



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 any benefit, other than an excluded pension, to which the member has an actual or prospective entitlement 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 any benefit, other than an excluded pension, to which the person has an actual or prospective entitlement under a registered pension scheme in respect of a member of the pension scheme.
- (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

Status: This is the original version (as it was originally enacted).

- (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.
- (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 assigned (or agreed to be assigned) are not unauthorised payments.
- (7) An excluded pension is a pension which under pension rule 2 may continue to be paid after the member's death (see section 165).
- (8) "Assignment" includes assignation and related expressions are to be read accordingly.

173 Benefits

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to 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 member, or
 - (b) a member of the member'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 member, or a member of the member'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 member of the pension scheme if, after the member'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 member's death, was a member of the member'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 member's death the member, or a member of the member's family or household, was a director of, and had a material interest in, a sponsoring employer.
- (8) The amount of an unauthorised payment treated as having been made by this section—

Status: This is the original version (as it was originally enacted).

- (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)—
- (a) references in the benefits code to the employee are to be treated as references to the 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.

174 Value shifting

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to 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
 - (b) the value of an asset held by or for the benefit of the member is increased, a liability of the member is reduced, or a liability of another person is reduced for the benefit of the member.
- (2) But if the event or the change in the value of the currency occurs after the member’s death—
- (a) the pension scheme is to be treated as having made an unauthorised payment in respect of the member (rather than to the member), 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

Status: This is the original version (as it was originally enacted).

- (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).