given the Commissioners grounds for withdrawing the approval of the scheme.

(2) A lump sum to which paragraph (1) applies is not a relevant lump sum death benefit as defined in paragraph 16 of Schedule 32, and the payment of such a death benefit is to be disregarded for the purposes of benefit crystallisation event 7.

(3) A lump sum to which paragraph (1) applies shall be chargeable to income tax in accordance with section 648B of ICTA(34) as if—

- (a) that section had not been repealed;
- (b) references in that section to the administrator of the scheme were references to the scheme administrator of the registered pension scheme which is treated as coming into being by virtue of paragraph 1(1)(g) of Schedule 36;
- (c) subsection (3) were omitted; and
- (d) the reference in subsection (4) to the rules of the scheme were a reference to the rules of the personal pension scheme as they stood immediately before the 6th April 2006.

(30) The definition of “guaranteed minimum pension” was amended by paragraph 1 of Schedule 1 to S.I. [2005/2050](#).

(31) Section 10 was amended by paragraph 25 of Schedule 5 to the Pensions Act 1995 (c. 26), paragraph 36 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), section 32(2) of the Welfare Reform and Pensions Act 1999 (c. 30) and paragraph 22(2) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29).

(32) S.I. [1996/1172](#). The definition of “section 9(2B) rights” was substituted by paragraph 4(2) of Schedule 1 to S.I. [1997/786](#) and amended by S.I. [1999/3198](#).

(33) Section 68A was inserted by section 36 of the Welfare Reform and Pensions Act 1999.

(34) Section 648B was inserted by paragraph 12 of Schedule 11 to the Finance Act 1995, amended by paragraph 266 of Schedule 1 to the Income Tax (Trading and Other Income Act 2005, and repealed by Part 3 of Schedule 42 to the Finance Act 2004.

(4) For the purposes of a lump sum payment to which paragraph (1) applies, regulation 5 of the Personal Pension Schemes (Information Powers) Regulations 2000⁽³⁵⁾ (“the 2000 Regulations”) shall continue to have effect, subject to the following modifications—

- (a) references to the scheme administrator of the personal pension scheme are to be read as references to the scheme administrator of the registered pension scheme which is treated as coming into being by virtue of paragraph 1(1)(g) of Schedule 36; and
- (b) in paragraph (2) of that regulation for “an approved personal pension scheme” substitute “the registered pension scheme”.

(5) In section 98(5) of the Taxes Management Act 1970 the entry in Table 1 relating to regulations under section 651A(1)(b) to (d) of ICTA shall continue to have effect, so far as it relates to regulation 5 of the 2000 Regulations as saved, with modifications, by paragraph (4).

Lump sum death benefits — death of a dependant

41.—(1) This paragraph applies to a lump sum paid—

- (a) in respect of the death, occurring before the 6th April 2006, of a dependant of a former member of a pension scheme;
- (b) by a scheme which is treated as becoming a registered pension scheme on the 6th April 2006 by virtue of paragraph 1(1)(g) of Schedule 36 (personal pension schemes);
- (c) within two years of the dependant’s death;
- (d) in accordance with the rules of that scheme as they stood—
 - (i) immediately before the dependant’s death; or
 - (ii) immediately before the 6th April 2006; and
- (e) in circumstances which would not have given the Commissioners grounds for withdrawing the approval of the scheme.

(2) Paragraphs (3) to (5) of article 40 apply for the purposes of paragraph (1) as they apply for the purposes of paragraph (1) of that article.

9th March 2006

*Vernon Coaker
Tom Watson*
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order contains further transitional provisions in relation to the new provisions for pension schemes coming into force on 6th April 2006 (“A Day”) pursuant to Part 4 of the Finance Act 2004 (“the 2004 Act”).

Article 2 provides for the modification of section 161 (meaning of payment). The ambit of section 161(3) is extended to cover payments made or benefits provided, from investments purchased by approved schemes before A day. Paragraph 3 of Article 2 excludes certain annuities bought from insurance companies from this extension. Paragraphs 4 and 5 deal with approved schemes which were wound up prior to A day. The wording of section 161(4) is modified in respect of these schemes so that the payment is deemed to be made by a registered scheme.

Articles 3 to 5 provide for commencement provisions for unsecured pensions. Pensions which are in payment by way of income withdrawal before A day and which become unsecured pensions or dependant’s unsecured pension at A day would need to be valued on A day under the existing legislation. These transitional provisions are designed to stagger the date of the valuation exercise to avoid a bottleneck of valuations. Article 3 sets out the pensions which will be covered by these transitional provisions. Article 4 provides for the modification of section 165(1), Pension rule 5. The 120% maximum is reduced to 100% (the pre A day limit) for schemes which have not been re-valued using the new rules. Article 5 makes various modifications to paragraphs 9 and 24 of schedule 28 to enable pensions referred to in article 3 to be re-valued at any time up to 6th April 2006 (or earlier, if there has been an annuity purchase prior to that date). The modifications provide that the pre A Day valuation will be used as the “basis amount” until the new valuation takes place.

Articles 6 to 8 provide transitional protection for people who have pre A Day rights to life cover lump sums where the rules of the pension scheme included such provision on 10th December 2003. Under the new regime lump sum payments made on or after the member’s 75th birthday will be unauthorised. Article 6 sets out the conditions which the member of the registered pension scheme needs to satisfy to qualify for the transitional protection. Article 7 provides for modifications to section 636A of the Income Taxes (Earnings and Pensions) Act 2003 to add life cover lump sums to the list of lump sums exempt from income tax. Article 8 modifies section 168(1) to insert life cover lump sums to the list of lump sum death benefits that a pension scheme is authorised by make under section 164. Paragraph (3) of article 8 adds a new paragraph 21A to Schedule 29 defining “life cover lump sum”.

Articles 9 to 11 provide transitional protection for individuals who qualify for “primary protection” under paragraph 7 to Schedule 36 but whose pre-commencement rights may have been undervalued on 5th April 2006 due to the poor performance of investments held by the scheme. If the scheme receives compensation in respect of the poor performance on or after A day this compensation becomes potentially chargeable to the lifetime allowance charge (section 214). Article 9 sets out the conditions which the individual needs to satisfy to qualify for the transitional protection. Article 10 modifies section 212 (valuation of uncrystallised rights for the purposes of section 210) for the purposes of calculating *RR* in paragraph 7(3) of Schedule 36. Paragraph (2) deducts the market value of any “relevant compensation” from the amount of *RR* and paragraph (3) defines “relevant compensation”. Paragraph (4) and (5) apply the modifications to hybrid arrangements (section 212(7)). Article 11 modifies paragraph 8(5) of Schedule 36 (valuation of the individual’s uncrystallised right) to ensure that the modifications made by article 10 apply.

Articles 12 to 14 deal with individuals who qualify for primary protection and a lifetime allowance enhancement factor under section 221 in relation to a period of non-residence. The modifications prevent the individual qualifying for two lifetime allowance enhancement factors in respect of the same increase in benefits. Article 12 contains details of the individuals who will be affected by the modifications. Article 13 contains modifications to the value of OV in section 222(4) and (5) (b) to prevent it being indexed prior to A day. Article 14 contains modifications to section 223 (arrangements that are not money purchase arrangements). The definitions of PB and LSB in sub-section (4) are modified so that the rights referred to are valued at 5th April 2006. Paragraph (3) inserts sub-section (4A) indexing PB and LSB during the active membership period (as defined in section 221(4)).

Articles 15,16 and 17 provide transitional protection to contributions made by employers where those contributions qualified for corresponding relief under section 76(6A) and (6C) of the Finance Act 1989. Article 15 sets out the contributions that may be treated as if they were relevant migrant member contributions under paragraph 2 of Schedule 33 and the conditions that must be met in respect of those contributions. Paragraph (4) applies the provisions of the Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulation 2005 S.I.2006/208 to qualifying employees and to exempt employees under article 17. Paragraphs (5) and (6) apply the transitional protection to pension schemes which have received a block transfer from a scheme to which paragraph (2) applies. Article 16 modifies section 245 (restriction of deduction for contributions by employer) for cases which qualify for transitional protection under article 15. Section 245 modifies/amends Schedule 24 of the Finance Act 2003 (“the 2003 Act”) and the new modification prevents contributions which have been given relief under article 15 being given double relief under Schedule 24 of the 2003 Act. Article 17 provides that the provisions of section 308A of ITEPA 2003 (exemption of contributions to overseas pension scheme) shall apply to employees (“exempt employees”) who meet the conditions set out in paragraphs (1) and (2) of the article.

Article 18 switches off paragraph 1(1)(b) of Schedule 29 (requirement that lump sum payable only when lifetime allowance available) in the case of an individual whose pension commencement lump sum is determined by paragraphs 27 and 29 of Schedule 36 (enhanced protection).

Article 19 modifies paragraph 2(6) of Schedule 29 (calculation of the available portion of the member’s lump sum allowance) in the case of individuals who fall within paragraph 20(1) of Schedule 36 (individuals who have an actual right to payment of one or more pensions on 5th April 2006). Paragraph 2(6) is modified so that AAC includes any pre-commencement pension rights valued under paragraph 20 of Schedule 36.

Article 20 provides that where a lump sum death benefit is paid in respect of a member who had an actual right to payment of a relevant pension (a pre-commencement pension) immediately before his death, those pre-commencement pension rights will be taken into account when calculating the available amount of lifetime allowance to be set against the lump sum death benefit.

Articles 21 to 23 provide for scheme specific lump sum protection as set out in paragraphs 31 to 34 of Schedule 36 (entitlement to lump sums exceeding 25% of uncrystallised rights) to be lost in respect of rights transferred where there has been a partial transfer of those rights (rather than a block transfer) away from a scheme. Article 21 sets out when the modifications in articles 22 and 23 shall apply. Article 22 modifies paragraph 31 of Schedule 36. A new paragraph (2A) is added which provides for the modifications to Schedule 29 made by paragraph 34 (as modified by article 23) to apply to persons where sums and assets representing accrued rights are transferred other than by a block transfer to another scheme. Article 23 modifies paragraph 34 of Schedule 36 so that the amount that has been partially transferred shall be ignored when calculating the “permitted maximum” in paragraph 2 of Schedule 29.

Article 24 disapplies the limit on dependants scheme pensions set out in paragraphs 16A,B and C of Schedule 28 where the member in respect of whom the dependant’s scheme pension is being paid

was actually entitled to one or more relevant existing pensions (as defined in paragraph 10(2) of Schedule 36) on 5th April 2006.

Article 25 and 26 provides transitional protection for individuals whose benefits will only be payable as a lump sum with no connected pension. Paragraph (2) of article 25 sets out the conditions that the individual must meet to qualify for the protection. Paragraph (3) adds a “stand-alone lump sum to the list of lump sums which are authorised payments in section 166(1). Paragraph (4) inserts a new paragraph 3A into Schedule 29 which provides a definition of a “stand-alone lump sum”. Article 26 modifies paragraph 31(3) of Schedule 36 for individuals who meet the conditions set out in paragraph (2) of the article. Paragraph (3) applies the provisions of paragraph 31 of Schedule 36 (entitlement to lump sums exceeding 25% of uncrystallised rights) so that individuals whose benefits are payable as a lump sum only can qualify for the modification of the “permitted maximum” lump sum rules in Schedule 29.

Article 27 deals with contracts which prior to A day, had been approved under section 621(1)(b) of ICTA. Paragraph (3) adds these contracts to the list of pensions in paragraph 1(1) of Schedule 36 which are converted to registered pensions and paragraph (4) adds the contracts to the list of “pre-commencement retirement annuity arrangements” in paragraph 40(3) of Schedule 36.

Article 28 provides that individuals who have become entitled to a tax-free lump sum before A day but deferred their entitlement to the accompanying pension will not become entitled to a second tax-free lump sum under the same arrangement. Paragraph (2) sets out the conditions and paragraph (3) (a) provides that paragraph 1 of Schedule 29 shall be modified so that the tax free lump sum shall be treated as a pension commencement lump sum with a deemed crystallisation on A day. No lifetime allowance charge will arise in respect of the sum however. Paragraph (3)(b) inserts a new paragraph (3A) into paragraph 1 of Schedule 29 which provides that the accompanying pension shall not be a “relevant pension” pursuant to sub-paragraph (3). Any further lump sums paid out in connection with the pension will therefore not be pension commencement lump sums.

Articles 29 modifies paragraphs 8 and 9 of Schedule 28 so that certain types of pension to which the member was entitled immediately before A day shall become unsecured pension funds and accordingly covered by the new regime. Paragraphs (1) and (2) set out the applicable conditions. Paragraph (3) modifies paragraph 8 of Schedule 28 (member’s unsecured pension fund) so that the pensions listed will become unsecured pension funds at A day. Sub-paragraph (d) provides that these rights shall form a separate arrangement and that this deemed designation shall not create a benefit crystallisation event. Paragraph (4) contains amendments to paragraph 9 of Schedule 28 (unsecured pension year and basis amount for unsecured pension year). Paragraph (5) modifies section 216 so that benefit crystallisation events 2, 4 and 8 are not triggered when the unsecured pension funds are utilised to provide a scheme pension, lifetime annuity or rights under a qualifying recognised overseas pensions scheme. This paragraph is necessary because the provisions in paragraphs 3 and 4 of Schedule 32 preventing overlap do not apply appropriately to these funds that were in existence before A day.

Article 30 provides similar provisions to article 29 for dependant’s pension funds. Paragraphs (1) and (2) set out the conditions which the dependant must meet for the modifications to take effect. Paragraph (3) modifies paragraph 22 of Schedule 28 (dependant’s unsecured pension fund) so that the unsecured pensions listed will become dependant’s unsecured pension funds at A day. Paragraph (4) contains amendments to paragraph 23 (unsecured pension year and basis amount for unsecured pension year).

Article 31 provides for certain individuals over the age of 75 at A day to be treated as being in alternatively secured pension from A day. Paragraphs (1) and (2) set out the conditions to be met for the modification to apply. Paragraph (3) modifies paragraph 11 of Schedule 28 (member’s alternatively secured pension fund) so that the sums and assets that meet the inserted condition C shall become member’s alternatively secured pension funds at A day. The effect of paragraphs (4), (5) and (6) is that certain individuals over the age of 75 who were already drawing a pension on 5th

April 2006 will have their funds automatically converted to member's alternatively secured pensions funds pursuant to paragraph 11 of Schedule 28. Paragraphs (4) and (5) set out the conditions that must be met for the modifications to apply. Paragraph (6) modifies paragraph 11 of Schedule 28 so that sums and assets which meet the inserted condition C shall become member's alternatively secured pension funds.

Article 32 contains similar provisions to those in article 31 for dependant's alternatively secured pension funds. Paragraphs (1) and (2) set out the conditions that must be met by the dependant. Paragraph (3) contains modifications to paragraph 25 of Schedule 28 (dependant's alternatively secured pension fund) so that the sums and assets which meet the inserted condition C shall become dependant's alternatively secured pension funds.

Article 33 deals with serious ill-health lump sums, pension protection lump sum death benefits and annuity protection lump sum death benefits. Paragraphs (1) and (2) set out the applicable conditions. Paragraph (3) modifies paragraph 4 of Schedule 29 (serious ill-health sum) to prevent an individual who already had an actual right to payment of a relevant pension at A day being paid a serious ill-health lump sum. This reflects the position in the new regime. Paragraphs (4) and (5) modify paragraphs 14 (pension protection lump sum death benefit) and 16 (annuity protection lump sum death benefit) so payments of pension protection lump sum death benefits and annuity protection lump sum death benefits can be made in respect of individuals who fall within the conditions set out in paragraphs (1) and (2). In the new regime these lump sums must not exceed a protection limit. Individuals who meet the conditions would have a limit of £0 as the limit is defined by reference to "the amount crystallised". The concept of crystallisation is not applicable to pensions before A day so this is changed to the value of the individuals pre-commencement pension rights.

Article 34 provides transitional protection for dependants over the age of 23 who are in full time education or have become incapacitated before that age. The conditions are set out in paragraphs (1) (4), (5) and (6) and paragraph (3) modifies paragraph 15(2) of Schedule 28 (meaning of "dependant").

Article 35 modifies paragraph 12(8) of Schedule 36 ("enhanced protection") so that transfers to insurance companies which are recognised transfers pursuant to section 169(1A) are "permitted transfers". If the transfer was not a permitted transfer, enhanced protection would be lost.

Article 36 protects an individual's right to enhanced protection in the event of a transfer made in connection with a wind-up. Paragraphs (1) and (2) set out the applicable conditions. Paragraph (3) modifies paragraph 15 of Schedule 36 (definition of the "relevant crystallised amount") so that transfers representing crystallised rights which are made in connection with a wind-up shall be valued at £0 for the purposes of calculating the relevant crystallised amount.

Article 37 modifies section 636B ITEPA 2003 (trivial commutation and winding-up lump sums). The section provides for the taxation of trivial commutation lump sums or winding-up lump sums. Paragraph (1) sets out the lump sums that the modification will apply to. Paragraph (2) substitutes a new heading and paragraph (3) adds an "equivalent pension benefits commutation lump sum" to the list in section 636B(1). Paragraph (4) inserts a definition of "equivalent pension benefits commutation lump sum" to the section.

Articles 38 to 41 contain transitional provisions in relation to various lump sums which had become payable under the pre A day regime. Article 38 provides that lump sum payments which meet the conditions set out in paragraph (1) shall be chargeable to income tax in accordance with section 598, 599 or 599A of ICTA even though they were paid after A day. The article applies to lump sums payments which were payable in accordance with the rules of the pension scheme before A day. The article also provides that the reporting requirement shall transfer to the scheme administrator. Article 39 deals with lump sums paid to a member in circumstances of the member's serious ill-health. Paragraph (2) provides that there is no charge to tax under Part 4 if the sum meets the requirements set out in sub-paragraphs (a) to (d) of article 38(1) (i.e that the sum was paid after A day, in accordance with the rules of the scheme as they stood prior to A day). Paragraphs (3) and (4) set out when a

lump is paid in circumstances of the member's serious ill-health. Article 40 deals with lump sum death benefits payable in respect of the death of a member who died before A day. Paragraph (1) sets out the circumstances in which the article will apply which are similar to those set out in article 38. Paragraph (2) provides that the lump sum shall not be a relevant lump sum death benefit as defined in paragraph 15 of Schedule 32 (benefit crystallisation event 7: meaning of "relevant lump sum death benefit") and shall be disregarded for the purposes of benefit crystallisation event 7. Paragraph (3) states that the lump sum shall be chargeable under section 648B as if the section was still in force following A day. Paragraph (4) provides that the reporting requirements shall transfer to the scheme administrator. Article 41 provides that paragraphs (3) to (5) of article 40 shall apply to lump sums paid in respect of the death of a dependant of a former member of a pension scheme prior to A day. The Board of Inland Revenue published a regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004, and subordinate legislation under it, on 8 April 2004. That assessment is now available on the website of HM Revenue and Customs at www.hmrc.gov.uk/ria/simplifying-pensions.pdf or obtained by writing to The Ministerial Correspondence Unit, 1st Floor, Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.