



# Finance Act 2004

## 2004 CHAPTER 12

### PART 4

#### PENSION SCHEMES ETC

#### CHAPTER 7

#### COMPLIANCE

#### *Information*

#### **250 Registered pension scheme return**

- (1) The Inland Revenue may, in relation to any tax year, by notice require the scheme administrator of a registered pension scheme—
  - (a) to make and deliver to the Inland Revenue a return containing any information reasonably required by the notice, and
  - (b) to deliver with the return any accounts, statements or other documents relating to information contained in the return which may reasonably be required by the notice.
- (2) The information that may be required to be included in the return is any information relating to—
  - (a) contributions made under the pension scheme,
  - (b) transfers of sums or assets held for the purposes of, or representing accrued rights under, another pension scheme so as to become held for the purposes of, or to represent rights under, the pension scheme,
  - (c) income and gains derived from investments or deposits held for the purposes of the pension scheme,
  - (d) other receipts of the pension scheme,
  - (e) the sums and other assets held for the purposes of the pension scheme,
  - (f) the liabilities of the pension scheme,

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- (g) the provision of benefits by the pension scheme,
  - (h) transfers of sums or assets held for the purposes of, or representing accrued rights under, the pension scheme so as to become held for the purposes of, or to represent rights under, another pension scheme,
  - (i) other expenditure of the pension scheme,
  - (j) the membership of the pension scheme, or
  - (k) any other matter relating to the administration of the pension scheme.
- (3) The information that may be required to be included in the return may be limited to information concerning any particular arrangement or arrangements under the pension scheme.
- (4) The notice must specify the period to be covered by the return.
- (5) The period may be—
- (a) the whole or any specified part of the tax year, or
  - (b) if audited accounts of the pension scheme have been prepared for any period or periods ending in the tax year, the period or periods covered by the accounts.
- (6) “Audited accounts” means accounts audited by a person of a description specified in regulations made by the Board of Inland Revenue.
- (7) A return relating to the whole or part of, or to a period or periods ending in, a tax year must be delivered—
- (a) where the notice requiring the return is given after the 31st October in the next tax year, before the end of the period of three months beginning with the day on which the notice is given, and
  - (b) otherwise, not later than the 31st January in the next tax year (but subject as follows).
- (8) If, in a case within paragraph (b) of subsection (7), the winding-up of the pension scheme has been completed before 31st October in the next tax year, the return must be delivered before the end of the period of three months beginning with the day on which the winding-up is completed.
- (9) But subsection (8) does not apply if the end of that period is before the end of the period of three months beginning with the day on which the notice is given; and in that case the return must be delivered before the end of that period.

## **251 Information: general requirements**

- (1) The Board of Inland Revenue may by regulations make provision requiring persons of a prescribed description—
- (a) to provide to the Inland Revenue, in a form specified by the Board of Inland Revenue, information of a prescribed description relating to any of the matters mentioned in subsection (2), and
  - (b) to preserve for a prescribed period any documents relating to such information.
- (2) Those matters are—
- (a) any matter relating to a registered pension scheme,
  - (b) any matter relating to a pension scheme which has ceased to be a registered pension scheme,

- (c) any matter relating to a pension scheme in relation to which an application for registration has been made,
  - (d) any matter relating to an annuity purchased with sums or assets held for the purposes of a registered pension scheme,
  - (e) the coming into operation of an employer-financed retirement benefits scheme, and
  - (f) the provision of relevant benefits under an employer-financed retirement benefits scheme.
- (3) In subsection (2)—
- “employer-financed retirement benefits scheme”, and
  - “relevant benefits”,
- have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).
- (4) The Board of Inland Revenue may by regulations make provision—
- (a) requiring scheme administrators of registered pension schemes or other persons of a prescribed description to provide information of a prescribed description to persons of such of the descriptions mentioned in subsection (5) as are prescribed, or
  - (b) requiring persons of such of the descriptions specified in subsection (5) as are prescribed to provide information of a prescribed description to the scheme administrators of registered pension schemes.
- (5) Those persons are—
- (a) members of a registered pension scheme,
  - (b) persons who have ceased to be members of a registered pension scheme,
  - (c) persons to whom benefits under a registered pension scheme are being, or have been, provided,
  - (d) the personal representatives of any person within paragraphs (a) to (c), and
  - (e) insurance companies who pay annuities purchased with sums or assets held for the purposes of registered pension schemes.
- (6) “Prescribed”, in relation to regulations, means prescribed by the regulations.

## **252 Notices requiring documents or particulars**

- (1) The Inland Revenue may by notice require any person of a description prescribed by regulations made by the Board of Inland Revenue—
- (a) to produce to the Inland Revenue, or to make available for inspection by the Inland Revenue, any documents within the person’s possession or power relating to any of the matters mentioned in subsection (3) which the Inland Revenue may reasonably require, and
  - (b) to provide to the Inland Revenue any particulars relating to any of those matters which the Inland Revenue may reasonably require.
- (2) The Inland Revenue may by notice require any other person to produce to the Inland Revenue, or to make available for inspection by the Inland Revenue, any documents within the person’s possession or power which—
- (a) relate to any of the matters mentioned in subsection (3), and

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- (b) were created not more than six years before the day on which the notice is given,  
and which the Inland Revenue may reasonably require.
- (3) The matters referred to in subsections (1) and (2) are—
- (a) any matter relating to a registered pension scheme,
  - (b) any matter relating to a pension scheme which has ceased to be a registered pension scheme,
  - (c) any matter relating to a pension scheme in relation to which an application for registration has been made,
  - (d) any matter relating to an annuity purchased with sums or assets held for the purposes of a registered pension scheme,
  - (e) the coming into operation of an employer-financed retirement benefits scheme, and
  - (f) the provision of relevant benefits under an employer-financed retirement benefits scheme.
- (4) In subsection (3)—  
“employer-financed retirement benefits scheme”, and  
“relevant benefits”,  
have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).
- (5) A notice under this section must specify the period within which it is to be complied with; and that period may not end earlier than the period of 30 days beginning with the day on which the notice is given.
- (6) A notice under subsection (2) must specify the pension scheme or employer-financed retirement benefits scheme to which it relates.
- (7) The Inland Revenue must notify the scheme administrator of the pension scheme, or the responsible person in relation to the employer-financed retirement benefits scheme, to which such a notice relates that the notice has been given no later than the end of the period of 30 days beginning with the day on which it is given.
- (8) In subsection (7) “responsible person” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 399A of that Act).
- (9) A person may comply with a notice under this section requiring the production of a document by producing a copy of the document.
- (10) But where a person produces a copy of a document in compliance with a notice under this section the Inland Revenue may by notice require the production of the original for inspection within a period specified in the notice; and that period may not end earlier than the period of 30 days beginning with the day on which the notice is given.
- (11) The Inland Revenue may take copies of, or make extracts from, any document produced in compliance with a notice under this section.
- (12) A notice under this section does not require a person—
- (a) to produce or make available for inspection any document, or
  - (b) to provide any particulars,
- relating to any pending appeal by the person relating to tax.

### **253 Appeal against notices**

- (1) The person to whom a notice under section 252(1) or (2) (notices requiring documents or particulars) is given may appeal against any requirement imposed by the notice.
- (2) The appeal must be brought within the period of 30 days beginning with the date on which the notice is given.
- (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 requirement imposed by a notice must be brought within the period of 30 days beginning with the day on which the notice was given.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the production of the document, or provision of the particulars, to which the appeal relates was reasonably required by the Inland Revenue.
- (7) If they decide that it was, they must confirm the notice so far as relating to that requirement.
- (8) If they decide that it was not, they must set aside the notice so far as relating to that requirement.
- (9) If the notice is confirmed it has effect in relation to the requirement to which the appeal relates as if it specified as the period within which it must be complied with the period of 30 days beginning with the day on which the appeal was determined.
- (10) The determination of the Commissioners is final and conclusive.

### *Accounting and assessment*

### **254 Accounting for tax by scheme administrators**

- (1) A scheme administrator of a registered pension scheme must make returns to the Inland Revenue of the income tax to which the scheme administrator is liable under this Part.
- (2) A return is to be made for each period of three months ending with 31st March, 30th June, 30th September or 31st December if tax has been charged on the scheme administrator by virtue of this Part in that period.
- (3) A return for any period must be made before the end of the period of 45 days beginning with the day immediately following the end of that period.
- (4) A return must—
  - (a) show the income tax to which the scheme administrator is liable, and
  - (b) include such particulars of the events or other circumstances giving rise to the liability (including particulars as to the persons to whom the events or

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other circumstances relate) as are required to be included in returns under this section by regulations made by the Board of Inland Revenue.

- (5) The income tax required to be shown in a return is due at the time by which the return is to be made and is payable without the making of an assessment.
- (6) The Board of Inland Revenue may by regulations make provision for and in connection with—
  - (a) the charging of interest on tax due under this section which is not paid on or before the due date,
  - (b) the making of amended returns by scheme administrators in the event of error in a return under this section,
  - (c) the making of assessments, repayments or adjustments in cases where the correct tax due under this section has not been paid on or before the due date, and
  - (d) otherwise for supplementing this section.
- (7) The regulations may, in particular—
  - (a) modify the operation of any provision of the Tax Acts, or
  - (b) provide for the application of any provision of the Tax Acts (with or without modifications).
- (8) References in this section to the income tax to which a scheme administrator is liable under this Part do not include any to which the scheme administrator is liable under section 239 (scheme sanction charge).
- (9) Where the registration of a registered pension scheme has been withdrawn, this section has effect as if references to the scheme administrator were to the person who was, or each of the persons who were, the scheme administrator immediately before the registration was withdrawn.

## **255 Assessments under this Part**

- (1) The Board of Inland Revenue may by regulations make provision for and in connection with the making of assessments in respect of—
  - (a) the unauthorised payments charge,
  - (b) the unauthorised payments surcharge,
  - (c) liability to the lifetime allowance charge under section 217(2) (person to whom lump sum death benefit paid),
  - (d) the scheme sanction charge,
  - (e) liability under section 272 (trustees etc. liable as scheme administrator),
  - (f) liability under section 273 (member liable as scheme administrator), and
  - (g) liability under section 394 of ITEPA 2003 (benefit under employer-financed retirement benefits scheme: charge on responsible person).
- (2) The provision that may be made by the regulations includes (in particular) provision for the charging of interest on tax due under such assessments which remains unpaid.
- (3) The regulations may, in particular—
  - (a) modify the operation of any provision of the Tax Acts, or
  - (b) provide for the application of any provision of the Tax Acts (with or without modification).

### *Registration regulations*

#### **256 Enhanced lifetime allowance regulations**

- (1) This section applies to regulations made by the Board of Inland Revenue under—
  - (a) section 220(5) (lifetime allowance enhancement: registration of pension credits),
  - (b) section 221(6) (lifetime allowance enhancement: individuals who are not always relevant UK individuals),
  - (c) section 224(9) (lifetime allowance enhancement: transfers from recognised overseas pension scheme),
  - (d) paragraph 7(1)(b) of Schedule 36 (lifetime allowance enhancement: primary protection),
  - (e) paragraph 12(1) of that Schedule (lifetime allowance: enhanced protection), and
  - (f) paragraph 18(6) of that Schedule (lifetime allowance enhancement: pre-commencement pension credits).
- (2) The regulations to which this section applies are referred to in this Part as “enhanced lifetime allowance regulations”.
- (3) Enhanced lifetime allowance regulations may include any provision that appears appropriate for securing that the correct tax is charged—
  - (a) by way of the lifetime allowance charge in respect of amounts crystallised by benefit crystallisation events, and
  - (b) in respect of the payment of lump sums by registered pension schemes.
- (4) Enhanced lifetime allowance regulations may, for that purpose, in particular contain provision—
  - (a) requiring any person to produce or make available documents, produce certificates or provide information, and
  - (b) for the review from time to time of any matter registered in accordance with the regulations.

### *Penalties*

#### **257 Registered pension scheme return**

- (1) If the scheme administrator of a registered pension scheme fails to comply with a notice under section 250 (registered pension scheme return), the scheme administrator is liable to a penalty of £100.
- (2) If the failure continues after a penalty is imposed under subsection (1), the scheme administrator is liable to a further penalty not exceeding £60 for each day on which the failure continues after the day on which that penalty was imposed (but excluding any day for which a penalty under this subsection has already been imposed).
- (3) No penalty may be imposed under subsection (1) or (2) in respect of a failure after it has been remedied.
- (4) If the scheme administrator of a registered pension scheme fraudulently or negligently—

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- (a) makes an incorrect return required by a notice under section 250, or
  - (b) delivers any incorrect accounts, statements or other documents with such a return,
- the scheme administrator is liable to a penalty not exceeding £3,000.

### **258 Information required by regulations**

- (1) In section 98 of TMA 1970 (penalties for failure to provide information and providing false information), in the second column of the Table, insert at the appropriate place—  
“regulations under section 251(1)(a) or (4) of the Finance Act 2004;”.
- (2) A person who fails to comply with regulations under section 251(1)(b) (preservation of documents) is liable to a penalty not exceeding £3,000.

### **259 Documents and particulars required by notice**

- (1) A person who fails to comply with a notice under section 252 (notice requiring documents or particulars) is liable to a penalty not exceeding £300.
- (2) If the failure continues after a penalty is imposed under subsection (1), the person is liable to a further penalty not exceeding £60 for each day on which the failure continues after the day on which that penalty was imposed (but excluding any day for which a penalty under this subsection has already been imposed).
- (3) No penalty may be imposed under subsection (1) or (2) in respect of a failure after it has been remedied.
- (4) If a person fraudulently or negligently—
  - (a) produces or makes available for inspection any incorrect documents, or
  - (b) provides any incorrect particulars,
in response to a notice under section 252, the person is liable to a penalty not exceeding £3,000.

### **260 Accounting return**

- (1) If the scheme administrator of a registered pension scheme fails to make a return for a quarter in accordance with section 254 (return of tax charged), the scheme administrator is liable—
  - (a) to a penalty or penalties of the relevant quarterly amount for each quarter (or part of a quarter) for which the failure continues, excluding any quarter after the fourth or for which a penalty under this paragraph has already been imposed, and
  - (b) if the failure continues beyond the fourth quarter (whether or not any penalty under paragraph (a) is imposed), to a penalty not exceeding the amount of income tax to which the scheme administrator is liable (otherwise than under section 239: scheme sanction charge) for the quarter for which the return is not made.
- (2) In subsection (1)—  
“quarter” means a period of three months ending with 31st March, 30th June, 30th September or 31st December, and



- “the relevant quarterly amount”—
- (a) if the number of persons in respect of whom particulars should be included in the return by virtue of section 254(4)(b) is ten or less, is £100, and
  - (b) if that number is greater than ten, is £100 for each ten such persons and an additional £100 where that number is not a multiple of ten.
- (3) The Treasury may from time to time by order amend the amounts specified in the definition of “the relevant quarterly amount” in subsection (2).
- (4) No penalty under subsection (1)(b) may be imposed unless—
- (a) the amount of income tax to which the scheme administrator is liable (otherwise than under section 239) for the quarter concerned has been determined by the Inland Revenue, and
  - (b) the scheme administrator has been notified of that amount.
- (5) In section 100(6)(a) of TMA 1970 (excessive penalty), after “1998” insert “or section 260(1)(b) of the Finance Act 2004”.
- (6) If the scheme administrator of a registered pension scheme fraudulently or negligently makes an incorrect return under section 254, the scheme administrator is liable to a penalty not exceeding the difference between—
- (a) the amount of the tax shown in the return, and
  - (b) the amount of the tax which should have been shown in the return,
- or, if no tax is shown in the return, the amount of the tax which should have been shown in the return.
- (7) Where the registration of a registered pension scheme has been withdrawn, this section has effect as if references to the scheme administrator were to the person who was or the persons who were the scheme administrator immediately before the registration was withdrawn.

## **261 Enhanced lifetime allowance regulations: documents and information**

- (1) This section applies where an individual fraudulently or negligently—
- (a) produces or makes available an incorrect document, or produces an incorrect certificate, in connection with any matter registered in accordance with enhanced lifetime allowance regulations, or
  - (b) provides false information in connection with any such matter,
- and the condition in subsection (2) is met.
- (2) The condition is that—
- (a) the amount of the individual’s lifetime allowance at the time which is relevant for the purposes of this paragraph, or
  - (b) the amount of the pension commencement lump sums to which the individual may be entitled at the time which is relevant for the purposes of this paragraph,
- would be greater than it actually is were the document or certificate correct or the information true.
- (3) The individual is liable to a penalty not exceeding 25% of the relevant excess.
- (4) In a case within paragraph (a) of subsection (2), the relevant excess is the difference between what would be the amount of the individual’s lifetime allowance at the time

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which is relevant for the purposes of that paragraph (were the document or certificate correct or the information true) and whichever is the higher of—

- (a) the actual amount of the individual's lifetime allowance at that time, and
- (b) the standard lifetime allowance at that time.

(5) The time which is relevant for the purposes of paragraph (a) of subsection (2)—

- (a) where a benefit crystallisation event has occurred in relation to the individual since the document was produced or made available, the certificate produced or the information provided (but before a penalty under this section is imposed), is the time when the benefit crystallisation event occurred, and
- (b) otherwise, is the time when the document was produced or made available, the certificate produced or the information provided.

(6) In a case within paragraph (b) of subsection (2), the relevant excess is the difference between—

- (a) what would be the amount of the pension commencement lump sums to which the individual may be entitled at the time which is relevant for the purposes of that paragraph (were the document or certificate correct or the information true), and
- (b) the actual amount at that time of the pension commencement lump sums to which the individual may be entitled.

(7) The time which is relevant for the purposes of paragraph (b) of subsection (2) is the time when the document was produced or made available, the certificate produced or the information provided.

## **262 Enhanced lifetime allowance regulations: failures to comply**

An individual who fails—

- (a) to produce or make available any document required to be produced by enhanced lifetime allowance regulations,
- (b) to produce any certificate required to be produced by enhanced lifetime allowance regulations, or
- (c) to provide any information required to be provided by enhanced lifetime allowance regulations,

is liable to a penalty not exceeding £3,000.

## **263 Lifetime allowance enhanced protection: benefit accrual**

(1) This section applies where—

- (a) paragraph 12 of Schedule 36 (lifetime allowance charge: enhanced protection) applies in relation to an individual, and
- (b) relevant benefit accrual occurs in relation to the individual (as to which see paragraph 13 of that Schedule).

(2) If the individual fails to notify the Inland Revenue of the relevant benefit accrual within the period of 90 days beginning with the day on which it occurs, the individual is liable to a penalty not exceeding £3,000.

## **264 False statements etc**

- (1) A person who fraudulently or negligently makes a false statement or representation is liable to a penalty not exceeding £3,000 if, in consequence of the statement or representation—
  - (a) that person or any other person obtains relief from, or repayment of, tax chargeable under this Part, or
  - (b) a registered pension scheme makes a payment which is an unauthorised payment.
- (2) A person who assists in or induces the preparation of any document which the person knows—
  - (a) is incorrect, and
  - (b) will, or is likely to, cause a registered pension scheme to make an unauthorised payment,is liable to a penalty not exceeding £3,000.

## **265 Winding-up to facilitate payment of lump sums**

- (1) This section applies where the winding-up of a registered pension scheme has begun and the Inland Revenue considers the pension scheme is being wound up wholly or mainly for the purpose specified in subsection (2).
- (2) That purpose is facilitating the payment of winding-up lump sums or winding-up lump sum death benefits (or both) under the pension scheme.
- (3) The scheme administrator is liable to a penalty not exceeding the relevant amount.
- (4) The relevant amount is £3,000 in respect of—
  - (a) each member to whom a winding-up lump sum is paid under the pension scheme, and
  - (b) each member in respect of whom a winding-up lump sum death benefit is paid under the pension scheme.

## **266 Transfers to insured schemes**

- (1) This section applies where sums held for the purposes of, or representing accrued rights under, a registered pension scheme (“the transferor scheme”) are transferred so as to become held for the purposes of, or to represent rights under, a registered pension scheme that is an insured scheme (“the transferee scheme”).
- (2) The scheme administrator of the transferor scheme is liable to a penalty not exceeding £3,000 unless the sums are transferred either to the scheme administrator of the transferee scheme or to a relevant insurance company.
- (3) In this section—
  - “insured scheme” means a pension scheme all the income and other assets of which are invested in policies of insurance, and
  - “relevant insurance company” means an insurance company that issued any of the policies of insurance.

*Discharge of tax liability: good faith*

**267 Lifetime allowance charge**

- (1) This section applies where the scheme administrator of a registered pension scheme is liable to the lifetime allowance charge in respect of a benefit crystallisation event.
- (2) The scheme administrator may apply to the Inland Revenue for the discharge of the scheme administrator's liability to the lifetime allowance charge in respect of the benefit crystallisation event on the ground mentioned in subsection (3).
- (3) The ground is that—
  - (a) the scheme administrator reasonably believed that there was no liability to the lifetime allowance charge in respect of the benefit crystallisation event, and
  - (b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the lifetime allowance charge in respect of the benefit crystallisation event.
- (4) On receiving an application under subsection (2), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the lifetime allowance charge in respect of the benefit crystallisation event.
- (5) The scheme administrator may apply to the Inland Revenue for the discharge of part of the scheme administrator's liability to the lifetime allowance charge in respect of the benefit crystallisation event on the ground mentioned in subsection (6).
- (6) The ground is that—
  - (a) the scheme administrator reasonably believed that the amount of the lifetime allowance charge in respect of the benefit crystallisation event was less than the actual amount, and
  - (b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to an amount ("the excess amount") equal to the difference between the amount which the scheme administrator believed to be the amount of the charge and the actual amount.
- (7) On receiving an application under subsection (5), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the lifetime allowance charge in respect of the excess amount (or part of the excess amount).
- (8) The discharge of the scheme administrator's liability to the lifetime allowance charge (or to the excess amount or part of the excess amount) does not affect the liability of any other person to the lifetime allowance charge.
- (9) The Inland Revenue must notify the scheme administrator of the decision on an application under this section.
- (10) Regulations made by the Board of Inland Revenue may make provision supplementing this section; and the regulations may in particular make provision as to the time limits for the making of an application.

**268 Unauthorised payments surcharge and scheme sanction charge**

- (1) This section applies where—
  - (a) a person is liable to the unauthorised payments surcharge in respect of an unauthorised payment, or

- (b) the scheme administrator of a registered pension scheme is liable to the scheme sanction charge in respect of a scheme chargeable payment.
- (2) The person liable to the unauthorised payments surcharge may apply to the Inland Revenue for the discharge of the person's liability to the unauthorised payments surcharge in respect of the unauthorised payment on the ground mentioned in subsection (3).
- (3) The ground is that in all the circumstances of the case, it would not be just and reasonable for the person to be liable to the unauthorised payments surcharge in respect of the payment.
- (4) On receiving an application by a person under subsection (2) the Inland Revenue must decide whether to discharge the person's liability to the unauthorised payments surcharge in respect of the payment.
- (5) The scheme administrator may apply to the Inland Revenue for the discharge of the scheme administrator's liability to the scheme sanction charge in respect of a scheme chargeable payment on the ground mentioned in subsection (6) or (7).
- (6) In the case of a scheme chargeable payment which is treated as being an unauthorised member payment by section 172 (assignment), the ground is that, in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the scheme sanction charge.
- (7) In any other case, the ground is that—
  - (a) the scheme administrator reasonably believed that the unauthorised payment was not a scheme chargeable payment, and
  - (b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the scheme sanction charge in respect of the unauthorised payment.
- (8) On receiving an application under subsection (5), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the scheme sanction charge in respect of the unauthorised payment.
- (9) The Inland Revenue must notify the applicant of the decision on an application under this section.
- (10) Regulations made by the Board of Inland Revenue may make provision supplementing this section; and the regulations may in particular make provision as to the time limits for the making of an application.

## **269 Appeal against decision on discharge of liability**

- (1) This section applies where the Inland Revenue—
  - (a) decides to refuse an application under section 267(2) (discharge of liability to lifetime allowance charge) or section 268 (discharge of liability to unauthorised payments surcharge or scheme sanction charge), or
  - (b) on an application under section 267(5), decides to refuse the application or to discharge the applicant's liability to the lifetime allowance charge in respect of part only of the excess amount.
- (2) The applicant may appeal against the decision.

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- (3) The appeal is to the General Commissioners, except that the person 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 applicant was given notification of the decision.
- (6) The Commissioners before whom an appeal under subsection (1)(a) is brought must consider whether the applicant's liability to the lifetime allowance charge, unauthorised payments surcharge or scheme sanction charge ought to have been discharged.
- (7) If they consider that the applicant's liability ought not to have been discharged, they must dismiss the appeal.
- (8) If they consider that the applicant's liability ought to have been discharged, they must grant the application.
- (9) The Commissioners before whom an appeal under subsection (1)(b) is brought must consider whether the applicant's liability to the lifetime allowance charge ought to have been discharged in respect of the excess amount or a greater part of the excess amount.
- (10) If they consider that the applicant's liability ought not to have been discharged in respect of the excess amount or a greater part of the excess amount, they must dismiss the appeal.
- (11) If they consider that the applicant's liability ought to have been discharged in respect of the excess amount or a greater part of the excess amount, they must discharge the applicant's liability in respect of the excess amount or that part of the excess amount.

*Scheme administrator*

**270 Meaning of “scheme administrator”**

- (1) References in this Part to the scheme administrator, in relation to a pension scheme, are to the person who is, or persons who are, appointed in accordance with the rules of the pension scheme to be responsible for the discharge of the functions conferred or imposed on the scheme administrator of the pension scheme by and under this Part.
- (2) But a person cannot be the person who is, or one of the persons who are, the scheme administrator of a pension scheme unless the person—
  - (a) is resident in the United Kingdom or another state which is a member State or a non-member EEA State, and
  - (b) has made the required declaration to the Inland Revenue.
- (3) “The required declaration” is a declaration that the person—

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- (a) understands that the person will be responsible for discharging the functions conferred or imposed on the scheme administrator of the pension scheme by and under this Part, and
  - (b) intends to discharge those functions at all times, whether resident in the United Kingdom or another state which is a member State or a non-member EEA State.
- (4) “Non-member EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as adjusted by the Protocol signed at Brussels on 17th March 1993) but which is not a member State.

## **271 Liability of scheme administrator**

- (1) Any liability of a person who is, or of any of the persons who are, the scheme administrator of a registered pension scheme ceases to be a liability of that person on the person ceasing to be, or to be one of the persons who is, the scheme administrator of the pension scheme.

This subsection does not apply to a liability to pay a penalty and is subject to subsection (4).

- (2) Where a person becomes, or becomes one of the persons who is, the scheme administrator of a registered pension scheme, the person assumes any existing liabilities of the scheme administrator of the pension scheme, other than any liability to pay a penalty.
- (3) Subsection (4) applies where, on the person who is or the persons who are the scheme administrator of a registered pension scheme ceasing to be the scheme administrator, there is no scheme administrator of the pension scheme.
- (4) Any liability of the person or persons as scheme administrator remains a liability of that person or those persons as if still the scheme administrator (unless dead or having ceased to exist) until another person becomes, or other persons become, the scheme administrator of the pension scheme.
- (5) But a person who retains, or persons who retain, any liability by virtue of subsection (4) may apply to the Inland Revenue to be released from the liability.
- (6) On receipt of the application the Inland Revenue must decide whether or not to release the applicant or applicants from the liability and must notify the applicant, or each of the applicants, of the decision.
- (7) If the decision is not to release the applicant or applicants from the liability the applicant or applicants may appeal against the decision.
- (8) The appeal is to the General Commissioners, except that the applicant or applicants may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (9) The appeal must be brought within the period of 30 days beginning with the day on which the applicant was notified of the decision.
- (10) 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.

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- (11) The Commissioners before whom an appeal under this section is brought must consider whether the applicant or applicants ought to have been released from the liability.
- (12) If they decide that the applicant or applicants ought not to have been released from the liability, they must dismiss the appeal.
- (13) If they decide that the applicant or applicants ought to have been released from the liability, the applicant is, or applicants are, to be treated as having been released from the liability (but subject to any further appeal or any determination on, or in consequence of, a case stated).

## **272 Trustees etc. liable as scheme administrator**

- (1) This section applies in relation to a registered pension scheme if—
  - (a) there is no scheme administrator of the pension scheme and no-one who remains subject to the liabilities of the scheme administrator by virtue of section 271(4) (continuation of liability where no scheme administrator),
  - (b) the person who is, or all the persons who are, the scheme administrator of the pension scheme or remain so subject cannot be traced, or
  - (c) the person who is, or all the persons who are, the scheme administrator of the pension scheme or remain so subject are in serious default.
- (2) Any person who assumes liability by reason of this section applying in relation to the pension scheme—
  - (a) is liable to pay any tax (and any interest on tax) due from the scheme administrator of the pension scheme by virtue of this Part, and
  - (b) is responsible for the discharge of all other obligations imposed on the scheme administrator of the pension scheme by or under this Part.
- (3) In subsection (2)—
  - (a) the references in paragraph (a) to tax, and interest on tax, include any that has become due before this section applied in relation to the pension scheme and remains unpaid, and
  - (b) the reference in paragraph (b) to obligations includes any that have become due before this section applied in relation to the pension scheme and remain unsatisfied, other than any liability to pay a penalty which has become due before this section so applied.
- (4) The following heads specify the persons who assume liability by reason of this section applying in relation to the pension scheme; but if—
  - (a) a person assumes, or persons assume, liability by virtue of being specified under one head, and
  - (b) that person, or any of those persons, can be traced and is not in default,
 no-one assumes liability by virtue of being specified under a later head.

### *Head 1*

If there are one or more trustees of the pension scheme who are resident in the United Kingdom, that trustee or each of those trustees.

### *Head 2*

If there are one or more persons who control the management of the pension scheme, that person or each of those persons.



*Head 3*

If alive or still in existence, the person, or any of the persons, who established the pension scheme and any person by whom that person, or any of those persons, has been directly or indirectly succeeded in relation to the provision of benefits under the pension scheme.

*Head 4*

If the pension scheme is an occupational pension scheme, any sponsoring employer.

*Head 5*

If there are one or more trustees of the pension scheme who are not resident in the United Kingdom, that trustee or each of those trustees.

- (5) Where a person assumes liability by reason of this section applying in relation to the pension scheme, the Inland Revenue must, as soon as is reasonably practicable, notify the person of that fact; but failure to do so does not affect the person's liability.
- (6) For the purposes of this section a person is in default if the person—
- (a) has failed to pay all or any of the tax (or interest on tax) due from the person by virtue of this Part, or
  - (b) has failed to discharge any other obligation imposed on the person by or under this Part,

and a person in default is in serious default if the Inland Revenue considers the failure to be of a serious nature.

**273 Members liable as scheme administrator**

- (1) This section applies in relation to a registered pension scheme if—
- (a) a person has, or persons have, assumed liability by reason of section 272 (trustees etc.) applying in relation to the pension scheme,
  - (b) the person has, or the persons have, become liable to pay tax (or interest on tax) which became due by virtue of section 239 (scheme sanction charge) or section 242 (de-registration charge) before section 272 applied in relation to the pension scheme,
  - (c) that person, or each of those persons, has failed (in whole or in part) to satisfy the liability, and
  - (d) that person, or each of those persons, has either died or ceased to exist or is a person in whose case the Inland Revenue considers the person's failure to satisfy the liability to be of a serious nature.
- (2) Any person who was a member of the pension scheme at any time during the relevant three-year period is liable to pay the appropriate share of the unpaid amount if—
- (a) any of the conditions in subsection (5) is met, and
  - (b) the Inland Revenue notifies the person of the person's liability to do so.
- (3) "The relevant three-year period" is the period of three years ending with the date on which the liability to pay the tax arose.
- (4) The "appropriate share of the unpaid amount", in the case of a person, is—

$$\frac{AAP}{AA} \times UT$$

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where—

AA is an amount equal to 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 liability to pay the tax arose,

AAP is an amount equal to so much of AA as is held for the purposes of such of the arrangements under the pension scheme as relate to the person or a person connected with the person, and

UT is so much of the tax (and any interest on it) as remains unpaid.

- (5) The conditions referred to in subsection (2)(a) are—
- (a) that the pension scheme was established by a person or body specified in section 154(1)(a) to (g) (insurance companies etc.) and was not an occupational pension scheme,
  - (b) that at any time during the relevant three-year period the pension scheme received a transfer value in which there were represented relevant personal pension contributions made by or in respect of the person,
  - (c) that the pension scheme was an occupational pension scheme and at any time during the relevant three-year period the person was a controlling director of a company that was a sponsoring employer, and
  - (d) that at any time during the relevant three-year period the pension scheme received a transfer value in which there were represented relevant controlling director contributions made by or in respect of the person.
- (6) A notification under subsection (2)(b) may be included in an assessment in respect of a liability under this section; and such an assessment made in relation to an amount is not out of time if made within the period of three years beginning with the date on which the person assessed first became liable to pay the amount.
- (7) “Relevant personal pension contributions” means contributions under a pension scheme (whether or not the pension scheme from which the transfer value was received) which was established by a person or body specified in section 154(1)(a) to (g) and was not an occupational pension scheme.
- (8) “Relevant controlling director contributions” means contributions under an occupational pension scheme (whether or not the pension scheme from which the transfer value was received) made by reference to service (or remuneration in respect of service) as a controlling director of a company that was a sponsoring employer.
- (9) A person is a “controlling director” of a company if the person is a director of the company and is within section 417(5)(b) of ICTA (director able to control 20% of ordinary share capital) in relation to the company.
- (10) References to receipt of a transfer value by the pension scheme are to the transfer, so as to become held for the purposes of or to represent rights under the pension scheme, of any sums or assets held for the purposes of or representing accrued rights under any other pension scheme.
- (11) Section 839 of ICTA (connected persons) applies for the purposes of this section.

## **274 Supplementary**

- (1) The fact that any person is liable to pay any tax or interest, or is responsible for the discharge of any other obligation, under section 272 (trustees etc.) or section 273

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(members) does not relieve any other person of any liability to pay the tax or interest, or any obligation to discharge the obligation, arising—

- (a) by reason of that other person being, or being one of the persons who is, the scheme administrator of the pension scheme, or
- (b) under section 271(4) (continuation of liability where no scheme administrator).

(2) Where a liability imposed on the scheme administrator of a registered pension scheme falls to be satisfied by two or more persons (whether or not they constitute the scheme administrator), they are jointly and severally liable.

(3) No liability to pay tax or interest, or other obligation, of any person in relation to a registered pension scheme arising—

- (a) by reason of the person being, or being one of the persons who is, the scheme administrator of the pension scheme concerned, or
- (b) under section 271(4), 272 or 273,

is affected by the termination of the pension scheme or by its ceasing to be a registered pension scheme.