Finance Act 2004

2004 CHAPTER 12

PART 4

PENSION SCHEMES ETC

CHAPTER 3

PAYMENTS BY REGISTERED PENSION SCHEMES

Authorised member payments

164 Authorised member payments

The only payments a registered pension scheme is authorised to make to or in respect of a member of the pension scheme are—

(a) pensions permitted by the pension rules or the pension death benefit rules (see sections 165 and 167),

(b) lump sums permitted by the lump sum rule or the lump sum death benefit rule (see sections 166 and 168),

(c) recognised transfers (see section 169),

(d) scheme administration member payments (see section 171),

(e) payments pursuant to a pension sharing order or provision, and

(f) payments of a description prescribed by regulations made by the Board of Inland Revenue.

165 Pension rules

(1) These are the rules relating to the payment of pensions by a registered pension scheme to a member of the pension scheme ("the pension rules").

Pension rule 1

No payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the pension scheme.

Pension rule 2

If the member dies before the end of the period of ten years beginning with the day on which the member became entitled to a scheme pension, an annuity or alternatively secured pension, payment of the scheme pension, annuity or alternatively secured pension may continue to be made (to any person) until the end of that period.

But no other payment of the member's pension may be made after the member's death.

Pension rule 3

No payment of pension other than a scheme pension may be made in respect of a defined benefits arrangement.

Pension rule 4

If the member has not reached the age of 75, no payment of pension other than—

(a) a scheme pension,

(b) a lifetime annuity, or

(c) unsecured pension,

may be made in respect of a money purchase arrangement; but a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead.

Pension rule 5

The total amount of unsecured pension paid in each unsecured pension year in respect of a money purchase arrangement must not exceed 120% of the basis amount for the unsecured pension year.

Pension rule 6

If the member has reached the age of 75, no payment of pension other than—

(a) a scheme pension,

(b) a lifetime annuity, or

(c) alternatively secured pension,

may be made in respect of a money purchase arrangement; but a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead.

Pension rule 7

The total amount of alternatively secured pension paid in each alternatively secured pension year in respect of a money purchase arrangement must not exceed 70% of the basis amount for the alternatively secured pension year.

(2) In this Part "pension", in relation to a registered pension scheme, includes—

(a) an annuity, and

(b) income withdrawal.

(3) For the purposes of this Part, a person becomes entitled to a pension under a registered pension scheme—

(a) in the case of income withdrawal under the pension scheme, whenever sums or assets held for the purposes of an arrangement under the pension scheme are designated as available for the payment of unsecured pension, and

(b) in any other case, when the person first acquires an actual (rather than a prospective) right to receive the pension.

(4) Part 1 of Schedule 28 gives the meaning of expressions used in the pension rules.

166 Lump sum rule

(1) This is the rule relating to the payment of lump sums by a registered pension scheme to a member of the pension scheme ("the lump sum rule").

Lump sum rule

No lump sum may be paid other than—

(a) a pension commencement lump sum,
(b) a serious ill-health lump sum,
(c) a short service refund lump sum,
(d) a refund of excess contributions lump sum,
(e) a trivial commutation lump sum,
(f) a winding-up lump sum, or
(g) a lifetime allowance excess lump sum.

(2) For the purposes of this Part, a person becomes entitled to a lump sum under a registered pension scheme—

(a) in the case of a pension commencement lump sum, immediately before the person becomes entitled to the pension in connection with which it is paid, and

(b) in any other case, when the person acquires an actual (rather than a prospective) right to receive the lump sum.

(3) Part 1 of Schedule 29 gives the meaning of expressions used in the lump sum rule.

(4) Schedule 36 contains (in Part 3) transitional provisions about lump sums.

167 Pension death benefit rules

(1) These are the rules relating to the payment of pension death benefits by a registered pension scheme in respect of a member of the pension scheme ("the pension death benefit rules").

Pension death benefit rule 1

No payment of pension death benefit may be made otherwise than to a dependant of the member.

Pension death benefit rule 2

No payment of pension death benefit other than a dependants' scheme pension may be made in respect of a defined benefits arrangement.

Pension death benefit rule 3

If a dependant has not reached the age of 75, no payment of pension death benefit to the dependant other than—

(a) a dependants' scheme pension,
(b) a dependants' annuity, or
(c) dependants' unsecured pension,

may be made to the dependant in respect of a money purchase arrangement; but a dependants' scheme pension may only be paid if the member or dependant had an opportunity to select a dependants' annuity instead.

Pension death benefit rule 4

The total amount of dependants' unsecured pension paid to a dependant in each unsecured pension year in respect of a money purchase arrangement must not exceed 120% of the basis amount for the unsecured pension year.

Pension death benefit rule 5

If a dependant has reached the age of 75, no payment of pension other than—

(a) a dependants' scheme pension,

(b) a dependants' annuity, or

(c) dependants' alternatively secured pension,

may be made to the dependant in respect of a money purchase arrangement; but a dependants' scheme pension may only be paid if the member or dependant had an opportunity to select a dependants' annuity instead.

Pension death benefit rule 6

The total amount of dependants' alternatively secured pension paid to a dependant in each alternatively secured pension year in respect of a money purchase arrangement must not exceed 70% of the basis amount for the alternatively secured pension year.

(2) "Pension death benefit" means a pension payable on the death of the member (other than a member's pension payable after the member's death under pension rule 2: see section 165).

(3) Part 2 of Schedule 28 gives the meaning of expressions used in the pension death benefit rules.

168 Lump sum death benefit rule

(1) This is the rule relating to the payment of lump sum death benefits by a registered pension scheme in respect of a member of the pension scheme ("the lump sum death benefit rule").

Lump sum death benefit rule

No lump sum death benefit may be paid other than—

(a) a defined benefits lump sum death benefit,

(b) a pension protection lump sum death benefit,

(c) an uncrystallised funds lump sum death benefit,

(d) an annuity protection lump sum death benefit,

(e) an unsecured pension fund lump sum death benefit,

(f) a charity lump sum death benefit,

(g) a transfer lump sum death benefit,

(h) a trivial commutation lump sum death benefit, or

(i) a winding-up lump sum death benefit.

(2) In this Part "lump sum death benefit" means a lump sum payable on the death of the member.

(3) Part 2 of Schedule 29 gives the meaning of expressions used in the lump sum death benefit rule.

(4) Schedule 36 contains (in Part 3) transitional provision about lump sum death benefits.

169 Recognised transfers

(1) A "recognised transfer" is a transfer of sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme so as to become held for the purposes of, or to represent rights under—

(a) another registered pension scheme, or

(b) a qualifying recognised overseas pension scheme,

in connection with a member of that pension scheme.

(2) For the purposes of this Part a recognised overseas pension scheme is a qualifying recognised overseas pension scheme if—

(a) the scheme manager has given to the Inland Revenue notification that it is a recognised overseas pension scheme and has provided any such evidence that it is a recognised overseas pension scheme as the Inland Revenue may require,

(b) the scheme manager has undertaken to the Inland Revenue to inform the Inland Revenue if it ceases to be a recognised overseas pension scheme,

(c) the scheme manager has undertaken to the Inland Revenue to comply with any prescribed information requirements imposed on the scheme manager, and

(d) the recognised overseas pension scheme is not excluded from being a qualifying recognised overseas pension scheme by subsection (5).

(3) In this Part "scheme manager", in relation to a pension scheme, means the person or persons administering, or responsible for the management of, the pension scheme.

(4) In this section "prescribed information requirements" means—

(a) requirements imposed by or under regulations made by the Board of Inland Revenue to provide to the Inland Revenue any information of a description prescribed by regulations so made, and

(b) requirements specified by regulations so made to provide information to an authority so specified in circumstances so specified.

(5) A recognised overseas pension scheme is excluded from being a qualifying recognised overseas pension scheme by this subsection if the Inland Revenue has decided that—

(a) there has been a failure to comply with any prescribed information requirements imposed on the scheme manager and the failure is significant, and

(b) by reason of the failure it is not appropriate that transfers of sums or assets held for the purposes of, or representing accrued rights under, registered pension schemes so as to become held for the purposes of, or to represent rights under, the recognised overseas pension scheme should be recognised transfers,

and has notified the person or persons appearing to be the scheme manager of that decision (but subject to subsection (7) and section 170).

(6) A failure to comply with prescribed information requirements imposed on the scheme manager is significant if—

(a) the amount of the information which has not been provided is substantial, or

(b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.

(7) The Inland Revenue—

(a) may at any time after a recognised overseas pension scheme becomes excluded from being a qualifying recognised overseas pension scheme decide that the pension scheme is to cease to be so excluded, and

(b) must notify the scheme manager of the decision.

170 Appeal against decision to exclude recognised overseas pension scheme

(1) This section applies where a recognised overseas pension scheme is excluded from being a qualifying recognised overseas pension scheme by a decision of the Inland Revenue under section 169(5).

(2) The scheme manager may appeal against the decision.

(3) The appeal is to the General Commissioners, except that the scheme manager 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 notification of the decision was given.

(6) The Commissioners before whom an appeal under this section is brought must consider whether the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme.

(7) If they decide that the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme, they must dismiss the appeal.

(8) If they decide that the recognised overseas pension scheme ought not to have been excluded from being a qualifying recognised overseas pension scheme, the recognised overseas pension scheme is to be treated as having remained a qualifying recognised overseas pension scheme (but subject to any further appeal or any determination on, or in consequence of, a case stated).

171 Scheme administration member payments

(1) A "scheme administration member payment" is a payment by a registered pension scheme to or in respect of a member of the pension scheme which is made for the purposes of the administration or management of the pension scheme.

(2) But if a payment falling within subsection (1) exceeds the amount which might be expected to be paid to a person who was at arm's length, the excess is not a scheme administration member payment.

(3) Scheme administration member payments include in particular—

(a) the payment of wages, salaries or fees to persons engaged in administering the pension scheme, and

(b) payments made for the purchase of assets to be held for the purposes of the pension scheme.

(4) A loan to or in respect of a member of the pension scheme is not a scheme administration member payment.

(5) Regulations made by the Board of Inland Revenue may provide that payments of a description specified in the regulations are, or are not, scheme administration member payments.