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Amendment 136

Schedule 20, page 232, line 25, leave out paragraph 9 and insert-

‘9 In section 166(2)(a) (when person becomes entitled to pension commencement lump sum), after “paid” insert “(or, if the person dies before becoming entitled to the pension in connection with which it was anticipated it would be paid, immediately before death)”.

9A In section 219(7) (multiple benefit crystallisation events occurring by reason of payment of lump sum death benefits treated as occurring immediately before death), insert at the end “but immediately after any benefit crystallisation event occurring immediately before the individual’s death by virtue of section 166(2).”

9B (1) Schedule 29 (authorised lump sums) is amended as follows.

(2) In paragraph 1(1) (conditions to be met if lump sum is to be pension commencement lump sum)-

(a) for paragraph (a) substitute-

“(a) the member becomes entitled to it before reaching the age of 75,

(aa) the member becomes entitled to it in connection with becoming entitled to a relevant pension (or dies after becoming entitled to it but before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to it)”,

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- (b) in paragraph (c), for “of three months beginning with” substitute “beginning six months before, and ending one year after,” and
 - (c) omit paragraph (e) (but not including the “and” at the end).
- (3) In paragraph 2 (“permitted maximum”), after sub-paragraph (5) insert-
- “(5A) But if the member dies before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to the lump sum, the permitted maximum is the available portion of the member’s lump sum allowance.”.

Amendment 137

Schedule 20, page 238, line 27, after ‘9’ insert ‘to 9B’.

EXPLANATORY NOTE

SUMMARY

1. Amendment 136 provides for a change to the rules which allow lump sums to be paid in connection with a pension. The amendment relaxes the current requirement that lump sums can be paid only after the member becomes entitled to a pension, so that such lump sums may be paid up to 6 months before the member becomes entitled to the pension. The amendment will have effect from 6th April 2006.

DETAILS OF THE AMENDMENTS

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2. Paragraph 9 of Schedule 20 introduces two changes to the pension commencement lump sum rules. First, it permits a lump sum to be paid after the member reaches age 75, provided they became entitled to it before their 75th birthday. Secondly, it extends the period in which a lump sum must be paid from 3 months to 12 months from the date the member becomes entitled to it.
3. Amendment 136 introduces a further change to the pension commencement lump sum rules, which will permit a lump sum to be paid up to 6 months before the member becomes entitled to the relevant pension.
4. Amendment 136 replaces paragraph 9 of Schedule 20, so that it provides for an amendment to section 166(2)(a) Finance Act 2004. Section 166(2)(a) provides that a member becomes entitled to a pension commencement lump sum immediately before the member becomes entitled to the relevant pension. This also determines when a pension commencement lump sum is tested against a member's lifetime allowance, which is when the member becomes entitled to it.
5. The amendment to section 166(2)(a) will ensure that where a person dies, having taken a lump sum within the preceding 6 month period, but before actually becoming entitled to the relevant pension which they intended the lump sum to be drawn in connection with, then the person is treated as becoming entitled to the pension commencement lump sum immediately before they died. This will ensure that in these circumstances the lump sum can still be an authorised payment as a pension commencement lump sum, albeit that no pension has actually been paid. It will also be a relevant lump sum for the purposes

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of Event 6 in section 216(1) Finance Act 2004, so that the amount of the lump sum will need to be tested against the lifetime allowance.

6. Amendment 136 also inserts paragraph 9A into Schedule 20 of the Bill, which provides for an amendment to section 219(7) Finance Act 2004. Section 219(7) provides for situations where after the death of the member more than one lump sum death benefit is paid out. In these circumstances, the available lifetime allowance is to be calculated on the basis that all the benefit crystallisation events (arising on the payment of the lump sum death benefits) took place immediately before the member's death. Because this would coincide with the time at which a pension commencement lump sum would be treated as being crystallised in circumstances set out in paragraph 9 of Schedule 20, the amendment to section 219(7) ensures that the pension commencement lump sum will be tested against the lifetime allowance before any lump sum death benefits.
7. Amendment 136 also inserts paragraph 9B into Schedule 20 of the Bill. These provide for amendments to the authorised lump sum rules in Schedule 29 Finance Act 2004.
8. Paragraph 9B(2)(a) of Schedule 20 to the Finance Bill amends paragraph 1(1)(a) of Schedule 29 Finance Act 2004, to introduce a requirement that the member must become entitled to the lump sum before their 75th birthday. This replaces the requirement previously included in paragraph 1(1)(e) of Schedule 29 that the lump sum must be paid by the 75th birthday. It also introduces new paragraph 1(1)(aa) to Schedule 29, which provides that a member must become entitled to a lump sum in connection with a relevant pension, except where a member dies before becoming entitled to the relevant pension.

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In this case the member will be treated as becoming entitled to the pension commencement lump sum by virtue of new section 166(2)(a) Finance Act 2004, albeit that they have not become entitled to a relevant pension.

9. Paragraph 9B(2)(b) of Schedule 20 to the Finance Bill amends paragraph 1(1)(c) of Schedule 29 Finance Act 2004. This requires that for a lump sum to be a pension commencement lump sum it must be paid within either six months before or twelve months after becoming entitled to it. And by virtue of section 166(2)(a) Finance Act 2004, except where a member dies within 6 months of the lump sum being paid, they will be treated as becoming entitled to the pension commencement lump sum immediately before becoming entitled to the relevant pension.
10. Paragraph 9B(2)(c) of Schedule 20 to the Finance Bill removes the condition in paragraph 1(1)(e) of Schedule 29 Finance Act 2004 that the lump sum must be paid by the member's 75th birthday, because this has been replaced by the requirement in new paragraph 1(1)(a) of Schedule 29 Finance Act 2004 that the member must become entitled to the lump sum by their 75th birthday.
11. Paragraph 9B(3) of Schedule 20 to the Finance Bill inserts new paragraph 2(5A) to Schedule 29 Finance Act 2004, which will apply where a member dies having taken a lump sum within the preceding six months, but before having become entitled to the relevant pension. Paragraph 2(5) of Schedule 29 provides for the maximum amount of pension commencement lump sum that may be paid. This is the lower of the available portion of the member's lump sum allowance and the applicable amount. The applicable amount is calculated by reference to the value of relevant pension in connection with which the lump sum is being drawn. In circumstances where the member has died

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before having become entitled to the relevant pension, then the applicable amount would be nil. Therefore, new paragraph 2(5A) of Schedule 29 provides that in these circumstances the maximum pension commencement lump sum is the available portion of the member's lump sum allowance.

12. Amendment 137 provides that these changes to the lump sum rules will all have effect from 6th April 2006.

BACKGROUND NOTE

13. The pension commencement lump sum rules are set out in paragraphs 1 to 3 of Schedule 29 Finance Act 2004. A pension commencement lump sum of up to one quarter of the combined capital value of the pension and the lump sum may be taken in connection with a member becoming entitled to that pension. The rules currently require that the member must become entitled to the pension before the lump sum is paid. HMRC have recently received a number of representations that schemes often pay out a lump sum shortly before a member becomes actually entitled to the relevant pension, primarily because of the administration needed to set up a pension to be paid in the form of an annuity. The amendment will permit schemes to pay out lump sums up to 6 months before the member becomes entitled to the pension, so providing a period in which the administration to set up the pension may be finalised.