STATUTORY INSTRUMENTS

2009 No. 1171

The Registered Pension Schemes (Authorised Payments) Regulations 2009

PART 3

PENSION ERRORS

Pensions paid in error

13.—(1) A payment made in error which is intended to represent a payment permitted by the pension rules or the pension death benefit rules([1]) to or in respect of a member, if the scheme administrator or insurance company making the payment (in either case, "the payer") believed that—

(a) the recipient was entitled to the payment, and

(b) the recipient was entitled to it in that amount.

(2) A payment is not within paragraph (1) if the error is that the recipient is no longer alive (as to which see regulation 15).

(3) Regulation 4 applies to—

(a) the whole of the payment; or

(b) if the recipient was entitled to an authorised payment apart from under this regulation, the amount by which the payment exceeds the amount of the authorised payment.

Pensions paid after discovery of error

14.—(1) A payment made after the discovery of an error if either—

(a) it is made after there is a payment within regulation 13 to the same person and (apart from the discovery of the error) is of a similar nature to that payment; or

(b) if the error had not been discovered until after the payment, it would have been a payment within regulation 13.

(2) A payment is not within paragraph (1) unless it falls within paragraph (3), (4) or (5).

(3) A payment is within this paragraph if it is made even though the payer took reasonable steps to prevent its being made or its being made in that amount.

(4) A payment is within this paragraph if it is made while the scheme administrator is considering whether the rules of the scheme should be amended so that such payments or payments in such amounts will be permitted by the pension rules or the pension death benefit rules (as the case may be), provided the scheme administrator has not taken an unreasonable amount of time to decide.

(5) A payment is within this paragraph if it is made while the scheme administrator is in the process of amending the rules of the scheme so that such payments or payments in such amounts will

([1]) Sections 165 and 167 of the Finance Act 2004 set out the pension rules and pension death benefit rules respectively.

be permitted by the pension rules or the pension death benefit rules (as the case may be), provided the scheme administrator has not taken an unreasonable amount of time to amend the rules.

(6) Regulation 4 applies to—

(a) the whole of the payment; or

(b) if the recipient was entitled to an authorised payment apart from under this regulation, the amount by which the payment exceeds the amount of the authorised payment.

Pensions continuing to be paid after death

15.—(1) A payment which is intended to represent the payment of a pension permitted by the pension rules or the pension death benefit rules to or in respect of a member if—

(a) the member or dependant concerned (“the person”) has died;

(b) the payment is made no later than six months after the date of the person’s death;

(c) the payment would not have been an unauthorised payment if it had been made on the day before the person died; and

(d) either of the conditions in paragraph (2) is satisfied.

(2) The conditions mentioned in paragraph (1)(d) are—

(a) the scheme administrator or insurance company making the payment (in either case, “the payer”) did not know, and could not reasonably have been expected to know, that the person had died before the payment was made;

(b) where the payer knew of the person’s death before the payment was made, the payer took reasonable steps to prevent the payment’s being made or its being made in that amount.

(3) Regulation 4 applies to the whole of the payment.

Payments of arrears of pension after death

16.—(1) A payment of pension under the pension scheme to or in respect of a member who has died if—

(a) the payment is in respect of a defined benefits arrangement;

(b) the member had not reached the age of 75;

(c) the member—

(i) was not a controlling director of a sponsoring employer of this or any related scheme, and

(ii) was not a person connected to such a person; and

(d) either—

(i) the conditions in paragraph (2) are satisfied, or

(ii) where the member died on or after 6th April 2006, the conditions in paragraph (3) are satisfied.

(2) The conditions where the member died before 6th April 2006 are that—

(a) the payment represents accrued arrears of pension;

(b) the payment was allowed or required by the rules of this scheme as they stood immediately before the member died; and

(c) the existence of the rule or rules concerned would not have prejudiced approval of the scheme by the Inland Revenue or Her Majesty’s Revenue and Customs.

(3) The conditions where the member died on or after 6th April 2006 are that—

(a) the payment represents accrued arrears of scheme pension the member's entitlement to which the scheme administrator had not established until after the member's death;

(b) the payment would not have been an unauthorised payment if the payment had been made immediately before the member's death and the member had been entitled to it; and

(c) the scheme administrator could not reasonably have been expected to make the payment before the member's death.

(4) Regulation 4 applies to so much of the payment as does not exceed the amount accrued during the period—

(a) beginning with the earliest date from which the member could have required the scheme administrator to make the payment if the member had been entitled to it; and

(b) ending with the member's death.

(5) If the member died on or after 6th April 2006, the making of the payment shall be treated as a benefit crystallisation event for the purposes of the lifetime allowance charge(**2**), namely benefit crystallisation event 9(**3**).

(6) The amount crystallised for the purposes of benefit crystallisation event 9 is the amount of the payment to which regulation 4 applies.

(7) For the purpose of paragraph (2)(c), whether something would have prejudiced the approval of a scheme by the Inland Revenue or by Her Majesty's Revenue and Customs is to be determined in accordance with the publication IR 12(2001) (known as the Occupational Pension Schemes Practice Notes) published by the former Inland Revenue Pension Schemes Office on 23rd March 2001, as that publication stood—

(a) if the member died before 23rd March 2001, on that date,

(b) otherwise, on the date of the member's death.

(**2**) Section 214 of the Finance Act 2004 establishes the lifetime allowance charge.

(**3**) Benefit crystallisation event 9 was inserted in the table in section 216(1) of the Finance Act 2004 by paragraph 1 of Schedule 29 to the Finance Act 2008.