



# Finance Act 2004

## 2004 CHAPTER 12

### PART 4

#### PENSION SCHEMES ETC

### CHAPTER 2

#### REGISTRATION OF PENSION SCHEMES

#### *Registration*

#### **153 Registration of pension schemes**

- (1) An application may be made to the Inland Revenue for a pension scheme to be registered.
- (2) The application—
  - (a) must contain any information which is reasonably required by the Inland Revenue in any form specified by the Board of Inland Revenue, and
  - (b) must be accompanied by a declaration that the application is made by the scheme administrator (see section 270) and any other declarations by the scheme administrator which are reasonably required by the Inland Revenue.
- (3) The declarations which the Inland Revenue may require to accompany an application for the registration of a pension scheme include, in particular, a declaration that the instruments or agreements by which it is constituted do not entitle any person to unauthorised payments (see section 160(5)).
- (4) On receipt of an application for a pension scheme to be registered the Inland Revenue must decide whether or not to register the pension scheme.
- (5) The Inland Revenue's decision must be to register the pension scheme unless it appears that—

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- (a) any information contained in the application is incorrect, or
  - (b) any declaration accompanying it is false.
- (6) The Inland Revenue must notify the scheme administrator of the decision on the application.
- (7) Unless the Inland Revenue's decision is not to register the pension scheme, the notification must state the day on and after which the pension scheme will be a registered pension scheme.
- (8) An annuity contract—
- (a) by means of which benefits under a registered pension scheme have been secured, but
  - (b) which does not provide for the immediate payment of benefits,
- is to be treated as having become a registered pension scheme on the day on which it is made.
- (9) Schedule 36 contains (in Part 1) provisions treating certain pension schemes in existence immediately before 6th April 2006 as registered pension schemes (and related provisions).

#### **154 Persons by whom registered pension scheme may be established**

- (1) An application to register a pension scheme may be made only if the pension scheme is an occupational pension scheme or has been established by—
- (a) an insurance company (see section 275),
  - (b) a unit trust scheme manager,
  - (c) an operator, trustee or depositary of a recognised EEA collective investment scheme,
  - (d) an authorised open-ended investment company,
  - (e) a building society,
  - (f) a bank, or
  - (g) an EEA investment portfolio manager.
- (2) But subsection (1) does not apply to a public service pension scheme.
- (3) Section 155 defines terms used in subsection (1)(b) to (g).
- (4) The Treasury may by order amend this section and section 155.

#### **155 Persons by whom scheme may be established: supplementary**

- (1) This section has effect for defining terms used in section 154(1)(b) to (g).
- (2) “Unit trust scheme manager” means—
- (a) a person who has permission under Part 4 of FISMA 2000 to manage unit trust schemes authorised under section 243 of FISMA 2000, or
  - (b) a firm which has permission under paragraph 4 of Schedule 4 to FISMA 2000 (as a result of qualifying for authorisation under paragraph 2 of that Schedule: Treaty firms) to manage unit trust schemes authorised under that section.

- (3) “Recognised EEA collective investment scheme” means a collective investment scheme (within the meaning given by section 235 of FISMA 2000) which is recognised by virtue of section 264 of FISMA 2000 (schemes constituted in other EEA States).
- (4) “Authorised open-ended investment company” has the meaning given by section 237(3) of FISMA 2000.
- (5) “Building society” means a building society within the Building Societies Act 1986 (c. 53).
- (6) “Bank” means—
  - (a) a person falling within section 840A(1)(b) of ICTA (persons, other than building societies etc. permitted to accept deposits), or
  - (b) a body corporate which is a subsidiary or holding company of a person falling within section 840A(1)(b) of ICTA or is a subsidiary of the holding company of such a person.

In paragraph (b) “subsidiary” and “holding company” are to be read in accordance with section 736 of the Companies Act 1985 (c. 6) or Article 4 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).

- (7) “EEA investment portfolio manager” means an institution which—
  - (a) is an EEA firm of the kind mentioned in paragraph 5(a), (b) or (c) of Schedule 3 to FISMA 2000 (certain credit and financial institutions),
  - (b) qualifies for authorisation under paragraph 12(1) or (2) of that Schedule, and
  - (c) has permission under FISMA 2000 to manage portfolios of investments.

## **156 Appeal against decision not to register**

- (1) This section applies where, on an application for a pension scheme to be registered, the Inland Revenue’s decision is not to register the pension scheme.
- (2) The scheme administrator may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the scheme administrator may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the scheme administrator was notified of the decision.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the pension scheme ought to have been registered by the Inland Revenue.
- (7) If they decide that the pension scheme ought not to have been registered by the Inland Revenue, they must dismiss the appeal.

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- (8) If they decide that the pension scheme ought to have been registered by the Inland Revenue, the pension scheme is to be treated as having been registered on such date as the Commissioners determine (but subject to any further appeal or any determination on, or in consequence of, a case stated).

### *De-registration*

#### **157 De-registration**

- (1) The Inland Revenue may withdraw the registration of a pension scheme.
- (2) If the Inland Revenue withdraws the registration of a pension scheme the Inland Revenue must notify the scheme administrator.
- (3) If there is no-one who is the scheme administrator, the Inland Revenue must instead notify any person or persons—
  - (a) who has or have responsibility for the discharge of any obligation relating to the pension scheme under section 271(4) (continuation of liability where no scheme administrator), section 272 (trustees etc.) or section 273 (members), and
  - (b) whom it is reasonably practicable for the Inland Revenue to identify.
- (4) The notification must state the date on and after which the pension scheme will not be a registered pension scheme.

#### **158 Grounds for de-registration**

- (1) The registration of a pension scheme may be withdrawn under section 157 only if it appears to the Inland Revenue—
  - (a) that the amount of the scheme chargeable payments (see section 241) made by the pension scheme during any period of 12 months exceeds the de-registration threshold,
  - (b) that the scheme administrator fails to pay a substantial amount of tax (or interest on tax) due from the scheme administrator by virtue of this Part,
  - (c) that the scheme administrator fails to provide information required to be provided to the Inland Revenue by virtue of this Part and the failure is significant,
  - (d) that any information contained in the application to register the pension scheme or otherwise provided to the Inland Revenue is incorrect in a material particular,
  - (e) that any declaration accompanying that application or the provision of other information to the Inland Revenue is false in a material particular, or
  - (f) that there is no scheme administrator.
- (2) The amount of the scheme chargeable payments made by a pension scheme during any period of 12 months exceeds the de-registration threshold if the scheme chargeable payments percentage is 25% or more.
- (3) The scheme chargeable payments percentage is—

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- (a) if only one scheme chargeable payment is made during the period of 12 months, the percentage of the pension fund used up on the occasion of that scheme chargeable payment, and
  - (b) if two or more scheme chargeable payments are made during the period of 12 months, the aggregate of the percentages of the pension fund used up on the occasion of each of those scheme chargeable payments.
- (4) The percentage of the pension fund used up on the occasion of a scheme chargeable payment is—

$$\frac{SCP}{AA} \times 100$$

where—

SCP is the amount of the scheme chargeable payment, and

AA is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme at the time when the scheme chargeable payment is made.

- (5) A failure by a scheme administrator to provide information required to be provided to the Inland Revenue by or under this Part is significant if—
- (a) the amount of information which the scheme administrator fails to provide is substantial, or
  - (b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.

## **159 Appeal against decision to de-register**

- (1) This section applies where the Inland Revenue decides to withdraw the registration of a pension scheme under section 157.
- (2) The scheme administrator, or any person notified under that section of the withdrawal of registration, may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the appellant may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the appellant was notified of the decision.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the registration of the pension scheme ought to have been withdrawn.
- (7) If they decide that the registration of the pension scheme ought to have been withdrawn, they must dismiss the appeal.
- (8) If they decide that the registration of the pension scheme ought not to have been withdrawn, the pension scheme is to be treated as having remained a registered pension

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scheme (but subject to any further appeal or any determination on, or in consequence of, a case stated).