

Amendment	Page	Line
SC 385	116	23
SC 386	116	23
SC 387	116	37
SC 391	119	26

Dawn Primarolo

(Bristol South - Lab)

**Amendment 385**

Schedule 20, page 116, line 23 [Vol II], after ‘only’ insert ‘– (a)’.

**Amendment 386**

Schedule 20, page 116, line 23 [Vol II], at end insert , ‘or

(b) if, and to the extent that, section 49D below so provides.’

**Amendment 387**

Schedule 20, page 116, line 37 [Vol II], at end insert -

**‘49D Transitional serial interest: contracts of life insurance**

(1) Where—

- (a) a person (“C”) is beneficially entitled to an interest in possession in settled property (“the present interest”),
- and
- (b) on C’s becoming beneficially entitled to the present interest, the settled property consisted of or included a contract of life insurance entered into before 22nd March 2006, the present interest so far as subsisting in the contract, or in property comprised in the settlement that directly or indirectly represents the contract, is a “transitional serial interest” for the purposes of this Chapter if the following conditions are met.

(2) Condition 1 is that—

- (a) the settlement commenced before 22nd March 2006,
- and
- (b) immediately before 22nd March 2006-
- (i) the property then comprised in the settlement consisted of, or included, rights under the contract, and

Amendment	Page	Line
SC 385	116	23
SC 386	116	23
SC 387	116	37
SC 391	119	26

(ii) those rights were property in which C, or some other person, was beneficially entitled to an interest in possession (“the earlier interest”).

(3) Condition 2 is that—

(a) the earlier interest came to an end at a time on or after 6th April 2008 (“the earlier-interest end-time”) on the death of the person beneficially to it and C became beneficially entitled to the present interest-

(i) at the earlier-interest end-time, or

(ii) on the coming to an end, on the death of the person beneficially entitled to it, of an interest in possession to which that person became beneficially entitled at the earlier-interest end-time, or

(iii) on the coming to an end of the second or last in an unbroken sequence of two or more consecutive interests in possession to the first of which a person became beneficially entitled at the earlier-interest end-time and each of which ended on the death of the person beneficially entitled to it, or

(b) C became beneficially entitled to the present interest-

(i) on the coming to an end, on the death of the person entitled to it, of an interest in possession that is a transitional serial interest under section 49C(1)(a), or

(ii) on the coming to an end of the second or last in an unbroken sequence of two or more consecutive interests in possession the first of which was a transitional serial interest under section 49C(1)(a) and each of which ended on the death of the person beneficially entitled to it.

(4) Condition 3 is that rights under the contract were comprised in the settlement throughout the period

Amendment	Page	Line
SC 385	116	23
SC 386	116	23
SC 387	116	37
SC 391	119	26

beginning with 22nd March 2006 and ending with C's becoming beneficially entitled to the present interest.

(5) Condition 4 is that—

- (a) section 71A below does not apply to the property in which the present interest subsists, and
- (b) the present interest is not a disabled person's interest.”.

**Amendment 391**

Schedule 20, page 119, line 26 [Vol II], at end insert -

*‘Life assurance policies entered into before 22nd March 2006*

10A (1) After section 46 insert.

**“46A Contract of life insurance entered into before 22nd March 2006 which on that day is settled property in which interest in possession subsists**

- (1) Subsections (2) and (4) below apply where-
- (a) a settlement commenced before 22nd March 2006,
  - (b) a contract of life insurance was entered into before that day,
  - (c) a premium payable under the contract is paid, or an allowed variation is made to the contract, at a particular time on or after that day,
  - (d) immediately before that day, and at all subsequent times up to the particular time, there were rights under that contract that-
    - (i) were comprised in the settlement, and
    - (ii) were settled property in which a transitionally-protected interest (whether or not the same such interest throughout that period) subsisted,
  - (e) rights under the contract become, by reference to payment of the premium or as a result of the variation,-
    - (i) comprised in the settlement, and
    - (ii) part of the settled property in the then transitionally-protected interest subsists, and

Amendment	Page	Line
SC 385	116	23
SC 386	116	23
SC 387	116	37
SC 391	119	26

- (f) any variation of the contract on or after 22nd March 2006 but before the particular time, so far as it is a variation that-
- (i) increased the benefits secured by the contract, or
  - (ii) extended the term of the insurance provided by the contract,
- was an allowed variation.

(2) For the purposes of the provisions mentioned in subsection (3) below-

- (a) the rights mentioned in subsection (1)(e) above shall be taken to have become comprised in the settlement, and
- (b) the person beneficially entitled to the then-current transitionally-protected interest shall be taken to have become beneficially entitled to his interest in possession so far as it subsists in those rights, before 22nd March 2006.

(3) Those provisions are—

- section 3A(2) above;
- section 5(1A) above;
- section 49(1A) and (1B) below;
- section 51(1A) and (1B) below;
- section 51A(1) below;
- section 52(2A) and (3A) below;
- section 53(1A) and (2A) below;
- section 54(2A) and (2B) below;
- section 54A(1A) below;
- section 57A(1A) below;
- section 58(1B) and (1C) below;
- section 59(1) and (2) below;
- section 80(3) below;
- section 100(1A) below;
- section 101(1A) below;
- section 102ZA(1) of the Finance Act 1986 (gifts with reservation); and
- sections 72(1A) and (2A) and 73(2A) of the 1992 Act.

Amendment	Page	Line
SC 385	116	23
SC 386	116	23
SC 387	116	37
SC 391	119	26

(4) If payment of the premium is a transfer of value made by an individual, that transfer of value is a potentially exempt transfer.

(5) In this section—

“allowed variation,” in relation to a contract, means a variation that takes place by operation of, or as a result of exercise of rights conferred by, provisions forming part of the contract immediately before 22 March 2006;

“transitionally-protected interest” means—

- (a) an interest in possession to which a person was beneficially entitled immediately before, and on, 22<sup>nd</sup> March 2006, or
- (b) a transitional serial interest.

**46B Contract of life insurance entered into before 22nd March 2006 which immediately before that day is property to which section 71 applies**

(1) Subsections (2) and (5) below apply where—

- (a) a settlement commenced before 22nd March 2006,
  - (b) a contract of life insurance was entered into before that day,
  - (c) a premium payable under the contract is paid at a particular time on or after that day,
  - (d) immediately before that day, and at all subsequent times up to the particular time, there were rights under that contract that—
    - (i) were comprised in the settlement, and
    - (ii) were settled property to which section 71 below applied,
  - (e) rights under the contract become, by reference to payment of the premium, comprised in the settlement, and
  - (f) any variation of the contract on or after 22nd March 2006 but before the particular time, so far as it is a variation that—
    - (i) increases the benefits secured by the contract, or
    - (ii) extends the term of the insurance provided by the contract,
- was an allowed variation.

(2) If the rights mentioned in subsection (1)(e) above would, but for

Amendment	Page	Line
SC 385	116	23
SC 386	116	23
SC 387	116	37
SC 391	119	26

subsection (1A) of section 71 below, become property to which that section applies, those rights shall become settled property to which that section applies when they become comprised in the settlement.

(3) Subsection (5) below also applies where—

- (a) a settlement commenced before 22nd March 2006,
- (b) a contract of life insurance was entered into before that day,
- (c) a premium payable under the contract is paid, or an allowed variation is made to the contract at a particular time on or after that day when there are rights under that contract—
  - (i) that are comprised in the settlement and are settled property to which section 71A or 71D below applies,
  - (ii) that immediately before that day were settled property to which section 71 below applied, and
  - (iii) that on or after that day, but before the particular time, became property to which section 71A or 71D below applies in circumstances falling within subsection (4) below,
- (d) rights under the contract become, by reference to payment of the premium, or as a result of the variation, comprised in the settlement, and
- (e) any variation of the contract on or after 22nd March 2006 but before the particular time, so far as it was a variation that—
  - (i) increased the benefits secured by the contract, or
  - (ii) extended the term of the insurance provided by the contract,was an allowed variation.

(4) The circumstances referred to in subsection (3)(c)(iii) above are—

- (a) in the case of property to which section 71D below applies, that the property on becoming property to which section 71D below applies ceased to be property to which section 71 below applied without ceasing to be settled property;
- (b) in the case of property to which section 71A below applies—
  - (i) that the property on becoming property to which section 71A below applies ceased, by the operation of section 71(1B) below, to be property to which section 71 below applied, or

Amendment	Page	Line
SC 385	116	23
SC 386	116	23
SC 387	116	37
SC 391	119	26

(ii) that the property, having become property to which section 71D below applied in circumstances falling within paragraph (a) above, on becoming property to which 71A below applies ceased, by the operation of section 71D(5)(a) below, to be property to which section 71D below applied.

(5) If payment of the premium is a transfer of value made by an individual, that transfer of value is a potentially exempt transfer.

(6) In this section “allowed variation” in relation to a contract, means a variation that takes place by operation of, or as a result of exercise of rights conferred by, provisions forming part of the contract immediately before 22 March 2006.”

(2) Sub-paragraph (1) shall be deemed to have come into force on 22nd March 2006.

## **SUMMARY**

1. These amendments make clear that where a life policy has been settled on either interest-in-possession or accumulation and maintenance trusts before Budget day, but premiums continue to be payable after that date, the whole value of the policy qualifies for transitional protection as an asset of a pre-Budget settlement. That will apply to cases where the policy terms are varied on or after Budget day so long as the original terms of the policy provide for this, and will continue where someone succeeds to an interest-in-possession in a pre-Budget policy on the death of a previous holder.

## **DETAILS**

2. Amendments 385 and 386 prepare the ground for amendment 387 which defines a new class of cases eligible to be treated as a “transitional serial interest”.

3. Amendment 387 introduces new section 49D IHTA, which extends the scope for interests in trusts holding pre-Budget life policies to qualify as a “transitional serial interest” (TSI), so that the trust assets

Amendment	Page	Line
SC 385	116	23
SC 386	116	23
SC 387	116	37
SC 391	119	26

will be treated as owned by the person having the interest. Where someone holds an interest-in-possession (section 49D(1)(a)), and the trust assets at the time the interest commenced were, or included, a pre-Budget life insurance policy (section 49D(1)(b)), the interest will be treated as a TSI so far as the life policy is concerned if the following conditions are satisfied.

4. Condition (1) (section 49D(2)) requires that the policy was already held in the settlement on Budget day and was subject to an interest-in-possession at that date.

5. Condition (2) (section 49D(3)) requires that the current interest-in-possession has arisen on the death of the person who held the interest subsisting on Budget day; of someone holding a TSI in succession to them under the provisions at section 49C; or of someone holding a TSI by virtue of a previous application of section 49D.

6. Condition (3) (section 49D(4)) requires that the life policy has been held in the trust in question throughout the period from Budget day to the start of the current interest-in-possession.

7. Condition (4) (section 49D(5)) allows TSI treatment only where the interest in question would not also qualify as a trust for a bereaved minor or as a disabled person's interest (which are already eligible for the same IHT treatment as a TSI).

8. Amendment 391 inserts new paragraph 10A of Schedule 20, which in turn inserts new sections 46A and 46B IHTA. New section 46A makes clear that an interest-in-possession arising before 22 March 2006 in a life policy taken out before that time is to be treated wholly as an pre-Budget interest-in-possession, and the policy wholly as an asset settled before the Budget, notwithstanding that some premiums are paid on or after Budget day.

9. New section 46A(1) sets out the conditions which have to be satisfied to qualify for this treatment; subsection (2) specifies the treatment that applies to them; and subsection (3) lists the provisions for which it is to be applied. Subsection (4) makes clear that post-Budget

Amendment	Page	Line
SC 385	116	23
SC 386	116	23
SC 387	116	37
SC 391	119	26

premiums continue to be treated as a potentially exempt transfer if they are made by an individual.

10. New section 46B makes provision equivalent to new section 46A where a life policy was held on accumulation and maintenance trusts on Budget day and premiums are paid on or after that date. Subsection (1) specifies the conditions that have to be satisfied by such a policy; and subsection (2) provides that where they apply, rights arising from post-Budget premiums will be treated as held under a pre-Budget trust. Subsection (3) provides for the possibility that a pre-Budget accumulation and maintenance trust (originally subject to section 71 IHTA) may subsequently become subject either to section 71A to section 71D (under the new provision for “age 18-to-25 trusts” proposed by Amendment 358) depending on the choices made by the trustees in the transitional period up to 6 April 2008: the subsection ensures that any life policy held by such a trust continues to benefit from section 49. Subsection (4) caters for the further possibility that a pre-Budget accumulation and maintenance trust may originally satisfy the conditions in section 71D under the transitional rules for pre-Budget trusts, but subsequently come to satisfy the slightly stricter conditions in section 71A: again the subsection ensures that the benefit of section 49B is preserved through these changes.

11. Subsection (5) makes clear that post-Budget premiums continue to be treated as a potentially exempt transfer if they are made by an individual.

12. Sub-paragraph (2) brings these provisions into effect from Budget Day.

### **BACKGROUND NOTE**

13. Some life insurance policies taken out before Budget day were written on trusts creating a “flexible interest-in-possession” or qualified as accumulation and maintenance trusts. Schedule 20 changes the treatment of such trusts, but includes transitional provision for pre-Budget cases.