

NOTICES OF AMENDMENTS

given on

Thursday 13 June 2013

For other Amendment(s) see the following page(s):
Finance Bill Committee 128-135

PUBLIC BILL COMMITTEE

FINANCE BILL

(Except Clauses 1, 3, 16, 183, 184 and 200 to 212; Schedules 3 and 41; any new Clauses, and any new Schedules, first appearing on the Order Paper not later than Tuesday 16 April 2013 and relating to tax measures concerning housing; and any new Clauses, and any new Schedules, relating to value added tax or the bank levy or air passenger duty or the subject matter of Clauses 1 and 16 and Schedule 3 or the subject matter of Clause 3 or the subject matter of Clauses 203 to 212 and Schedule 41)

Mr David Gauke

Schedule 42, page 486, line 27, leave out 'or payment' and insert ', payment or increased pension'. **110**

Mr David Gauke

Schedule 42, page 486, line 31, after '72(8)' insert ', 104(3)'. **111**

Mr David Gauke

Schedule 42, page 486, line 32, after '72(8)' insert ', 104(3)'. **112**

Mr David Gauke

Schedule 42, page 486, line 37, leave out 'or payment' and insert ', payment or increased pension'. **113**

Mr David Gauke

Schedule 42, page 486, line 42, at end insert— **114**
'(iv) articles 61 and 64 of the Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686),

Finance Bill, continued

- (v) article 53 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606), and
- (vi) article 42 of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517).’.

Mr David Gauke

115

Schedule 42, page 487, line 44, at end insert—

- ‘(7) In the heading, for the words following “**person**” substitute “**expected to fall within the definition of “disabled person”**”.

Mr David Gauke

116

Schedule 42, page 488, line 14, at end insert—

- ‘9A(1) In section 89B (meaning of “disabled person’s interest”), in subsection (1)(c) after “2006” insert “if the trusts on which the settled property is held secure that, if any of the settled property is applied during the disabled person’s life for the benefit of a beneficiary, it is applied for the benefit of the disabled person”.

- (2) After that section insert—

“89C Disabled person’s interest: powers of advancement etc

- (1) The trusts on which settled property is held are not to be treated for the purposes of section 89B(1)(c) or (d) (meaning of “disabled person’s interest”: cases involving an interest in possession) as failing to secure that the settled property is applied for the benefit of a beneficiary by reason only of—

- (a) the trustees’ having powers that enable them to apply otherwise than for the benefit of the beneficiary amounts (whether consisting of income or capital, or both) not exceeding the annual limit,
- (b) the trustees’ having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
- (c) the trustees’ having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
- (d) the trustees’ having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
- (e) the trustees’ having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1)(a) of that section, or
- (f) the trustees’ having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).

- (2) For the purposes of this section, the “annual limit” is whichever is the lower of the following amounts—

- (a) £3,000, and
- (b) 3% of the amount that is the maximum value of the settled property during the period in question.

- (3) For those purposes the annual limit applies in relation to each period of 12 months that begins on 6 April.

Finance Bill, *continued*

- (4) The Treasury may by order made by statutory instrument—
 - (a) specify circumstances in which subsection (1)(a) is, or is not, to apply in relation to a trust, and
 - (b) amend the definition of “the annual limit” in subsection (2).
- (5) An order under subsection (4) may—
 - (a) make different provision for different cases, and
 - (b) contain transitional and saving provision.
- (6) A statutory instrument containing an order under subsection (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”
- (3) The amendments made by this paragraph have effect in relation to property transferred into settlement on or after the day on which this Act is passed.
- (4) Nothing in this paragraph is to be read as preventing property transferred into a settlement to which sub-paragraph (5) applies from being settled property for the purposes of section 89B(1)(c) or (d) of IHTA 1984.
- (5) This sub-paragraph applies to a settlement—
 - (a) created before the day on which this Act is passed the trusts of which have not been altered on or after that day, or
 - (b) arising on or after the day on which this Act is passed under the will of a testator, if—
 - (i) the will was executed before the day on which this Act is passed and its provisions, so far as relating to the settlement, have not been altered on or after that day, or
 - (ii) the will was executed or confirmed on or after the day on which this Act is passed and its provisions, so far as relating to the settlement, are in the same terms as those contained in a will executed by the same testator before that day.’.

Mr David Gauke

117

Schedule 42, page 493, line 24, at end insert—
 ‘(da) a person in receipt of an increased disablement pension.’.

Mr David Gauke

118

Schedule 42, page 493, line 30, leave out from ‘that’ to end of line 36 and insert
 ‘he or she would be entitled to receive attendance allowance but for—
 ‘() the conditions as to residence and presence prescribed under section 64(1) of SSCBA 1992 or section 64(1) of SSCB(NI)A 1992.’.

Mr David Gauke

119

Schedule 42, page 494, line 5, leave out from ‘that’ to end of line 12 and insert
 ‘he or she would be entitled to receive a disability living allowance by virtue of entitlement to the care component at the highest or middle rate but for—
 ‘() the conditions as to residence and presence prescribed under section 71(6) of SSCBA 1992 or section 71(6) of SSCB(NI)A 1992.’.

Finance Bill, *continued*

Mr David Gauke

120

Schedule 42, page 494, line 24, leave out from ‘that’ to end of line 32 and insert ‘he or she would be entitled to receive personal independence payment by virtue of entitlement to the daily living component but for—

- ‘() the conditions as to residence and presence prescribed under section 77(3) of WRA 2012 or the corresponding provision having effect in Northern Ireland.’.

Mr David Gauke

121

Schedule 42, page 494, line 43, at end insert—

‘Increased disablement pension

7A A person is to be treated as a disabled person under paragraph 1(da) if he or she satisfies HMRC that he or she would be entitled to receive an increased disablement pension but for—

- (a) conditions as to residence and presence that have effect in relation to increased disablement pension by virtue of regulations under section 104(3) of SSCBA 1992 or section 104(3) of SSCB(NI)A 1992 (application of attendance allowance provisions),
- (b) provision made under section 67(1) or (2) of SSCBA 1992 or section 67(1) or (2) of SSCB(NI)A 1992 (non-satisfaction of conditions for attendance allowance where person is undergoing treatment for renal failure in hospital or is provided with certain accommodation) that has effect in relation to increased disablement pension by virtue of such regulations, or
- (c) section 113(1) of SSCBA 1992 or section 113(1) of SSCB(NI)A 1992 or provision made by regulations under section 113(2) of SSCBA 1992 or section 113(2) of SSCB(NI)A 1992 (general provisions as to disqualification and suspension).

Constant attendance allowance

7B A person is to be treated as a disabled person under paragraph 1(e) if he or she satisfies HMRC that he or she would be entitled to receive constant attendance allowance but for—

- (a) article 61 (residence outside United Kingdom) or article 64 (maintenance in hospital or institution) of the Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686), or
- (b) article 53 (maintenance in hospital or institution) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606).

Armed forces independence payment

7C A person is to be treated as a disabled person under paragraph 1(f) if he or she satisfies HMRC that he or she would be entitled to receive armed forces independence payment but for article 42 of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) (cessation of payment on admission to Royal Hospital, Chelsea).’.

Finance Bill, *continued*

Mr David Gauke

122

Schedule 42, page 495, line 5, at end insert—

- (a) article 14 of the Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686), or
(b) ‘.

Mr David Gauke

123

Schedule 42, page 495, line 12, at end insert—

“‘increased disablement pension’ means an increase of disablement pension under—

- (a) section 104 of SSCBA 1992, or
(b) section 104 of SSCB(NI)A 1992, ‘.

Mr David Gauke

124

Schedule 42, page 495, line 27, leave out from ‘arising’ to end of line 28 and insert ‘on or after 8 April 2013 under the will of a testator, if—

- (i) the will was executed before 8 April 2013 and its provisions, so far as relating to the settlement, have not been altered on or after that date, or
(ii) the will was executed or confirmed on or after 8 April 2013 and its provisions, so far as relating to the settlement, are in the same terms as those contained in a will executed by the same testator before that date.
(2) In this Schedule a reference to a will includes a reference to a codicil.’.
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EXPLANATORY NOTE - AMENDMENTS

CLAUSE 213, SCHEDULE 42: TRUSTS WITH VULNERABLE BENEFICIARY

SUMMARY

1. The amendments make detailed changes to ensure that:
 - the definition of ‘disabled person’ for the purposes of a trust with a vulnerable beneficiary includes all those who claim constant attendance allowance, including by way of an increase in disablement pension;
 - a person remains a ‘disabled person’ if he or she would be entitled to receive a qualifying welfare benefit were it not for them being in a publicly funded institution (such as a hospital) or abroad;
 - harmonisation of how the trust income and capital can be used is complete by applying also to ‘interest in possession’ trusts in the Inheritance Tax code; and
 - ‘grand-fathered’ rights under the commencement rules are preserved where a codicil to a will, or a new will, continues provision that a qualifying vulnerable beneficiary trust be established.

DETAILS OF THE AMENDMENTS

2. Amendments 110 to 114 amend paragraph 7(4) of Schedule 42 to the Finance Bill so as to include within section 89A of the Inheritance Tax Act (IHTA) 1984 the assumption that the beneficiary is entitled to receive constant attendance allowance or armed forces independence payment when resident outside the UK or in a care home, hospital or prison.
3. Amendment 115 inserts paragraph 7(7) to Schedule 42 so as to amend the heading to section 89A of IHTA 1984 in recognition that a person may be disabled at the time of self-settlement, but not a ‘disabled person’ as defined.
4. Amendment 116 inserts paragraph 9A to Schedule 42.
5. Paragraph 9A(1) amends section 89B(1)(c) of IHTA 1984 to provide (in a similar way to existing section 89B(1)(d)) that any of the settled property that is applied is to be applied for the benefit of the disabled person.

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CLAUSE 213
SCHEDULE 42

6. Paragraph 9A(2) adds new section 89C to IHTA 1984, which provides that, for the purposes of section 89B(1)(c) or (d), any of the settled property that is applied is to be applied for the benefit of the disabled person; and that powers that enable trustees to apply in a tax year up to an ‘annual limit’ of the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person. The amounts and circumstances may be amended by Treasury order.
7. Paragraphs 9A(3) and (4) provide that new section 89C commences from Royal assent and for transition.
8. Amendments 117 to 123 amend the consolidated meaning of ‘disabled person’ at Schedule 1A to Finance Act 2005 (as inserted by paragraph 18 of Schedule 42 to the Bill).
9. Amendment 117 adds a person in receipt of an increased disablement pension to paragraph 1 of Schedule 1A.
10. Amendments 118 to 120 simplify the structure of paragraphs 2 to 7 of Schedule 1A to ensure, for the purposes of attendance allowance, disability living allowance and personal independence payment, that a person is treated as a disabled person if he or she would be entitled to receive a relevant payment or allowance were it not for them being resident outside the UK or in a care home, hospital or prison.
11. Amendment 121 inserts paragraphs 7A to 7C of Schedule 1A to treat, for the purposes of increased disablement pension, constant attendance allowance and armed forces independence payment, a person as a disabled person if he or she would be entitled to receive a relevant payment or allowance were it not for them being resident outside the UK or in a care home, hospital or prison.
12. Amendment 122 extends the definition of “constant attendance allowance” at paragraph 8 of Schedule 1A.
13. Amendment 123 inserts at paragraph 8 of Schedule 1A a definition for “increased disablement pension”.
14. Amendment 124 amends the meaning of “relevant settlement” at paragraph 19 of Schedule 42 so that the transitional provisions at paragraphs 9(2), 11(7) and 12(7) apply where the settlement arises under a codicil to a will, or a new will, made on or after 8 April that contains provisions in the same terms (in relation to the settlement) as a will or codicil made prior to that date by the testator.

BACKGROUND

15. Special tax rules exist for trusts with a vulnerable beneficiary. The rules:
 - reduce, following an election and annual claim, the trustees' tax liability on income and chargeable gains to an amount that, broadly, would be chargeable on the beneficiary if the gains had accrued and/or the income had arisen directly to that person;
 - extend the annual exempt amount of chargeable gains that applies to trusts to match that available to individuals;
 - ignore the normal charges to inheritance tax for trusts; instead, the property is treated as part of the beneficiary's estate on their death.
16. Clause 213 and Schedule 42 harmonise rules that limit how the income and capital of a trust with a vulnerable beneficiary may be applied and extend the meaning of a 'disabled person' to include those in receipt of the daily living component of personal independence payment, armed forces independence payment or constant attendance allowance.
17. Trusts created by a will executed prior to the commencement date (8 April 2013) may apply the pre-existing rules as to how the trust income and capital can be applied. However concern was raised that these 'grand-fathered' rights would be lost where a will is amended to, for example, change an executor or add a new legacy.