SCHEDULES

SCHEDULE 36

PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

Modifications etc. (not altering text)

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

PART 3

PRE-COMMENCEMENT BENEFIT RIGHTS

Modifications etc. (not altering text)

C2 Sch. 36 Pt. 3 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **31(1)**

Rights to take [F1benefit] before normal minimum pension age

Textual Amendments

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

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

(2) Paragraphs 22(8) and 23(8) define the member's protected pension age.

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

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

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

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

(3) Condition A is met if—

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

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

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

(a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to [F2any benefit] from an age of less than 55,

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

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

(5) Condition B is met if the member is a member of the pension scheme [F3("a transferee pension scheme") as a result of—

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

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

(6) A transfer is a block transfer if—

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

[F4(b) either the member was not a member of the pension scheme to which the transfer is made before the transfer or he has been a member of that pension scheme for no longer than such period as is prescribed by regulations made by the Board of Inland Revenue.]

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

(a) the member becomes entitled to all the [F5benefits] payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date, and

[F6(b) in a case where on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 50, Condition 1 is met or, in any other case, Condition 2 or 3 is met.]

[F7(7A) Condition 1 is met if—

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

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

(7B) Condition 2 is met if—

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

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

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

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

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

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

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

(7E) Condition 3 is met if —

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

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

(7F) The re-employment conditions are—

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

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

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

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

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

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

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

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

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

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

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

(b) under Part 5 of that Act,

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

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

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

(7J) [[F8]Section 1122 of the Corporation Tax Act 2010] (connected persons) applies for the purposes of this paragraph.]

(8) The member's protected pension age is the age from which the member had an actual or prospective right to [[F9]any benefit] under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).

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

Textual Amendments

F2 Words in Sch. 36 para. 22(4)(a) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 54(5)**, 64(1)

F3 Words in Sch. 36 para. 22(5) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 55(3)**, 64(1)

F4 Sch. 36 para. 22(6)(b) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 55(4)**, 64(1)

F5 Word in Sch. 36 para. 22(7)(a) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 54(6)(a)**, 64(1)

F6 Sch. 36 para. 22(7)(b) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 43(2)**

F7 Sch. 36 para. 22(7A)-(7J) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 43(3)**

F8 Words in Sch. 36 para. 22(7J) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 432(3)** (with Sch. 2)

F9 Words in Sch. 36 para. 22(8) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 54(7)**, 64(1)

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

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

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

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

(3) Condition A is met if—

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

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

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

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

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

(5) Condition B is met if the member is a member of the pension scheme [F10("a transferee pension scheme") as a result of—

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

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

(6) "Block transfer" has the same meaning as in paragraph 22(6).

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

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

Textual Amendments

F10 Words in Sch. 36 para. 23(5) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 55(5)**, 64(1)

[F11 23A (1) Where—

(a) paragraph 19 applies to a benefit crystallisation event occurring in relation to an individual, and

(b) the benefit crystallisation event consists in the individual becoming entitled to a pension or a pension commencement lump sum,

paragraph 2(6) of Schedule 29 has effect as if CSLA were the current standard lifetime allowance reduced by the relevant percentage (within the meaning of paragraph 19).

(2) Sub-paragraph (3) applies where, after the occurrence in relation to an individual of a benefit crystallisation event in relation to which paragraph 19 has had effect, another benefit crystallisation event occurs in relation to the individual.

(3) If the amount crystallised on the previous benefit crystallisation event exceeded the available amount of the individual's lifetime allowance at the time of that benefit crystallisation event, paragraph 2(6) of Schedule 29 has effect as if, for the purposes of AAC, the amount crystallised were the available amount of the individual's lifetime allowance at that time.]

Textual Amendments

F11 Sch. 36 para. 23A inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 56**, 64(1)

Lump sum rights exceeding £375,000: primary and enhanced protection

24 (1) If the lump sum condition and the registration condition are met in relation to an individual—

(a) paragraphs 27 to 29 (which modify Schedule 29 in relation to pension commencement lump sums), and

(b) paragraph 30 (which makes provision about scheme chargeable payments),

apply in relation to the individual.

(2) The lump sum condition is met if on 5th April 2006 the amount of an individual's total lump sum rights exceeds £375,000 (25% of the standard lifetime allowance for the tax year 2006-07).

(3) Paragraph 25 defines the amount of an individual's total lump sum rights on that date.

(4) The registration condition is met if either or both of the notice requirements is met.

(5) The first notice requirement is met if notice of intention to rely on paragraph 7 (primary protection) is given to the Inland Revenue in accordance with regulations under that paragraph in relation to the individual.

(6) The second notice requirement is met if notice of intention to rely on paragraph 12 (enhanced protection) is given to the Inland Revenue in accordance with regulations under that paragraph in relation to the individual.

25 (1) The amount of an individual's total lump sum rights on 5th April 2006 is—

$$\frac{VCPR}{4} + VULSR$$

where—

VCPR is the value of the individual's relevant crystallised pension rights on 5th April 2006, calculated in accordance with paragraph 10, and

VULSR is the value of the individual's relevant uncrystallised lump sum rights on that date.

(2) The value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 is the aggregate value of the individual's uncrystallised lump sum rights on that date under each relevant pension arrangement relating to the individual.

(3) An uncrystallised lump sum right is a right to a lump sum which on 5th April 2006 is prospective (rather than actual).

(4) An arrangement is a "relevant pension arrangement"if it is an arrangement under a pension scheme within paragraph 1(1).

(5) The value of the individual's uncrystallised lump sum rights under an arrangement on 5th April 2006—

(a) in the case of an arrangement under a pension scheme falling within paragraph 1(1)(f), is 25% of the value of the funds held for the purposes of the arrangement on that date, and

(b) in the case of any other arrangement, is an amount calculated in accordance with sub-paragraph (6).

(6) The amount is the amount of any lump sum to which the individual would have been entitled under the arrangement on 5th April 2006 on the assumption that

the individual became entitled to the present payment of a lump sum under the arrangement on that date.

(7) In calculating an amount in accordance with sub-paragraph (6) the valuation assumptions apply but as if the reference to such age (if any) as must have been reached to avoid any reduction in benefits on account of age in paragraph (a) of section 277 were to the relevant age; and for this purpose "the relevant age" is—

(a) if on 10th December 2003 the terms of the arrangement made provision for a reduction in the amount of benefits payable in respect of rights under the arrangement on account of the holder of the rights being below a particular age, that age, and

(b) otherwise, 60.

26 (1) This paragraph applies if any of the individual's uncrystallised lump sum rights on 5th April 2006 are rights under one or more arrangements under a pension scheme or schemes within paragraph 1(1)(a) to (d).

(2) The value of the individual's uncrystallised lump sum rights on 5th April 2006 under the arrangement, or the aggregate of the values of the individual's uncrystallised lump sum rights on 5th April 2006 under such of the arrangements as relate to a particular employment, is [F12] ...—

(a) the value, or the aggregate of the values, calculated under paragraph 25, **[**[F13]or (if lower)**]**

(b) the maximum permitted lump sum.

(3) "The maximum permitted lump sum" means

[[F14](a) in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section **[**[F15]611A(1)(a)**]** of ICTA, the maximum lump sum that could be paid to the individual under the pension scheme on 5th April 2006, and

(b) in any other case,**]**

the maximum lump sum that could be paid to the individual on 5th April 2006 under the arrangement or arrangements if it or they were made under a pension scheme within paragraph 1(1)(a) without giving the Board of Inland Revenue grounds for withdrawing approval of the pension scheme under section 591B of ICTA.

(4) For the purposes of sub-paragraph (3) it is to be assumed—

(a) **[**[F16]in the case of any arrangement, that**]** if the individual was in the employment to which the arrangement or arrangements relates or relate on 5th April **[**[F17]2006**]** the individual left the employment on that date, and

[[F18](aa) in the case of an arrangement within sub-paragraph (3)(a), that the valuation assumptions apply (see section 277),**]**

(b) **[**[F19]in the case of any other arrangement, that**]** if the individual had not reached the lowest age at which a lump sum may be paid under a pension scheme within paragraph 1(1)(a) to a person in good health without giving the Board of Inland Revenue grounds for withdrawing the approval of the pension **[**[F20]scheme**]** that fact would not give the Board such grounds.

(5) Whether an arrangement relating to an individual relates to an employment is to be determined in accordance with paragraph 9(6).

Textual Amendments

F12 Words in Sch. 36 para. 26(2) repealed (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 52(7)(a), 64(1), **Sch. 11 Pt. 4**

F13 Words in Sch. 36 para. 26(2)(a) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 52(7)(b)**, 64(1)

F14 Words in Sch. 36 para. 26(3) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 52(8)**, 64(1)

F15 Word in Sch. 36 para. 26(3)(a) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 45**

F16 Words in Sch. 36 para. 26(4)(a) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 52(9)(a)**, 64(1)

F17 Word in Sch. 36 para. 26(4)(a) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 52(9)(a)**, 64(1)

F18 Sch. 36 para. 26(4)(aa) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 52(9)(b)**, 64(1)

F19 Words in Sch. 36 para. 26(4)(b) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 52(9)(c)**, 64(1)

F20 Word in Sch. 36 para. 26(4)(b) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 52(9)(c)**, 64(1)

27 (1) If (and for so long as) paragraph 12 (enhanced protection) applies in relation to the individual, paragraph 2 of Schedule 29 applies in relation to the individual with the following modifications.

(2) If the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26) was nil, the permitted maximum under paragraph 2 is nil.

(3) Otherwise, paragraph 2 applies as if for sub-paragraphs (5) to (8) there were substituted—

"(5) If sub-paragraph (2) does not apply, the permitted maximum is the applicable amount, calculated in accordance with paragraph 3."

28 (1) If paragraph 12 (enhanced protection) does not apply in relation to the individual, paragraph 2 of Schedule 29 applies in relation to the individual with the following modifications.

(2) If the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26) was nil, the permitted maximum under paragraph 2 is nil.

(3) Otherwise, paragraph 2 applies as if for sub-paragraphs (5) to (7) there were substituted—

"(5) If sub-paragraph (2) does not apply, the permitted maximum is the available portion of the member's lump sum allowance.

(6) The available portion of the member's lump sum allowance is—

$$VULSR - APCLS$$

where—

VULSR is the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26 of Schedule 36), as adjusted under sub-paragraph (6A), and

APCLS is the aggregate of the amounts of each pension commencement lump sum to which the individual has previously become entitled, as adjusted under sub-paragraph (7) (or, if the individual has not previously become entitled to a pension commencement lump sum, is nil).

(6A) The adjustment referred to in the definition of VULSR is the multiplication of the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 by—

$$\frac{\text{CSLA}}{\text{FSLA}}$$

where—

CSLA is the current standard lifetime allowance, and

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

(7) The adjustment of the amount of a pension commencement lump sum to which the individual has previously become entitled referred to in the definition of APCLS is the multiplication of the amount by—

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

where—

CSLA is the current standard lifetime allowance, and

PSLA is the standard lifetime allowance at the time the individual became entitled to the lump sum."

29 (1) If (and for so long as) paragraph 12 (enhanced protection) applies in relation to the individual, paragraph 3 of Schedule 29 (applicable amount) applies with the following modifications.

(2) Paragraph 3 applies as if for sub-paragraphs (1) to (3) there were substituted—

"(1) Where the member becomes entitled to income withdrawal, the applicable amount is—

$$\frac{\text{VULSR}}{\text{VUR}} \times \left(\text{LS} + \text{AD}\right)$$

where—

VULSR is the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006, calculated in accordance with paragraphs 25 and 26 of Schedule 36,

VUR is the value of the individual's uncrystallised pension rights on 5th April 2006, calculated in accordance with paragraphs 8 and 9 of that Schedule,

LS is the lump sum paid, and

AD is the aggregate of the amount of the sums, and the market value of the assets, designated as available for the payment of unsecured pension on that occasion.

(2) For the purposes of sub-paragraph (1) there is to be deducted from the aggregate of the lump sum and the amount of the sums and the market value of the assets designated as available for the payment of unsecured pension so much (if any) of that amount as represents rights which are attributable to a disqualifying pension credit.

(3) Where the member becomes entitled to a lifetime annuity, the applicable amount is—

$$\frac{VULSR}{VUR} \times \left(LS + APP \right)$$

where—

VULSR, VUR and LS have the same meaning as in sub-paragraph (1), and

APP is the annuity purchase price."

(3) Paragraph 3 applies as if for sub-paragraphs (5) to [F21(7A)] there were substituted—

"(5) There is to be deducted from the aggregate of the amount of the lump sum and the annuity purchase price—

(a) if the annuity is purchased (in whole or in part) by the application of sums or assets representing the whole or part of the member's unsecured pension fund, the aggregate of the amount of those sums and the market value of those assets, and

(b) in any case, so much (if any) of the aggregate of the lump sum and the annuity purchase price as represents rights which are attributable to a disqualifying pension credit.

(6) Where the member becomes entitled to a scheme pension [F22under a defined benefits arrangement], the applicable amount is—

$$\frac{VULSR}{VUR} \times \left(LS + AC \right)$$

but subject to sub-paragraph (8).

(7) In sub-paragraph (6)—

VULSR, VUR and LS have the same meaning as in sub-paragraph (1), and

AC is the amount crystallised by reason of the member becoming entitled to the pension (see section 216).

[[F23](7A) Where the member becomes entitled to a scheme pension under a money purchase arrangement, the applicable amount is (subject to sub-paragraph (8))—

$$VULSRVUR \times (LS+SPPP)$$

where—

VULSR, VUR and LS have the same meaning as in sub-paragraph (1), and

SPPP is the scheme pension purchase price.”**]**

Textual Amendments

F21 Word in Sch. 36 para. 29(3) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 24(2)**

F22 Words in Sch. 36 para. 29(3) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 24(3)**

F23 Words in Sch. 36 para. 29(3) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 24(4)**

30 (1) Any part of a lump sum falling within paragraph 1 (1) of Schedule 29 which—

(a) under paragraph 1(2) of that Schedule is not a pension commencement lump sum (because the lump sum exceeds the permitted maximum), and

(b) is an unauthorised payment,

is to be treated as exempt from being scheme chargeable (under section 241(2)) if the condition in sub-paragraph (2) is met.

(2) The condition is that it would not have been an unauthorised payment if—

(a) paragraphs 27 and 29 (in the case of an individual in relation to whom paragraph 12 applies), or

(b) paragraph 28 (in the case of an individual in relation to whom paragraph 12 does not apply),

had not applied.

Entitlement to lump sums exceeding 25% of uncrystallised rights

31 (1) If the pension condition is met in relation to an individual and a registered pension scheme which is a protected pension scheme, the provisions of Schedule 29 relating to pension commencement lump sums apply in relation to the individual and the pension scheme with the modifications specified in paragraph 34 (but subject to sub-paragraph (2)).

(2) Those provisions do not apply with those modifications if the lump sum condition and registration condition in paragraph 24 are met.

(3) The pension condition is that the individual becomes entitled to all the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) on the same date.

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

(5) Condition A is met if—

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

(b) on 5th April 2006 the lump sum percentage of the individual's uncrystallised rights under the pension scheme exceeded 25%.

(6) The lump sum percentage of an individual's uncrystallised pension rights under a pension scheme on 5th April 2006 is—

$$\frac{VULSR}{VUR} \times 100$$

where—

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, and

VUR is the value of the individual's uncrystallised rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 33.

(7) Condition B is met if the individual is a member of the pension scheme **[**[F24]("a transferee pension scheme") as a result of—

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

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

(8) "Block transfer" has the same meaning as in paragraph 22(6), but treating the references there to the member as references to the individual.

(9) Where a pension scheme is a protected pension scheme because condition B is met, Schedule 29 as modified by paragraph 34 applies as if the protected pension scheme were the same pension scheme as the original pension scheme.

Textual Amendments

F24 Words in Sch. 36 para. 31(7) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 55(6)**, 64(1)

Modifications etc. (not altering text)

C3 Sch. 36 para. 31 applied (6.4.2006) by The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 (S.I. 2006/131), regs. 1, **9(8)**

C4 Sch. 36 para. 31 modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), **21**, 22

C5 Sch. 36 para. 31(3) modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), **26**

32 (1) Subject to sub-paragraph (2), the value of the individual's uncrystallised lump sum rights under the pension scheme on 5th April 2006 is the aggregate of the value of the individual's uncrystallised lump sum rights under each arrangement in respect of the individual under the pension scheme, calculated in accordance with paragraph 25(5), on that date.

(2) If the pension scheme is a relevant pension scheme, the value of the individual's uncrystallised lump sum rights on 5th April 2006 under an arrangement—

(a) which relates to a particular employment, and

(b) in relation to which the excess lump sum condition is met (see sub-paragraph (5) or (6)),

is the amount arrived at in accordance with sub-paragraph (7) or (8).

(3) A pension scheme is a relevant pension scheme if it falls within paragraph 1(1)(a) to (d).

(4) Whether an arrangement relating to the individual relates to a particular employment is to be determined in accordance with paragraph 9(6).

(5) If no other arrangement relating to the individual under a relevant pension scheme relates to the employment to which the arrangement relates, the excess lump sum condition is met in relation to the arrangement if—

(a) the value of the individual's uncrystallised lump sum rights under the arrangement calculated in accordance with paragraph 25(5), exceeds

(b) the amount arrived at in relation to the arrangement in accordance with paragraph 26.

(6) If one or more other arrangements relating to the individual under a relevant pension scheme or relevant pension schemes relates or relate to the employment to which the arrangement relates, the excess lump sum condition is met in relation to the arrangement if—

(a) the aggregate of the values of the individual's uncrystallised lump sum rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 25(5), exceeds

(b) the amount arrived at in relation to those arrangements in accordance with paragraph 26;

and the amount by which the aggregate of those values exceeds that amount is the "lump sum excess".

(7) Where the excess lump sum condition is met by virtue of sub-paragraph (5), the value of the individual's uncrystallised lump sum rights under the arrangement is the amount arrived at in accordance with paragraph 26.

(8) Where the excess lump sum condition is met by virtue of sub-paragraph (6), the value of the individual's uncrystallised lump sum rights under the arrangement is the value of those rights calculated in accordance with paragraph 25(5), less the appropriate proportion of the lump sum excess.

(9) The appropriate proportion of the lump sum excess is—

$$\frac{V}{AV}$$

where—

V is the value of the individual's uncrystallised lump sum rights under the arrangement, calculated in accordance with paragraph 25(5), and

AV is the aggregate of the values of the individual's uncrystallised lump sum rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 25(5).

33 (1) Subject to sub-paragraph (2), the value of the individual's uncrystallised rights under the pension scheme on 5th April 2006 is the aggregate of the value of the individual's uncrystallised rights under each arrangement in respect of the individual under the pension scheme, calculated in accordance with paragraph 8(5).

(2) If the pension scheme is a relevant pension scheme, the value of the individual's uncrystallised rights on 5th April 2006 under an arrangement—

(a) which relates to a particular employment, and

(b) in relation to which the excess rights condition is met (see sub-paragraph (5) or (6)),

is the amount arrived at in accordance with sub-paragraph (7) or (8).

(3) A pension scheme is a relevant pension scheme if it falls within paragraph 1(1)(a) to (d).

(4) Whether an arrangement relating to the individual relates to a particular employment is to be determined in accordance with paragraph 9(6).

(5) If no other arrangement relating to the individual under a relevant pension scheme relates to the employment to which the arrangement relates, the excess rights condition is met in relation to the arrangement if—

(a) the value of the individual's uncrystallised rights under the arrangement calculated in accordance with paragraph 8(5), exceeds

(b) the amount arrived at in relation to the arrangement in accordance with paragraph 9(3).

(6) If one or more other arrangements relating to the individual under a relevant pension scheme or relevant pension schemes relates or relate to the employment to which the arrangement relates, the excess rights condition is met in relation to the arrangement if—

(a) the aggregate of the values of the individual's uncrystallised rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 8(5), exceeds

(b) the amount arrived at in relation to those arrangements in accordance with paragraph 9(3);

and the amount by which the aggregate of those values exceeds that amount is the "rights excess".

(7) Where the excess rights condition is met by virtue of sub-paragraph (5), the value of the individual's uncrystallised rights under the arrangement is the amount arrived at in accordance with paragraph 9(3).

(8) Where the excess rights condition is met by virtue of sub-paragraph (6), the value of the individual's uncrystallised rights under the arrangement is the value of those rights calculated in accordance with paragraph 8(5), less the appropriate proportion of the rights excess.

(9) The appropriate proportion of the rights excess is—

$$\frac{V}{\mathrm{AV}}$$

where—

V is the value of the individual's uncrystallised rights under the arrangement, calculated in accordance with paragraph 8(5), and

AV is the aggregate of the values of the individual's uncrystallised rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 8(5).

34 (1) Schedule 29 applies with the following modifications.

(2) Paragraph 2 applies as if the reference in sub-paragraph (2) to the arrangement under which the member becomes entitled to the relevant pension were to the pension scheme and for sub-paragraphs (5) to (8) there were substituted—

"(5) If paragraph 2(2) does not apply F25..., the permitted maximum is—

$$\left(\mathrm{VULSR} \times \frac{\mathrm{CSLA}}{\mathrm{FSLA}}\right) + \mathrm{ALSA}$$

F26(6) . . . .

(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,

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

ALSA is the [F27greater of the additional lump sum amount and nil].

(7A) The additional lump sum amount is—

$$\frac{LS + AC - \left(VUR \times \frac{CSLA}{FSLA}\right)}{4}$$

where—

LS is the lump sum paid (but this is subject to [F28 sub-paragraphs (7AA) and (7B)]),

AC is the amount crystallised on the individual becoming entitled to the pension in connection with which the lump sum is paid (see section 216) (but this is subject to sub-paragraph (7B)), and

VUR is the value of the individual's uncrystallised rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 33 of Schedule 36.

[F29 (7AA) Where the pension in connection with which the lump sum is paid is a scheme pension under a money purchase arrangement, AC is the scheme pension purchase price, as it would be defined by paragraph 3 if the words "but subject to sub-paragraph (8)" in sub-paragraph (7A) and sub-paragraph (8) were omitted.]

(7B) Any part of [F30 what would otherwise be LS or AC] which represents rights attributable to a disqualifying pension credit is to be disregarded.

F26 (7C) . . . ."

(3) Omit paragraph 3 (applicable amount for pension commencement lump sums) [F31 (but without prejudice to its operation for the purposes of paragraph 2(7AA) of Schedule 29 as inserted by sub-paragraph (2))].

Textual Amendments

F25 Words in Sch. 36 para. 34(2) omitted (retrospective to 6.4.2006) by virtue of Finance Act 2008 (c. 9), **Sch. 29 para. 13(1)(a)**(2)

F26 Words in Sch. 36 para. 34(2) omitted (retrospective to 6.4.2006) by virtue of Finance Act 2008 (c. 9), **Sch. 29 para. 13(1)(b)**(2)

F27 Words in Sch. 36 para. 34(2) substituted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 57**, 64(1)

F28 Words in Sch. 36 para. 34(2) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 25(2)**

F29 Words in Sch. 36 para. 34(2) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 25(3)**

F30 Words in Sch. 36 para. 34(2) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 25(4)**

F31 Words in Sch. 36 para. 34(3) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 25(5)**

Modifications etc. (not altering text)

C6 Sch. 36 para. 34 modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), **21**, **23** (as amended (1.1.2019) by S.I. 2008/2990, arts. 1(1), **4**)

Winding-up lump sums paid by former approved superannuation funds

35 (1) For the tax year 2006-07, Schedule 29 (authorised lump sums) applies in relation to former approved superannuation funds with the modifications specified in sub-paragraphs (2) and (3).

(2) Paragraph 10 (winding-up lump sums) applies as if the following were omitted—
(a) sub-paragraph (1)(c) and (d),
(b) sub-paragraph (2), and
(c) sub-paragraph (3).

(3) Paragraph 11 (lifetime allowance excess lump sums) applies as if at the end of paragraph (b) there were inserted "or a winding-up lump sum".

(4) Section 636B of ITEPA 2003 (taxation of trivial commutation and winding-up lump sums) applies in relation to a winding-up lump sum paid by a former approved superannuation fund in the tax year 2006-07 as if—
(a) in subsection (2), after "equal to" there were inserted "75% of", and
(b) subsection (3) were omitted.

(5) "Former approved superannuation fund" has the meaning given by paragraph 1(3).

Modifications etc. (not altering text)

C7 Sch. 36 paras. 35, 36 excluded (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **32**

Right to payment of lump sum death benefit

36 (1) This paragraph applies to a member of a registered pension scheme if on 5th April 2006—
(a) the pension scheme is within any of paragraphs (a) to (e) of paragraph 1(1),
(b) the member has an actual (rather than a prospective) right to a pension under an arrangement under the pension scheme, and
(c) under the arrangement a lump sum death benefit is payable if the member dies within the guarantee period.

(2) The guarantee period is the period of five years beginning with the day on which the member became entitled to the pension or, if later, the day on which the pension was first paid.

(3) If the member dies after having reached the age of 75 and before the end of the guarantee period—
(a) paragraph 14 of Schedule 29 (pension protection lump sum death benefit),
(b) paragraph 16 of that Schedule (annuity protection lump sum death benefit), and
(c) paragraph 17 of that Schedule (unsecured pension fund lump sum death benefit),

apply in relation to the member and the arrangement with the following modifications.

(4) Each of those paragraphs applies as if sub-paragraph (1)(a) were omitted.

(5) Paragraph 14 (1) applies as if paragraph (d) were omitted.

(6) Paragraph 14(2) applies as if the reference to the pension protection limit were to the transitional protection limit.

(7) Paragraph 16(2) applies as if the reference to the annuity protection limit were to the transitional protection limit.

(8) Paragraph 17(3) applies in relation to a lump sum falling within paragraph 17 (1) as if the reference to the permitted maximum were to the transitional protection limit.

(9) Section 206 (1) (special lump sum death benefits charge) does not apply to any pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit paid by virtue of sub-paragraphs (3) to (8).

(10) If the member dies before having reached the age of 75 and before the end of the guarantee period—

(a) section 206 (1) does not apply to so much of any pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit paid under the arrangement as does not exceed the transitional protection limit, and

(b) if the arrangement is a defined benefits arrangement, paragraph 14(1)(d) of Schedule 29 is to be treated as satisfied in relation to so much of the lump sum death benefit paid under the arrangement as does not exceed the transitional protection limit.

(11) The transitional protection limit is—

$$P - \mathrm{TPLS}$$

where—

P is the amount of pension to which (had the member lived) the member would have been entitled under the arrangement in respect of the period beginning with the day of the member's death and ending with the last day of the guarantee period, and

TPLS is the amount of any pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit previously paid in respect of the pension.

Modifications etc. (not altering text)

C7 Sch. 36 paras. 35, 36 excluded (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **32**

Status:
Point in time view as at 01/04/2010.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2004, Part 3.