These notes refer to the Finance Act 2014 (c.26) which received Royal Assent on 17 July 2014

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 46 and Schedule 7: Pension Schemes

Summary

1. This section and Schedule amend Finance Act 2004 (FA2004) to tackle the growing threat of pension liberation and preserve pension savings. Pension liberation describes schemes encouraging individuals to access their pension savings earlier than permitted by Parliament. The changes are intended to make it harder for liberation schemes to register for tax relief and ensure that tax charges and penalties applying where liberation occurs are fair.

Details of the Schedule

2. Paragraph 1 introduces the amendments made by the Schedule.

Registration of pension schemes

3. Paragraph 2 amends section 153 of FA2004, relating to new applications for registration of pension schemes.

4. Subparagraph 2(2) provides that HMRC has time to consider new registration applications and does not have to make a decision immediately on receipt of the application.

5. Subparagraph 2(3) amends section 153(5) to prescribe more circumstances in which HMRC may refuse to register a pension scheme. These amendments allow HMRC to refuse to register a pension scheme where it appears to HMRC that the main purpose of the scheme is not to provide pension benefits or the scheme administrator is not a fit and proper person to be the scheme administrator. The amendments also extend the existing provisions relating to the failure to provide information or the provision of inaccurate information to include documents provided in connection with the application as well as where the scheme administrator has deliberately obstructed an HMRC official in connection with an inspection of documents on the business premises of the scheme administrator, where the inspection was approved by the tribunal.

6. Subparagraph 2(4) inserts new subsections (5A), (5B) and (5C) into section 153. New subsections (5A) and (5B) define the scope of the information and documents covered by section 153(5) as amended by subparagraph 2(3). New subsection (5C) expands on the reference to a failure to comply with an information notice in section 153(5).

7. Paragraph 3 inserts new sections 153A to 153F into FA 2004. These provide new powers for HMRC to request additional information and documents and a new inspection power, including a power to enter business premises for the inspection, in connection with an application to register a pension scheme. It also includes a mechanism for appeals and penalties for failure to comply with a notice or the production of inaccurate information or documents.

8. New section 153A provides that HMRC may send an information notice to the scheme administrator of a pension scheme, or a third party, where an application to register a scheme is made. The information notice can request any information or document that is reasonably required by HMRC to make a decision on whether to register the scheme or not. New subsection 153A(3) applies specified paragraphs of Schedule 36 to Finance Act 2008 (FA2008) to information notices under new section 153A. Schedule 36 to FA 2008 prescribes HMRC's general powers to obtain and inspect information and documents. New subsection 153A(4) requires that where the notice is sent to a person other than the scheme administrator, it must be copied to the scheme administrator. New subsections 153A(5) and (6) deal with appeals where the notice is sent to a person other than the scheme administrator and apply paragraph 32 of Schedule 36 FA2008 (appeals against information notices) to any appeal under section 153A. Where the notice is sent to the scheme administrator, there are no penalties as failure to comply with that notice may lead to HMRC refusing to register the pension scheme under section 153. The scheme administrator may appeal under section 156 of FA2004 against a decision not to register a pension scheme.

9. New subsections 153B(1) to (4) provide that HMRC may enter the business premises of the scheme administrator or another person to inspect documents, in connection with the application to register a pension scheme. New subsection 153B(3) defines business premises for the purposes of this section. New subsection 153B(4) applies paragraphs 10(2), 12, 15 and 16 of Schedule 36 FA2008 (power of inspection) for the purposes of this section.

10. New subsection 153B(5) provides that HMRC can not inspect a document that could not be requested under an information notice under Schedule 36 FA2008. New subsections (6) and (7) allow HMRC to ask the tribunal to approve the inspection and specify that where this occurs, paragraphs 13(1A), (2) and (3) of Schedule 36 FA2008 apply.

11. New section 153C imposes penalties if a person other than the scheme administrator, fails to comply with an information notice under new section 153A, or deliberately obstructs an officer of HMRC carrying out an inspection under new section 153B that has been approved by the tribunal. New subsection 153C(3) applies the penalty provisions in paragraphs 39(2), 40 and 44 to 49 of Schedule 36 FA2008 (penalties for failure to comply or obstruction). Where penalties apply, a person is liable to a penalty of £300, and daily penalties of up to £60 per day, if the failure to comply continues after the initial penalty is imposed.

12. New section 153D imposes penalties if an application to register a pension scheme contains a material inaccuracy and the scheme administrator either did not take reasonable care, or where the scheme administrator is aware of the inaccuracy but does not inform HMRC. In these circumstances the scheme administrator is liable to a penalty of up to £3,000 for each inaccuracy. New subsection 153D(8) applies the assessment, appeal and enforcement provisions in paragraphs 46 to 49 of Schedule 36 FA2008 .

13. New section 153E imposes penalties if the information or documents provided under an information notice under new section 153A contain a material inaccuracy the person either did not take reasonable care, or where the person is aware of the inaccuracy but does not inform HMRC. New subsection 153E(2) imposes a penalty of up to £3,000 for each inaccuracy and applies the assessment, appeal and enforcement provisions in paragraphs 46 to 49 of Schedule 36 FA2008.

14. New section 153F imposes penalties if a declaration accompanying an application to register a pension scheme is false and the person completing the declaration either did not take reasonable care, or where they were aware of the inaccuracy but did not inform HMRC. The penalty is up to £3,000 for each falsehood. New subsection 153F(4) applies the assessment, appeal and enforcement provisions in paragraphs 46 to 49 of Schedule 36 FA2008.

15. Paragraph 4 inserts new section 156A into FA2004. This provides that if HMRC have not made a decision on whether or not to register a pension scheme within a period of 6 months of the application being received by HMRC, the scheme administrator may appeal to the tribunal as if a decision had been taken by HMRC not to register the scheme at the end of that period. Where the tribunal decides the pension scheme should have been registered, it will also provide the date from which it will be treated as being registered.

16. Paragraph 5 provides that the amendments made by paragraphs 2 to 4, have effect in relation to all applications to register a pension scheme received by HMRC on or after 20 March 2014 (the day after Budget Day). However where the application is made before 1 September 2014, HMRC can not refuse to register the pension scheme under section 153(5)(g), as inserted by subparagraph 2(3), that is, on the basis that it appears to HMRC that the scheme administrator is not a fit and proper person.

De-registration of pension schemes

17. Paragraph 6 amends section 158 of FA2004 to add new grounds upon which a pension scheme can be de-registered. These allow HMRC to de-register a scheme where it appears that the main purpose of the scheme is not to provide pension benefits or the scheme administrator is not a fit and proper person. HMRC may also de-register a scheme where the scheme administrator has obstructed HMRC in the course of an inspection approved by the tribunal. It also extends the existing provisions relating to the failure to provide information or the provision of inaccurate information to apply to all documents in connection with the pension scheme.

18. Paragraph 7 inserts new sections 159A to 159D into FA2004. These provide new information and inspection powers for HMRC to establish whether the scheme administrator is a fit and proper person, as well as a mechanism for appeals and penalties for failure to comply with an information notice or the production of inaccurate information or documents under new sections 159A or 159B. These sections mirror the provisions of new sections 153A to 153C and 153E relating to information notices in connection with an application to register a pension scheme.

19. Paragraph 8 provides that the amendments made by paragraphs 6 and 7, have effect in relation to all registered pension schemes on or after 20 March 2014 (the day after Budget Day), but before 1 September 2014 the provisions relating to the requirement that the scheme administrator is a fit and proper person do not apply.

Declarations required from person who is to be a scheme administrator

20. Paragraph 9 amends section 270 of FA2004. Section 270 defines “scheme administrator” and prescribes what declarations HMRC may require a person, who wishes to be a scheme administrator, may be required to make.

Payments by registered pension schemes: surrender

21. Paragraph 10 amends section 172A of FA2004 relating to surrenders of pension rights. Subparagraph 10(2) repeals subparagraph 172A(5)(d) to ensure that where a surrender of rights is made to fund an authorised surplus payment to a sponsoring employer, the surrender is treated as an unauthorised payment of the value of the rights surrendered. Subparagraph 10(3) inserts new subsection (5A) into section 172A so that a surrender of rights in favour of dependant will be treated as an unauthorised payment unless the new rights are provided under the same scheme under which the surrendered rights were held.

22. Paragraph 11 amends section 207 of FA2004 relating to the authorised surplus payments charge. It provides that the authorised payment surplus charge does not apply where the surplus is derived either directly or indirectly from a surrender of rights to the extent that surrender was treated as an unauthorised payment by virtue of section 172A, as amended by paragraph 10.

23. Paragraph 12 provides when paragraphs 10 and 11 have effect.

Orders for money etc to be restored to pension schemes

24. Paragraph 13 amends section 188 of FA2004 relating to relief for contributions paid by or on behalf of the individual. New subsection (3A) of section 188 provides that contributions made on the member's behalf under a court order under sections 16(1), 19(4) or 21(2)(a) of Pensions Act 2004 or their Northern Ireland equivalent do not receive tax relief to the extent the contribution has enabled the member to claim relief from unauthorised payments tax charges under section 266A FA2004. The court orders specified in section 188 (as amended by paragraph 13) and in section 266A (as amended by paragraph 14) are made or instigated by the Pensions Regulator with a view to providing restitution for the member. Where relief has been claimed under section 266A by virtue of the contribution, it is not appropriate for the member also to get tax relief on the contribution. Taken together with the original tax reliefs on contributions to the scheme and the refund of unauthorised payment charges this would amount to double relief in respect of the same amount. The amendments made by paragraph 13 are closely connected with the amendments made by paragraph 14.

25. Paragraph 14 amends section 266A of FA2004. It provides that a member may claim relief from an unauthorised payments tax charge or unauthorised payments surcharge where contributions are paid on the member's behalf to a registered pension scheme pursuant to an order under section 16(1) of Pensions Act 2004 or its Northern Ireland equivalent as a result of an unauthorised payment. The Pensions Regulator can use section 16 of the Pensions Act 2004 to apply to a court to issue an order of restitution to a member when pension scheme assets have been misused or misappropriated.

26. Paragraph 15 amends section 266B of FA2004. It provides that a scheme administrator may claim relief from the scheme sanction charge where the sums and assets paid to or on behalf of the member as an unauthorised payment are subsequently paid to a registered pension scheme pursuant to an order under section 16(1) of Pensions Act 2004 or its Northern Ireland equivalent.

27. Paragraph 16 provides when paragraphs 13 to 15 have effect.

Liabilities of trustees appointed by Pensions Regulator etc

28. Paragraph 17 provides a power for HMRC to make regulations for assessments in respect of any liability under new section 272C.

29. Paragraph 18 provides a consequential change in connection with new section 272C, which is inserted into FA 2004 by paragraph 19.

30. Paragraph 19 inserts new sections 272A to 272C into FA2004.

31. New section 272A ensures that an independent trustee who is appointed as a result of action by the Pensions Regulator does not become liable for specified tax charges that predate their appointment.

32. New subsections 272A(1) and (2) provide when the section applies and in relation to whom.

33. New section 272A(3) defines the date of the "relevant day" in respect of a person P who is an Independent Trustee.

34. New subsection 272A(4) to (6) provide that where the independent trustee (P) becomes a scheme administrator they do not become liable to the tax charges specified in subsection (7) that they would otherwise assume liability for in their capacity as scheme administrator. However, subsection (4) does not apply if P was the scheme administrator before the relevant day, as defined in subsection (3).

35. New subsections 272A(7) to (11) prescribe which tax charges that P does not assume liability for paying, which P otherwise would assume liability for by virtue of being either the scheme administrator, a trustee or a person who controlled the management of the pension scheme.

36. New Section 272B ensures that where a scheme administrator (Q) is appointed when a pension scheme has one or more independent trustees, Q will not become liable to specified tax charges.

37. New subsection 272B(1) provides when the section applies and in relation to whom.

38. New subsections 272B(2) and (3) provide that Q does not assume any liability for those tax charges specified in section 272A(7) that they would otherwise assume by virtue of being either the scheme administrator or a person who controls the management of the pension scheme. Subsection (5) defines the relevant day for the purposes of section 272B, as well as section 272A when it applies for the purposes of new section 272B.

39. New subsection 272B(4) provides that subsections (2) and (3) do not apply where Q was a scheme administrator before the relevant day.

40. New subsection 272B(5) defines the date of the "relevant day" in respect of a person Q, in relation to new section 272B as well as the tax charges prescribed in new section 272A(7) to (11).

41. New section 272C specifies who is liable for those tax charges for which neither P nor Q assume liability by virtue of new sections 272A and 272B.

42. New subsections 272C(1) and (2) prescribe the tax liabilities that the section applies to. New subsection 272C(3) provides that the liability is retained or assumed by the person or persons who were the scheme administrator immediately before the relevant day in relation to P or Q as appropriate.

43. New subsection 272C(4) provides that if there was no scheme administrator immediately before the relevant day, the liability is retained or assumed by the last scheme administrator before the relevant day.

44. New subsection 272C(5) provides that if there is any conflict between section 271 FA2004 and subsections (3) and (4), then the liability will be as set out in subsections (3) and (4).

45. New subsections 272C(6) and (7) provide that subsection (7) applies if no one assumes the liabilities under subsections (3) or (4) or the persons who do assume the liabilities either can not be traced or are already in serious default. In such cases, subsection (7) provides that the liability for the tax charges will fall as set out in section 272(4) of FA2004.

46. New subsection 272C(8) provides that where subsection (7) applies HMRC must notify the person of their liability as soon as is reasonably practicable; but failure to do so does not affect the person's liability.

47. New subsection 272C(9) provides that if a person is liable to a tax charge, and this section imposes liability on another person, the first person does not cease to be liable to that tax charge.

48. New section 272C(10) provides that a new scheme administrator appointed after the Pension Regulator's intervention in the pension scheme has come to an end, takes over responsibility for all the outstanding tax liabilities of the pension scheme.

49. New sections 272C(11) and (12) provide that a scheme administrator, who has assumed liabilities by virtue of new sections 272C(3) and (4), may apply to HMRC to be released from those liabilities and has the right of appeal to an independent tribunal if HMRC refuses the application.

50. Paragraph 20 inserts new subsection (1A) into section 273 of FA2004, which sets out the circumstances in which members of a pension scheme may assume the liability of a scheme administrator. New subsection (1A) extends section 273 to include cases where

a person other than the member had assumed liability for a tax charge under sections 239 and 241(1)(b) or (c) of FA2004 by virtue of section 272C, but has failed to pay the tax due and has either died or ceased to exist or HMRC considers the failure to pay the tax is of a serious nature.

51. Paragraph 21 makes consequential changes to section 274 of FA2004.

52. Paragraph 22 provides that new sections 272A to 272C, which act in relation to liabilities arising before Independent Trustees are appointed, do not apply

- In relation to a person P, who is an Independent Trustee, unless P is first appointed on or after 1 September 2014, and
- in relation to a person Q, who is a scheme administrator, unless the scheme in question first had an independent trustee on or after 1 September 2014.

53. Paragraph 23 amends sections 169(5), 257(4), 261(1) and 264(2) of FA2004 to replace ‘incorrect’ with ‘inaccurate’, to ensure consistency in Part 4 of FA 2004.

Background Note

54. Pensions tax relief is provided on contributions to a registered pension scheme for and on behalf of a member, and once in the registered pension scheme any investment growth on the funds is normally tax free. This tax relief is provided so that the funds can be used in later life by the member and/or their dependants. The pensions tax rules therefore set a minimum pension age at which benefits can normally be taken, this is currently age 55. Where benefits are taken before this age, except in prescribed circumstances, for example on the payment of an ill health pension, the payment of benefits will be an unauthorised payment and significant tax charges apply to recover the tax reliefs previously given.

55. A number of pension scheme promoters have set up schemes intended to enable individuals to access some or all of their pension benefits before the minimum pension age. To do this, they often use a registered pension scheme to which the member is encouraged to transfer their pension to before the pension is ‘liberated’ to the member. In many cases the member is not told of the significant tax charges that will apply and therefore are often left with little or no money after the promoter’s fees have deducted.

56. These changes have been introduced to:

- Provide additional powers to HMRC to help it detect and prevent the registration of liberation schemes and to detect and de-register any liberation schemes that have already been registered.
- Prevent authorised surpluses being artificially created as a potential means of liberation.
- Ensure that where the Pensions Regulator becomes involved with a pension scheme any tax charges are applied fairly.