

1 Pension schemes

Schedule 1 contains provisions about pension schemes.

SCHEDULES

SCHEDULE 1

Section [\[j1115\]](#)

ALTERNATIVELY SECURED PENSIONS AND TRANSFER LUMP SUM DEATH BENEFIT ETC

Introduction

- 1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.

Maximum alternatively secured pension

- 2 (1) In section 165(1) (pension rules) is amended as follows.
 - (2) In pension rule 2 (guaranteed pensions) –
 - (a) for “, an annuity or alternatively secured pension” substitute “or an annuity”, and
 - (b) for “, annuity or alternatively secured pension” substitute “or annuity”.
 - (3) In pension rule 7 (maximum alternatively secured pension), for “70%” substitute “90%”.

Maximum dependants’ alternatively secured pension

- 3 In section 167(1) (pension death benefit rules), in pension death benefit rule 6 (maximum dependants’ alternatively secured pension), for “70%” substitute “90%”.

Abolition of transfer lump sum death benefit

- 4 In section 168(1) (lump sum death benefit rule), omit paragraph (g) (transfer lump sum death benefit).

Increase in rights on death

- 5 (1) Section 172B (increase in rights of connected person on death) is amended as follows.
 - (2) In subsection (2)(b), for “, alternatively secured pension fund, dependant’s unsecured pension fund or dependant’s alternatively secured” substitute “or dependant’s unsecured”.
 - (3) In subsection (4), for “(6)” substitute “(5)”.
 - (4) Omit subsection (5)(a) (reduction for transfer lump sum death benefit).
 - (5) In subsection (7)(a), after “there” insert “are”.

6 After that section insert –

“172BA Increase in rights on death arising from alternatively secured pension fund etc

- (1) This section applies if, at any time (“the relevant time”) after the death of a member of a registered pension scheme, another member of the pension scheme becomes entitled to alternatively secured rights.
- (2) “Alternatively secured rights” are rights representing the whole or part of the dead member’s alternatively secured pension fund, or dependant’s alternatively secured pension fund, in respect of an arrangement under the pension scheme.
- (3) The pension scheme is to be treated as making an unauthorised payment to the other member (or to the other member’s personal representatives).
- (4) Subject to subsection (5), the amount of the unauthorised payment is the amount by which –
 - (a) the consideration which might be expected to be received in respect of an assignment (or assignation) of the benefits to which the other member is actually or prospectively entitled under the pension scheme immediately after the relevant time, exceeds
 - (b) the consideration which might be expected to be received in respect of such an assignment (or assignation) immediately before the relevant time.
- (5) But that amount is to be reduced by so much (if any) of the excess as arises from the other member becoming entitled to pension death benefits or lump sum death benefits in respect of the dead member.
- (6) This section does not apply if the other member’s entitlement to the alternatively secured rights is brought about by an assignment (or agreement to assign) within section 172.”

Minimum alternatively secured pension and dependants’ alternatively secured pension

7 After section 181 insert –

“Alternatively secured pensions

“181A Minimum level of payment

- (1) The total amount of alternatively secured pension paid to a member of a registered pension scheme in each alternatively secured pension year in respect of a money purchase arrangement under the pension scheme must be at least 65% of the basis amount for the alternatively secured pension year (but subject to subsection (5)).
- (2) The total amount of dependants’ alternatively secured pension paid to a dependant of a member of a registered pension scheme in each alternatively secured pension year in respect of a money purchase arrangement under the pension scheme must be at least 65% of the basis amount for the alternatively secured pension year (but subject to subsection (5)).

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- (3) If subsection (1) or (2) is not complied with in an alternatively secured pension year in the case of any arrangement under a registered pension scheme, the pension scheme is to be treated as having made a scheme chargeable payment when the alternatively secured pension year ends.
- (4) The amount of the scheme chargeable payment is the difference between—
- (a) the total amount of alternatively secured pension paid to the member, or of the dependants' alternatively secured pension paid to the dependant, in respect of the arrangement in the alternatively secured pension year, and
 - (b) 65% of the basis amount for the alternatively secured pension year,
- (or, if nothing is so paid, 65% of the basis amount for the alternatively secured pension year).
- (5) Subsection (1) or (2) does not apply in relation to an alternatively secured pension year if—
- (a) it is the alternatively secured pension year ending immediately before the death of the member or dependant, or
 - (b) in the alternatively secured pension year the member's alternatively secured pension fund, or the dependant's alternatively secured pension fund, in respect of the arrangement is applied on pension or annuity provision (see subsection (6)).
- (6) The member's alternatively secured pension fund, or the dependant's alternatively secured pension fund, in respect of the arrangement is applied on pension or annuity provision if all of the sums and assets representing it are applied in one or more of the following ways—
- (a) towards the provision of a scheme pension or dependants' scheme pension;
 - (b) to purchase a scheme pension or dependants' scheme pension;
 - (c) to purchase a lifetime annuity or dependants' annuity.
- (7) Part 1 of Schedule 28 gives the meaning of expressions used in this section so far as it relates to alternatively secured pension; and Part 2 of that Schedule gives the meaning of expressions used in this section so far as it relates to dependants' alternatively secured pension."

Other amendments

- 8 In section 188(5) (amounts not to be treated as contributions), omit paragraph (b) and the word "and" before it.
- 9 In section 241(1) (scheme chargeable payment), after paragraph (a) insert—
 “(aa) a scheme chargeable payment which the pension scheme is to be treated as having made by section 181A (minimum alternatively secured pension etc), and”.
- 10 In section 280(2) (index), omit the entry relating to transfer lump sum death benefit.

- 11 In paragraph 12 of Schedule 28 (pension rules: alternatively secured pension year), omit sub-paragraphs (3) and (4) (guaranteed pensions).
- 12 (1) In Schedule 29 (authorised lump sums) is amended as follows.
- (2) In paragraph 18 (charity lump sum death benefit) –
- (a) in sub-paragraph (1)(d), insert at the end “(or, if the member made no nomination, selected by the scheme administrator).”, and
- (b) in sub-paragraph (2)(e), for “(or, if the member made no nomination, by the dependant).” substitute “or, if the member made no nomination, by the dependant (or, if neither the member nor the dependant made a nomination, selected by the scheme administrator).”
- (3) Omit paragraph 19 (transfer lump sum death benefit).
- 13 (1) Schedule 34 (non-UK schemes application of certain charges) is amended as follows.
- (2) In paragraph 1(6), omit the words from “but also” to the end.
- (3) In paragraph 4(3), omit the words from “but also” to the end.
- (4) After paragraph 7 insert –

“Unauthorised payment charge: alternatively secured pension etc

- 7ZA The Commissions for Her Majesty’s Revenue and Customs may by regulations make provision for –
- (a) a relieved member of a relevant non-UK scheme, or
- (b) a transfer member of such a scheme,
- to be liable to the unauthorised payment charge in circumstances which are the same as or similar to those in which the scheme administrator of such a scheme is liable to the scheme sanction charge by virtue of section 181A (minimum alternatively and dependants’ alternatively secured pension).”
- 14 In paragraph 17A of Schedule 36 (“enhanced protection”) –
- (a) in sub-paragraph (1), insert “or” after paragraph (a) and omit paragraph (c) and the word “or” before it, and
- (b) in sub-paragraph (2), omit “, or to a transfer lump sum death benefit being paid,”.

Amendments of other enactments

- 15 (1) Section 636A of ITEPA 2003 (exemption for certain lump sums under registered pension schemes) is amended as follows.
- (2) In subsection (1) –
- (a) insert “or” at the end of paragraph (d), and
- (b) omit paragraph (f) and the word “or” before it.
- (3) In subsection (7), omit ““transfer lump sum death benefit”,”.

Commencement

- 16 (1) The amendments made by paragraphs 2(2) and 11 have effect in relation to deaths of members of registered pension schemes occurring on or after 6th April 2007.
- (2) The amendments made by paragraphs 2(3), 3, 7 and 9 have effect for alternatively secured pension years beginning on or after 6th April 2007.
- (3) The amendments made by paragraphs 4, 5(4), 8, 10, 12(3), 13(2) and (3), 14 and 15 have effect in relation to lump sum death benefits paid on or after 6th April 2007 in respect of members of schemes whose deaths occur on or after 6th December 2006.
- (4) The amendments made by paragraphs 5(2) and 6 have effect in relation to members of registered pension schemes becoming entitled to alternatively secured rights on or after 6th April 2007 in respect of members whose deaths occur on or after 6th December 2006.
- (5) The amendment made by paragraph 12(2) has effect in relation to charity lump sum death benefits paid on or after 6th April 2007.

SCHEDULE 2

Section

REPEALS

PENSION SCHEMES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 636A – (a) in subsection (1), paragraph (f) and the word “or” before it, and (b) in subsection (7), the words ““transfer lump sum death benefit”,”.
Finance Act 2004 (c. 12)	Section 168(1)(g). Section 172B(5)(a). In section 188(5), paragraph (b) and the word “and” before it. In section 280(2), the entry relating to transfer lump sum death benefit. In Schedule 28, paragraph 12(3) and (4). In Schedule 29, paragraph 19. In Schedule 34, in – (a) paragraph 1(6), and (b) paragraph 4(3), the words from “but also” to the end. In Schedule 36, in paragraph 17A – (a) in sub-paragraph (1), paragraph (c) and the word “or” before it, and (b) in sub-paragraph (2), the words “, or to a transfer lump sum death benefit being paid,”.

These repeals have effect in accordance with Schedule 1.

EXPLANATORY NOTE

DRAFT CLAUSE & SCHEDULES: ALTERNATIVELY SECURED PENSIONS AND TRANSFER LUMP SUM DEATH BENEFITS

SUMMARY

1. This clause and Schedule 1 introduce a requirement to pay a minimum income each year from a member or dependant's alternatively secured pension fund. It also removes from the authorised payment rules transfer lump sum death benefits, which means that in future such payments will be unauthorised. Schedule 2 provides for repeals as a consequence of the changes made by Schedule 1.

DETAILS OF THE CLAUSE

2. Clause 1 introduces Schedule 1, which makes changes to the alternatively secured pension and lump sum death benefit rules.

DETAILS OF SCHEDULE 1

3. Paragraph 1 provides for amendments to the rules that apply to pension schemes, which were introduced in Finance Act 2004
4. Paragraph 2 provides for two changes to the alternatively secured pension rules. First, it makes a change to the pension rules, so that pension from an alternatively secured pension fund can no longer be paid as an authorised benefit after the member dies, as the provision removes the facility to guarantee the pension for a period of up to 10 years from when the member became entitled to it. Secondly, it provides for an uplifted maximum pension that may be drawn from an alternatively secured pension fund, from 70% of the basis amount to 90% of the basis amount. (The background note explains "basis amount" in more detail.)

5. Sub-paragraph (1) is introductory and provides for the amendments to section 165(1) Finance Act 2004.
6. Sub-paragraph (2) removes the facility to guarantee alternatively secured pensions (ASPs). Generally, the pension rules provide that the payment of a member's pension must cease on the member's death. This is set out in *Pension rule 2* in section 165(1) Finance Act 2004. Pension payments that are not made in accordance with the *pension rules* set out in Finance Act 2004 will be unauthorised and attract tax charges on both the payer and the recipient. However, *Pension rule 2* does permit the payment of certain pensions (scheme pensions, annuities and ASPs) to be guaranteed for up to 10 years from when the member first became entitled to the pension. This means the pension can continue to be paid for the guaranteed period, even if the member dies during that period. Sub-paragraph (2) makes a change to *Pension rule 2*, so that it no longer permits ASPs to be guaranteed, which means that no authorised payments of pension may be made from the member's ASP fund after the member's death. This does not prevent the remaining ASP funds being used to provide a dependant's pension for one or more dependants of the deceased member.
7. Sub-paragraph (3) amends *Pension rule 7* in section 165(1) Finance Act 2004 by increasing the maximum pension that may be paid from an ASP fund each year from 70% of the basis amount to 90% of the basis amount.
8. Paragraph 3 amends *Pension death benefit rule 6* in section 167(1) Finance Act 2004 by increasing the maximum pension that may be paid in a year from a dependant's ASP fund, from 70% of the basis amount to 90% of the basis amount.
9. Paragraph 4 removes a transfer lump sum death benefit from the list of authorised lump sum death benefit payments in section 168(1) Finance Act 2004. Where a member (or a dependant) dies with ASP funds remaining and there are no remaining dependants of the member, the transfer lump sum death benefit rules permit the remaining funds to be passed to other members of the same scheme. Paragraph 4 and the other amendments in the Schedule ensure that such a transfer will in the future be an unauthorised payment.
10. Paragraph 5 makes amendments to section 172B Finance Act 2004 to remove from that section the references to transfer lump sum death benefits, because a further provision, new section 172BA Finance Act 2004, introduces an unauthorised payments charge on reallocations out of a deceased member or dependant's ASP fund.

11. Sub-paragraph (1) provides for amendments to section 172B Finance Act 2004. This section treats a registered pension scheme as making an unauthorised payment where there is an increase in the rights of a member of a scheme, as a consequence of the death of another member, with whom that person was connected.
12. Sub-paragraph (2) amends section 172B(2)(b) Finance Act 2004, so that the section will no longer apply to the reallocation of rights from an ASP fund or a dependant's ASP fund.
13. Sub-paragraph (3) corrects an error in a sub-section reference in section 172B(4) .
14. Sub-paragraph (4) amends section 172B(5)(a) Finance Act 2004, which provides for the amount of any unauthorised payment that would be imposed under this section to be reduced to the extent that the payment is made in accordance with the transfer lump sum death benefit rules. This is no longer required, because reallocations out of ASP funds are removed from the operation of section 172B, and separate provision is made for them in new section 172BA Finance Act 2004.
15. Sub-paragraph (5) corrects an error in section 172B(7)(a) Finance Act 2004, inserting a missing "are".
16. Paragraph 6 inserts a new section 172BA in to Finance Act 2004, which treats a registered pension scheme as making an unauthorised payment when ASP funds remaining on the death of a member or dependant are reallocated to another member of the scheme
17. Sub-sections (1) and (2) of new section 172BA set out when the provisions of this section apply, which is where the original member or the dependant of a registered pension scheme dies with an ASP fund or a dependant's ASP fund under that scheme and then, at any point after the member's death, another member of the scheme becomes entitled to the rights (referred to as "alternatively secured rights"), which represent all or part of the deceased member's ASP or dependant's ASP fund. So that, for example, the provisions will apply where any remaining ASP funds on the death of the member are reallocated to the pension pot of another member in the scheme.
18. Sub-section (3) of new section 172BA provides that where the circumstances in sub-sections (1) and (2) apply, then the pension scheme is treated as making an unauthorised payment.

19. Sub-section (4) of new section 172BA then sets out the amount of the unauthorised payment, which is the difference between the amount for which the member could assign their benefit rights immediately after they became entitled to the alternatively secured rights and the amount they could have received for assigning their rights immediately before that time. But this amount is also subject to the provisions of sub-section (5), which reduce the amount of the unauthorised payment in certain circumstances.
20. Sub-section (5) of new section 172BA reduces any unauthorised payment imposed by this section to the extent that the person who becomes entitled to the alternatively secured rights becomes entitled to them in the form of pension death benefits or lump sum death benefits in respect of the deceased member. This means, for example, that if the member dies with remaining ASP funds and the whole of the remaining funds are used to provide a dependant of the member with an authorised form of pension benefit (a dependant's scheme pension, annuity, unsecured pension, or ASP) then there will be no unauthorised payment charge.
21. Sub-section (6) of new section 172BA prevents a charge being imposed under new section 172BA, if an unauthorised payment charge has already been imposed because there was an assignment of benefits that is within section 172 Finance Act 2004.
22. Paragraph 7 of the Schedule inserts new section 181A in to Finance Act 2004. This imposes a minimum income requirement on ASP and dependant's ASP funds. Where the minimum level of ASP is not paid in the year then the difference between the amount of pension paid from the ASP fund and the minimum income requirement in respect of that fund will be a scheme chargeable payment, on which the scheme administrator will be liable to a scheme sanction charge.
23. Sub-section (1) of new section 181A sets out the minimum level of ASP that must be paid to the member in each ASP year; this is 65% of the basis amount, although the minimum level of payment will not apply in certain circumstances that are set out in sub-section (5).
24. Sub-section (2) of new section 181A sets out the minimum level of dependants' ASP that must be paid in each ASP year; this is 65% of the basis amount, although again the minimum level of payment will not apply in the circumstances set out in sub-section (5).

25. Sub-sections (3) and (4) of new section 181A provide that if the requirement to pay the minimum level of payment is not met, then the pension scheme is treated as having made a scheme chargeable payment. And the amount of that scheme chargeable payment is the difference between the total amount of ASP paid in the ASP year and the minimum level of payment required for that year. Scheme chargeable payments are subject to the scheme sanction charge, as set out in section 239 Finance Act 2004. The scheme administrator is liable to the scheme sanction charge. Section 240 Finance Act 2004 sets out the amount of the charge, which is 40% of the scheme chargeable payment made by the pension scheme. For example, the minimum level of ASP that has to be paid to a member in a year is, say, £10,000, but no ASP is paid to the member in that year. The scheme chargeable payment is, therefore, £10,000 (the difference between what should have been paid (£10,000) and what was actually paid (nil)). The scheme administrator is, therefore, liable to a scheme sanction charge of £4,000 (£10,000 x 40%).
26. Sub-sections (5) and (6) of new section 181A provide that the minimum level of payment from a member or dependant's ASP fund does not apply for an ASP year, which ends immediately before the death of the member or dependant. Neither does the minimum income requirement apply in any ASP year, in which all of the sums and assets in the member's ASP or dependant's ASP fund are applied in that year towards the purchase or provision of a scheme pension, dependant's scheme pension, lifetime annuity or dependant's annuity.
27. Sub-section (7) of new section 181A ensures that the expressions used in new section 181A are given the meanings set out in Schedule 28 Finance Act 2004.
28. Paragraph 8 makes a consequential amendment to section 188(5) Finance Act 2004, to remove the reference to transfer lump sum death benefits. (Section 188(5) provides for certain transfers into a pension scheme arrangement not to be treated as contributions, for the purposes of determining whether any tax relief is due on those contributions.)
29. Paragraph 9 inserts the scheme chargeable payment introduced by new section 181A of Finance Act 2004 into the scheme chargeable payment provisions in section 241(1). This ensures that provisions that apply to scheme chargeable payments (such as the scheme sanction charge in section 239 Finance Act 2004) apply also to the scheme chargeable payment in new section 181A.

30. Paragraph 10 is a consequential amendment to remove the reference to transfer lump sum death benefits from the index in section 280(2) Finance Act 2004.
31. Paragraph 11 removes the provisions that apply to ASP being paid after the member's death under a guarantee. This is consequential on the removal of the guarantee facility as set out at paragraph 6 of this Note.
32. Paragraph 12 provides for changes to the authorised lump sum death benefit rules, specifically the charity lump sum death benefit and transfer lump sum death benefit rules.
33. Sub-paragraph (2) amends the charity lump sum death benefit rules in paragraph 18 of Schedule 29 Finance Act 2004. The amendment permits a scheme administrator to select a charity to which a charity lump sum death benefit may be paid, in the absence of a member nomination (for lump sums paid to charity out of member's ASP funds) or in the absence of a member or dependant nomination (in the case of lump sums paid to charity out of a dependant's ASP fund).
34. Sub-paragraph (3) removes all the provisions relating to transfer lump sum death benefits.
35. Paragraph 13 provides for consequential changes to Schedules 34 and 36 Finance Act 2004.
36. Sub-paragraph (2) and (3) remove the reference to transfer lump sum death benefits from the definition of a "relevant transfer" and "relevant transferred sums and assets" in Schedule 34. These consequential changes are pursuant to Paragraph 4 above, which removes transfer lump sum death benefit from the list of authorised lump sum death benefits in section 168(1). Schedule 34 brings certain payments by a relevant non-UK scheme into charge where UK tax relief has been given in respect of sums or assets held for the purposes of the scheme.
37. Sub-paragraph (4) introduces a new regulation-making power into Schedule 34 Finance Act 2004. The new paragraph 7ZA of Schedule 34 contains a power to make regulations to make relieved members or transfer members of a relevant non-UK scheme liable to the unauthorised payment charge in circumstances similar to those in which the scheme administrator of a registered pension scheme would be liable to the scheme sanction charge under the provisions in new section 181A (because the minimum level of payment has not been paid from an ASP or dependant's ASP fund).

38. Paragraph 14 makes consequential changes to paragraph 17A of Schedule 36 to remove the references to transfer lump sum death benefits.
39. Paragraph 15 makes consequential changes to section 636A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) , which again remove references to transfer lump sum death benefits, which as authorised payments were included in section 636A ITEPA 2003 to ensure they were not liable to an income tax charge.
40. Paragraph 16 sets out when the provisions in the Schedule will be effective.
41. Sub-paragraph (1) provides that the removal of the guarantee facility on ASPs applies from 6th April 2007.
42. Sub-paragraph (2) provides that the increased maximum ASP and the introduction of the minimum level of payment from an ASP fund will apply to the first ASP year starting on or after 6th April 2007.
43. Sub-paragraph (3) provides that the changes to remove transfer lump sum death benefits from the authorised payment rules and consequential changes will apply on or after 6th April 2007. However, where the original member or the dependant has died before 6th December 2006 with sums and assets in an ASP or dependant's ASP fund then the new provisions (that remove transfer lump sum death benefits as authorised payments) will not apply in these cases to reallocations out of the remaining ASP or dependant's ASP funds. This means that for members with sums and assets in an ASP or dependant's ASP fund who die on or after 6th December 2006, any reallocation of the remaining funds will be within the new provisions, but only where the reallocation of those funds takes place on or after 6th April 2007.
44. Sub-paragraph (4) provides that the changes to the rules, which introduce a charge where a member becomes entitled to alternatively secured rights, will apply on or after 6th April 2007. However, where the original member or the dependant has died before 6th December 2006 with sums and assets in an ASP or dependant's ASP fund then these changes will not apply. This means that for members who die on or after 6th December 2006, where another member becomes entitled to alternatively secured rights on or after 6th April 2007, this will be within the new provisions.

45. Sub-paragraph (5) provides that the amendment to the charity lump sum death benefit rules will apply on or after 6th April 2007.

BACKGROUND NOTE

46. The minimum level of pension from a member ASP or dependant's ASP fund, and also the maximum level of pension that may be paid from those funds is set out by reference to a percentage of the "basis amount".
47. "Basis amount" is defined further in paragraph 13 of Schedule 28 Finance Act 2004 (and for dependants' ASPs in paragraph 27 of Schedule 28). It is the annual amount of a "relevant annuity" that could be purchased with the sums and assets in an ASP fund at the "nominated date". The "nominated date" is for the first ASP year, the date that the member becomes entitled to the ASP. For other years, it is a date within a 60 day period before the start of an ASP year that is nominated by the scheme administrator, although if no date is nominated then it is the first day of the ASP year.
48. A "relevant annuity" is defined further under regulations made under paragraph 14 of Schedule 28 Finance Act 2004. The regulations are the Registered Pension Schemes (Relevant Annuities) Regulations 2006 (SI 2006/129). These regulations provide for the annual amount of a relevant annuity to be determined by reference to tables published for this purpose by the Government Actuary's Department. For member and dependant's ASPs the rate is based on the amount of annual income that would be produced from a relevant annuity (a level single life annuity without a guaranteed term) for a 75 year old, regardless of the actual age of the member or dependant.