

Amendment	Page	Line
383	111	21
388	116	41
389	117	42
390	119	2
392	126	30

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**Amendment 383**

Schedule 20, page 111, line 21 [Vol II], leave out ‘to which section 89 below applies’ insert ‘in which a disabled person’s interest subsists’.

**Amendment 388**

Schedule 20, page 116, line 41 [Vol II], leave out from beginning to ‘After’ in line 4 on page 117 and insert—

‘6 (1) After section 89 (trusts for disabled persons) there is inserted—

**89A Self-settlement by person with condition expected to lead to disability**

- (1) This section applies to property transferred by a person (“A”) into settlement on or after 22nd March 2006 if -
  - (a) A was beneficially entitled to the property immediately before transferring it into settlement,
  - (b) A satisfies the Commissioners for Her Majesty’s Revenue and Customs that, when the property was transferred into settlement, A had a condition that it was at that time reasonable to expect would have such effects on A as to lead to A becoming.
    - (i) a person falling within section 89(4)(a) above,
    - (ii) in receipt of an attendance allowance mentioned in section 89(4)(b) above, or
    - (iii) in receipt of a disability living allowance mentioned in section 89(4)(c) above by virtue of entitlement to the care component at the highest or middle rate, and
  - (c) the property is held on trusts—

Amendment	Page	Line
383	111	21
388	116	41
389	117	42
390	119	2
392	126	30

- (i) under which, during the life of A, no interest in possession in the settled property subsists, and
- (ii) which secure that Conditions 1 and 2 are met.

(2) Condition 1 is that if any of the settled property is applied during A's life for the benefit of a beneficiary, it is applied for the benefit of A.

(3) Condition 2 is that any power to bring the trusts mentioned in subsection (1)(c) above to an end during A's life is such that, in the event of the power being exercised during A's life, either—

- (a) A or another person will, on the trusts being brought to an end, be absolutely entitled to the settled property, or
- (b) on the trusts being brought to an end, a disabled person's interest within section 89B(1)(a) or (c) will subsist in the settled property.

(4) If this section applies to settled property transferred into settlement by a person, the person shall be treated as beneficially entitled to an interest in possession in the settled property.

(5) For the purposes of subsection (1)(b)(ii) above, assume—

- (a) that A will meet the conditions as to residence under section 64(1) of whichever of the 1992 Acts is applicable, and
- (b) that there will be no provision made by regulations under section 67(1) and (2) of that Act.

(6) For the purposes of subsection (1)(b)(iii) above, assume—

- (a) that A will meet the prescribed conditions as to residence under section 71(6) of whichever of the 1992 Acts is applicable, and
- (b) that there will be no provision made by regulations under section 72(8) of that Act.

(7) For the purposes of subsection (3) above, ignore—

Amendment	Page	Line
383	111	21
388	116	41
389	117	42
390	119	2
392	126	30

- (a) power to give directions as to the settled property that is exercisable jointly by the persons who between them are entitled to the entire beneficial interest in the property, and
- (b) anything that could occur as a result of exercise of any such power.

(8) In this section “the 1992 Acts” means—  
the Social Security Contributions and Benefits Act 1992,  
and  
the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

**89B Meaning of “disabled person’s interest”**

- (1) In this Act “disabled person’s interest” means—
- (a) an interest in possession to which a person is under section 89(2) above treated as beneficially entitled,
  - (b) an interest in possession to which a person is under section 89A(4) above treated as beneficially entitled,
  - (c) an interest in possession in settled property (other than an interest within paragraph (a) or (b) above) to which a disabled person is beneficially entitled if the settled property was transferred into settlement on or after 22nd March 2006, or
  - (d) an interest in possession in settled property (other than an interest within paragraph (a) or (b) above) to which a person (“A”) is beneficially entitled if—
    - (i) A is the settlor,
    - (ii) A was beneficially entitled to the property immediately before transferring it into settlement,
    - (iii) A satisfies Her Majesty’s Commissioners for Revenue and Customs as mentioned in section 89A(1)(b) above,
    - (iv) the settled property was transferred into settlement on or after 22nd March 2006, and

Amendment	Page	Line
383	111	21
388	116	41
389	117	42
390	119	2
392	126	30

(v) the trusts on which the settled property is held secure that, if any of the settled property is applied during A's life for the benefit of a beneficiary, it is applied for the benefit of A.

(2) Subsections (4) to (6) of section 89 above (meaning of "disabled person" in subsection (1) of that section) have effect for the purposes of subsection (1)(c) above as they have effect for the purpose of subsection (1) of that section."

(3) In section 89, '.

**Amendment 389**

Schedule 20, page 117, line 42 [Vol II], leave out '(2)' and insert '(1)'.

**Amendment 390**

Schedule 20, page 119, line 2 [Vol II], after '89' insert 'or 89A'.

**Amendment 392**

Schedule 20, page 126, line 30 [Vol II], leave out '89(2A)' and insert '89B'.

**SUMMARY**

1. These amendments concern the inheritance tax (IHT) provisions for trusts providing for disabled persons. Section 89 of the Inheritance Tax Act 1984 (IHTA) currently makes special provision for discretionary trusts benefiting a disabled person: the amendments ensure this treatment applies to trusts which give an interest-in-possession to a disabled person (previously such trusts were given essentially the same treatment by rules of wider application which is being restricted by Schedule 20). The amendments also provide at new section 89A IHTA for a category of trust where a person who expects to

Amendment	Page	Line
383	111	21
388	116	41
389	117	42
390	119	2
392	126	30

become disabled in the future establishes a trust to provide for their future needs.

### **DETAILS**

2. Amendment 383 amends a provision in new section 71A IHTA (setting out which rules take precedence when a trust would otherwise qualify both as a trust for a bereaved minor and as a trust for a disabled person) to maintain consistency with the amendments below.

3. Amendment 388 modifies paragraph 6 of Schedule 80 that it inserts new material at sections 89A and 89B IHTA. New section 89A provides for a “self-settled” trust by a person who expects to become disabled. Subsection (1) sets out the basic tests to be satisfied by such a trust: i.e. broadly, the settlor is establishing a trust for their own future benefit, and has a condition which it makes it reasonable to expect that they will become disabled: subsection (2) and (3) amplify the conditions that benefits under the trust have to satisfy; subsection (4) says that assets in a trust satisfy the new tests are to be treated as beneficially owned by the person having an interest-in-possession (i.e. the settlor); and subsections (5)-(8) provide for interpretation of the conditions.

4. New section 89B inserts an expanded definition of “disabled person’s interest” (new section 49(1A) IHTA), which provides that a assets subject to disabled person’s interest will continue to be treated for IHT purposes as owned by the “disabled person”. It has been expanded to include an interest-in-possession in favour of a disabled person (subsection (1)(2)) which means that assets subject to such an interest will continue to be treated as owned by the disabled person for IHT purposes, by virtue of new section 49(1A)(b) IHTA, (inserted by paragraph 4); and also interests under the self-settled trusts at new section 89A (subsection (1)(d)).

5. Amendments 389, 390 and 392 make consequential amendments.

### **BACKGROUND**

**HM REVENUE AND CUSTOMS  
RESOLUTION 55**

**FINANCE (No.2) BILL 2006  
COMMITTEE  
SCHEDULE 20**

Amendment	Page	Line
383	111	21
388	116	41
389	117	42
390	119	2
392	126	30

6. The rules in Schedule 20 provide special treatment for trusts for a disabled person. These amendments ensure these rules work as intended.