



Finance Act 2004

2004 CHAPTER 12

PART 4

PENSION SCHEMES ETC

CHAPTER 3

PAYMENTS BY REGISTERED PENSION SCHEMES

Unauthorised member payments

172 Assignment

- (1) Subsection (2) applies if a member of a registered pension scheme (or the member's personal representatives) assigns or agrees to assign
 - ^[F1](a) any benefit, other than an excluded pension, to which the member (or any dependant of the member) has an actual or prospective entitlement under the pension scheme, or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement under the pension scheme].
- (2) Unless the assignment or agreement is pursuant to a pension sharing order or provision, the pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives in respect of the member).
- (3) Subsection (4) applies if a person (or a person's personal representatives) assigns or agrees to assign
 - ^[F2](a) any benefit, other than an excluded pension, to which the person has ^[F3]a] prospective entitlement under the pension scheme in respect of a member of the pension scheme, or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement relating to ^[F4]a member of the pension scheme] under the pension scheme].

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- (4) Unless the assignment or agreement is pursuant to a pension sharing order or provision, the pension scheme is to be treated as making an unauthorised payment to the person (or the person's personal representatives) in respect of the member.
- (5) The amount of the unauthorised payment is the greater of—
- (a) the consideration received in respect of the assignment or agreement, and
 - (b) the consideration which might be expected to be received in respect of the assignment or agreement if the parties to the transaction were at arm's length [^{F5} and any power to reduce the entitlement to the benefit or right did not exist].
- (6) Where a pension scheme is treated by this section as having made an unauthorised payment in relation to an assignment (or an agreement to assign), payments by the pension scheme of the benefit [^{F6} or right] assigned (or agreed to be assigned) are not unauthorised payments.
- [^{F7}(6A) References in this section to a benefit to which the member or a person has an entitlement under the pension scheme includes rights to payments under—
- (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or
 - (b) a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme.]
- [^{F8}(7) An excluded pension is so much of any pension which under pension rule 2 may continue to be paid after the member's death as may be so paid.]
- (8) "Assignment" includes assignation and related expressions are to be read accordingly.

Textual Amendments

- F1** S. 172(1)(a)(b) substituted for words (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 37\(2\), 64\(1\)](#)
- F2** S. 172(3)(a)(b) substituted for words (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 37\(3\), 64\(1\)](#)
- F3** Word in s. 172(3)(a) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 2\(2\)\(a\)](#)
- F4** Words in s. 172(3)(b) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 2\(2\)\(b\)](#)
- F5** Words in s. 172(5)(b) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 37\(4\), 64\(1\)](#)
- F6** Words in s. 172(6) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 37\(5\), 64\(1\)](#)
- F7** S. 172(6A) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 2\(3\)](#)
- F8** S. 172(7) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 37\(6\), 64\(1\)](#)

Commencement Information

- II** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

[^{F9}172A Surrender

- (1) Subsection (2) applies if a member of a registered pension scheme surrenders or agrees to surrender—

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- (a) any benefit, other than an excluded pension, to which the member (or any dependant of the member) has a prospective entitlement under an arrangement under the pension scheme,
 - ^{F10}(aa) [any rights to payments under a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme,] or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement under the pension scheme.
- (2) The pension scheme is to be treated as making an unauthorised payment to the member.
- (3) Subsection (4) applies if a person surrenders or agrees to surrender—
- (a) any benefit, other than an excluded pension, to which the person has a prospective entitlement under an arrangement under the pension scheme [^{F11}in respect of] a member of a pension scheme, or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement relating to a member of the pension scheme under the pension scheme.
- (4) The pension scheme is to be treated as making an unauthorised payment to the person in respect of the member.
- (5) Subsections (2) and (4) do not apply to—
- (a) a surrender pursuant to a pension sharing order or provision,
 - (b) a surrender (or agreement to surrender) by the member in return for the conferring on a dependant of an entitlement to benefits after the member's death,
 - (c) a transfer of (or agreement to transfer) benefits or rights so as to become benefits or rights under another arrangement under the pension scheme relating to the member or dependant,
 - ^{F12}(ca) [a surrender of (or agreement to surrender) rights to payments under an annuity in any case covered by regulations under paragraph 3(2B) or 17(3) of Schedule 28;]
 - ^{F13}(d)
 - ^{F14}(da) [a surrender made as part of a retirement-benefit activities compliance exercise,
 - (db) a surrender of a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) made in order to comply with [^{F15}Part 5 of the Equality Act 2010, so far as relating to age, or the] Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing [^{F16}those Regulations.])]
 - (e) a surrender (or agreement to surrender) which constitutes an assignment (or agreement to assign) within section 172, or
 - (f) any surrender (or agreement to surrender) of a description prescribed by regulations made by the Board of Inland Revenue.
- ^{F17}(5A) [Subsection (5)(b) applies only if the entitlement is held (or is to be held) by the dependant under an arrangement under the pension scheme relating to the member or dependant.]

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- (6) Regulations under subsection (5)(f) may include provision having effect in relation to times before they are made.
- (7) Subsections (2) and (4) do not apply to the surrender of a benefit to which the member (or a dependant of the member) has a prospective entitlement, or to which the person has a prospective entitlement in respect of a member, under an arrangement that is a defined benefits arrangement or cash balance arrangement unless—
- (a) in consequence of the surrender, the actual or prospective entitlement of another member (or dependant of another member) of the pension scheme, or of another person in respect of another member, to benefits under the scheme is increased, and
 - (b) the two members are or have been connected persons.
- (8) The amount of the unauthorised payment is the consideration that might be expected to be received if what is surrendered were assigned by a transaction between parties at arm's length and any power to reduce the entitlement to the benefit or right did not exist.
- (9) In this section “surrender”, in relation to any benefit or right of a member (or dependant of a member) of a pension scheme or other person, includes any schemes, arrangements or understandings of any kind (whether or not legally enforceable) the main purpose, or one of the main purposes, of which is to reduce the member's (or dependant's), or person's, entitlement to the benefit or right.
- [References in this section to a benefit to which the member or a person has an ^{F18}(9A) entitlement under the pension scheme includes rights to payments under—
- (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or
 - (b) a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme.]
- (10) [^{F19}For the purposes of this section an] excluded pension is so much of any pension which under pension rule 2 may continue to be paid after the member's death as may be so paid.
- [For the purposes of this section a surrender relating to an arrangement under the ^{F20}(10A) pension scheme (“the old arrangement”) is made as part of a retirement-benefit activities compliance exercise if—
- (a) it is made in connection with the making of an arrangement under another pension scheme relating to the member (“the new arrangement”),
 - (b) the old arrangement and the new arrangement relate to the same employment,
 - (c) both the rights surrendered and the rights conferred under the new arrangement consist of or include a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both),
 - (d) the surrender and the making of the new arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
 - (e) the rights surrendered and the rights conferred under the new arrangement are not significantly different.]

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[^{F21}(11) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]

Textual Amendments

- F9** Ss. 172A-172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 38, 64\(1\)](#)
- F10** S. 172A(1)(aa) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 3\(2\)](#)
- F11** Words in s. 172A(3)(a) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 3\(3\)](#)
- F12** S. 172A(5)(ca) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 3\(4\)](#)
- F13** S. 172A(5)(d) omitted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 7 para. 10\(2\)](#)
- F14** S. 172A(5)(da)(db) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 6\(2\), 24\(3\)](#)
- F15** Words in s. 172A(5)(db) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 58(a) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))
- F16** Words in s. 172A(5)(db) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 58(b) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))
- F17** S. 172A(5A) inserted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 para. 10\(3\)](#)
- F18** S. 172A(9A) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 3\(5\)](#)
- F19** Words in s. 172A(10) substituted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 6\(3\), 24\(3\)](#)
- F20** S. 172A(10A) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 6\(4\), 24\(3\)](#)
- F21** S. 172A(11) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 469](#) (with Sch. 2)

172B Increase in rights of connected person on death

- (1) This section applies if—
- at any time after the death of a relevant member of a registered pension scheme, there is an increase in the pension rights of another member of the pension scheme which is attributable to the death, and
 - the dead member and other member were connected persons immediately before the death.
- (2) A member of a registered pension scheme is a relevant member if, immediately before his death, any of his rights under the pension scheme are—
- rights to benefit to which the member (or any dependant of the member) has a prospective entitlement under an arrangement under the pension scheme,
 - [rights to payments under a scheme pension or dependants' scheme pension
- ^{F22}(aa) provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme or under a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme,] or

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- (b) rights representing the [^{F23}member's drawdown pension fund or dependant's drawdown pension fund] in respect of an arrangement under the pension scheme.
- (3) There is at any time an increase in the pension rights of the other member of the pension scheme which is attributable to the death if—
- (a) the consideration which might be expected to be received in respect of an assignment (or assignation) of the benefits to which he [^{F24}has an actual or prospective entitlement] under the pension scheme at that time, exceeds
 - (b) the consideration which might be expected to be received in respect of such an assignment (or assignation) immediately before that time,
- in consequence of the death (ignoring for the purposes of paragraphs (a) and (b) any power to reduce the entitlement to the benefits).
- (4) The pension scheme is to be treated as making an unauthorised payment to the other member (or to the other member's personal representatives) of an amount equal to the excess (but subject to subsection [^{F25}(5)]).
- (5) The amount which would (apart from this subsection) constitute the unauthorised payment is to be reduced by so much of the excess as arises—
- ^{F26}(a)
 - (b) from the other member becoming entitled to pension death benefits or lump sum death benefits in respect of the dead member, or
 - (c) in any manner prescribed by regulations made by the Board of Inland Revenue.
- (6) Regulations under subsection (5)(c) may include provision having effect in relation to times before they are made.
- (7) This section does not apply if—
- ^{F27}(a)
 - (b) the benefits to which each of [^{F28}at least 20 members of the pension scheme][^{F29}has an actual or prospective entitlement] under the pension scheme are increased at the same rate in consequence of the death.
- [This section does not apply if—
- ^{F30}(7A) (a) the increase mentioned in subsection (1)(a) is an increase in the rate of a dependants' annuity or dependants' scheme pension or in rights representing a [^{F31}dependant's drawdown pension fund], and
- (b) the increase is attributable to rights of the dead member to payments under a dependants' annuity or dependants' scheme pension or rights representing a [^{F32}dependant's drawdown pension fund].
- (7B) References in this section to a benefit to which the member or a person has an entitlement under the pension scheme includes rights to payments under—
- (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or
 - (b) a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme.]
- (8) This section does not apply if the increase in the pension rights of the other member is brought about by an assignment (or agreement to assign) within section 172.

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^{F33}(8A)

[^{F34}(9) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]

Textual Amendments

- F9** Ss. 172A-172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 38, 64(1)**
- F22** S. 172B(2)(aa) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 4(2)**
- F23** Words in s. 172B(2)(b) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 67(2)**
- F24** Words in s. 172B(3)(a) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 4(3)**
- F25** Word in s. 172B(4) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 19 para. 12(3)**
- F26** S. 172B(5)(a) repealed (19.7.2007) (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 19 para. 6, Sch. 27 Pt. 3(1)**
- F27** S. 172B(7)(a) omitted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 4(4)(a)**
- F28** Words in s. 172B(7)(b) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 4(4)(b)**
- F29** Words in s. 172B(7)(b) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 4(3)**
- F30** S. 172B(7A)(7B) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 4(5)**
- F31** Words in s. 172B(7A)(a) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 67(3)(a)**
- F32** Words in s. 172B(7A)(b) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 67(3)(b)**
- F33** S. 172B(8A) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 67(4)**
- F34** S. 172B(9) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 470** (with Sch. 2)

^{F35}**172BA** Increase in rights on death arising from alternatively secured pension fund etc

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Textual Amendments

- F9** Ss. 172A-172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 38, 64(1)**
- F35** S. 172BA omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 68**

172C Allocation of unallocated employer contributions

- (1) This section applies if—
 - (a) contributions are paid under a registered pension scheme by an employer otherwise than in respect of any individual,

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- (b) in any tax year any of the contributions become held for the purposes of the provision of benefits to or in respect of a member of the pension scheme under any relevant arrangement or arrangements (“the allocated contributions”),
 - (c) the amount of the allocated contributions exceeds the permitted maximum, and
 - (d) the member and the employer, or the member and any person connected with the employer at any time during the tax year, are connected persons at any time during the tax year.
- (2) An arrangement is a relevant arrangement if it is—
- (a) a money purchase arrangement that is not a cash balance arrangement, or
 - (b) a hybrid arrangement under which the benefits that may be provided to or in respect of the member are, or include, money purchase benefits other than cash balance benefits.
- (3) “The permitted maximum” is—
- (a) the maximum amount of relief to which the member is entitled under section 188 (relief for contributions) in respect of relievable pension contributions paid during the tax year (see section 190), less
 - (b) the amount of any contributions paid by employers under any registered pension scheme in respect of the member in the tax year.
- (4) But if the member is also a member of one or more other registered pension schemes, the permitted maximum in relation to each of the registered pension schemes of which he is a member is—

$$\frac{PM}{N}$$

where—

PM is the amount arrived at under subsection (3), and

N is the number of registered pension schemes of which he is a member.

- (5) The pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives).
- (6) The amount of the unauthorised payment is the amount by which the amount of the allocated contributions exceeds the permitted maximum.
- [^{F36}(7) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]

Textual Amendments

F9 Ss. 172A-172D inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 38, 64(1)

F36 S. 172C(7) substituted (with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), s. 1034(1), Sch. 1 para. 471 (with Sch. 2)

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172D Limit on increase in benefits

- (1) This section applies where, at any time during any pension input period in respect of a relevant arrangement relating to a member of an occupational pension scheme that is a registered pension scheme, the member and—
 - (a) a sponsoring employer, or
 - (b) a person connected with a sponsoring employer.are connected persons.
- (2) If—
 - (a) the pension input amount for the pension input period in respect of the relevant arrangement, exceeds
 - (b) the notional unconnected person input amount for the pension input period in respect of the relevant arrangement,the pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives) of an amount equal to the excess.
- (3) A relevant arrangement is an arrangement under the pension scheme that is—
 - (a) a defined benefits arrangement,
 - (b) a cash balance arrangement, or
 - (c) a hybrid arrangement under which the benefits that may be provided to or in respect of the member are, or include, defined benefits or cash balance benefits.
- (4) The pension input amount for a pension input period in respect of the relevant arrangement is to be determined in accordance with—
 - (a) sections 230 to 232 if the relevant arrangement is a cash balance arrangement,
 - (b) sections 234 to ^{F37}236A] if it is a defined benefits arrangement, and
 - (c) section 237 if it is a hybrid arrangement,treating references in those sections to the individual as to the member and treating section 237 as if the references to input amount B were omitted.
- (5) The notional unconnected person input amount for the pension input period in respect of the relevant arrangement is what the pension input amount, as so determined, would have been if the member were connected with—
 - (a) a sponsoring employer, or
 - (b) a person connected with a sponsoring employer,at no time during the pension input period.
- ^{F38}(6) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]]

Textual Amendments

- F9** Ss. 172A-172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 38, 64\(1\)](#)
- F37** Word in s. 172D(4)(b) substituted (with effect in accordance with Sch. 17 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 17 para. 2](#)
- F38** S. 172D(6) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 472](#) (with [Sch. 2](#))

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173 Benefits

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to a ^{F39}person who is or has been a] member of the pension scheme if an asset held for the purposes of the pension scheme is used to provide a benefit (other than a payment) to—
 - (a) the ^{F40}person], or
 - (b) a member of the ^{F41}person's] family or household.
- (2) If the benefit is received by reason of an employment which is not an excluded employment, subsection (1) does not apply.
- (3) If the benefit is received by reason of an excluded employment, subsection (1) only applies if—
 - (a) it is a benefit to which Chapter 6 or 10 of the benefits code (cars and vans, and benefits not dealt with elsewhere in benefits code) would apply if the employment were not an excluded employment,
 - (b) the pension scheme is an occupational pension scheme, and
 - (c) the ^{F42}person], or a member of the ^{F43}person's] family or household, is a director of, and has a material interest in, a sponsoring employer.
- (4) A registered pension scheme is to be treated as having made an unauthorised payment in respect of a ^{F44}person who is or has been a] member of the pension scheme if, after the ^{F45}person's] death, an asset held for the purposes of the pension scheme is used to provide a benefit (other than a payment) to a person who, at the date of the ^{F45}person's] death, was a member of the ^{F45}person's] family or household.
- (5) The person who receives the benefit is to be treated as having received the unauthorised payment.
- (6) If the benefit is received by reason of an employment which is not an excluded employment, subsections (4) and (5) do not apply.
- (7) If the benefit is received by reason of an excluded employment, subsections (4) and (5) only apply if—
 - (a) paragraphs (a) and (b) of subsection (3) apply, and
 - (b) at the date of the ^{F46}person's] death the ^{F47}person], or a member of the ^{F46}person's] family or household, was a director of, and had a material interest in, a sponsoring employer.
- ^{F48}(7A) This section does not apply if—
 - (a) the pension scheme is an investment-regulated pension scheme, and
 - (b) the asset consists of taxable property.]
- (8) The amount of an unauthorised payment treated as having been made by this section—
 - (a) in relation to such benefits, and in such circumstances, as may be prescribed by regulations made by the Board of Inland Revenue, is an amount determined in accordance with the regulations, and
 - (b) otherwise, is the amount which would be the cash equivalent of the benefit under the benefits code if the benefit were received by reason of an employment and the benefits code applied to it.
- (9) For the purposes of subsection (8)—

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- (a) references in the benefits code to the employee are to be treated as references to the [F49 person who is or has been a] member, and
 - (b) references in the benefits code to the employer are to be treated as references to the pension scheme.
- (10) In this section—
- “the benefits code” has the meaning given by section 63(1) of ITEPA 2003,
 - “director” has the meaning given by section 67 of that Act,
 - “excluded employment” has the meaning given by section 63(4) of that Act,
 - and
 - “material interest” has the meaning given by section 68 of that Act.
- (11) Section 721 of ITEPA 2003 applies for the purposes of determining the members of a person’s family or household.

Textual Amendments

- F39** Words in s. 173(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(2\)\(a\)](#)
- F40** Word in s. 173(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(2\)\(b\)](#)
- F41** Word in s. 173(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(2\)\(c\)](#)
- F42** Word in s. 173(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(3\)\(a\)](#)
- F43** Word in s. 173(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(3\)\(b\)](#)
- F44** Words in s. 173(4) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(4\)\(a\)](#)
- F45** Word in s. 173(4) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(4\)\(b\)](#)
- F46** Word in s. 173(7)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(5\)\(a\)](#)
- F47** Word in s. 173(7)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(5\)\(b\)](#)
- F48** S. 173(7A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 158(2), [Sch. 21 para. 4](#)
- F49** Words in s. 173(9)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(6\)](#)

Commencement Information

- I2** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

174 Value shifting

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to a [F50 person who is or has been a] member of the pension scheme if, in connection with any of the events mentioned in subsection (3) or a change in the value of a currency—
- (a) the value of an asset held for the purposes of the pension scheme is reduced or a liability of the pension scheme is increased, and

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- (b) the value of an asset held by or for the benefit of the [F51 person] is increased, a liability of the [F51 person] is reduced, or a liability of another person is reduced for the benefit of the [F51 person].
- (2) But if the event or the change in the value of the currency occurs after the [F52 person's] death—
- (a) the pension scheme is to be treated as having made an unauthorised payment in respect of the [F53 person] (rather than to the [F53 person]), and
- (b) the person who holds the asset or is subject to the liability in relation to which subsection (1)(b) is satisfied is to be treated as having received the unauthorised payment.
- (3) The events are—
- (a) the creation, alteration, release or extinction of any power, right, option or liability relating to assets held for the purposes of the pension scheme (whether or not provided for in the terms on which the asset is acquired or held),
- (b) the creation, alteration, release or extinction of any power, right or option relating to a liability of the pension scheme (whether or not provided for in the terms on which the liability is incurred),
- (c) the exercise of, or failure to exercise, any power, right or option in relation to assets held for the purposes of the pension scheme or a liability of the pension scheme, or
- (d) the exercise of, or failure to exercise, any power, right or option which constitutes an asset held for the purposes of the pension scheme,
- in a way which differs from that which might be expected if the parties to the transaction were at arm's length.
- (4) The amount of the unauthorised payment is the amount by which the reduction in value of the asset held for the purposes of the pension scheme, or the increase in the liability of the pension scheme, exceeds that which might be expected if the parties to the transaction were at arm's length.
- (5) Regulations made by the Board of Inland Revenue may make provision as to how the excess is to be calculated in relation to events of a description specified in the regulations (including provision as to the times at which the asset or liability is to be valued).

Textual Amendments

- F50** Words in s. 174(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 9\(2\)\(a\)](#)
- F51** Word in s. 174(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 9\(2\)\(b\)](#)
- F52** Word in s. 174(2) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 9\(3\)\(a\)](#)
- F53** Word in s. 174(2) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 9\(3\)\(b\)](#)

Commencement Information

- I3** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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[^{F54}174A Taxable property held by investment-regulated pension schemes

- (1) An investment-regulated pension scheme is to be treated as making an unauthorised payment to a member of the pension scheme if—
 - (a) the pension scheme acquires an interest in taxable property, and
 - (b) the interest is held by the pension scheme for the purposes of an arrangement under the pension scheme relating to the member.
- (2) An investment-regulated pension scheme is to be treated as making an unauthorised payment to a member of the pension scheme if—
 - (a) an interest in taxable property is held by the pension scheme for the purposes of an arrangement under the pension scheme relating to the member, and
 - (b) the property is improved.
- (3) An investment-regulated pension scheme is to be treated as making an unauthorised payment to a member of the pension scheme if—
 - (a) an interest in property which is not residential property is held by the pension scheme for the purposes of an arrangement under the pension scheme relating to the member, and
 - (b) the property is converted or adapted to become residential property.
- (4) Schedule 29A makes provision supplementing this section; and in that Schedule—
 - (a) Part 1 defines “investment-regulated pension scheme”,
 - (b) Part 2 defines “taxable property” (and “residential property”),
 - (c) Part 3 explains what it means to acquire, and to hold, an interest in taxable property, and
 - (d) Part 4 contains provision for calculating the amounts of unauthorised payments treated as made by this section and explains when the unauthorised payments are treated as made.]

Textual Amendments

F54 S. 174A inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 158(2), [Sch. 21 para. 5](#)

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