



# Finance Act 2004

## 2004 CHAPTER 12

### PART 4

#### PENSION SCHEMES ETC

### CHAPTER 3

#### PAYMENTS BY REGISTERED PENSION SCHEMES

#### *Introductory*

#### **160 Payments by registered pension schemes**

- (1) The only payments which a registered pension scheme is authorised to make to or in respect of a member of the pension scheme are those specified in section 164.
- (2) In this Part “unauthorised member payment” means—
  - (a) a payment by a registered pension scheme to or in respect of a member of the pension scheme which is not authorised by section 164, and
  - (b) anything which is to be treated as an unauthorised payment to or in respect of a member of the pension scheme under section 172, 173 or 174.
- (3) The only payments which a registered pension scheme that is an occupational pension scheme is authorised to make to or in respect of a sponsoring employer are those specified in section 175.
- (4) In this Part “unauthorised employer payment” means—
  - (a) a payment by a registered pension scheme that is an occupational pension scheme, to or in respect of a sponsoring employer, which is not authorised by section 175, and
  - (b) anything which is to be treated as an unauthorised payment to a sponsoring employer under section 181.

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*Status: This is the original version (as it was originally enacted).*

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- (5) In this Part “unauthorised payment” means—
  - (a) an unauthorised member payment, or
  - (b) an unauthorised employer payment.
- (6) As well as section 157 (de-registration), the following provisions—
  - (a) section 208 (unauthorised payments charge),
  - (b) section 209 (unauthorised payments surcharge),
  - (c) section 239 (scheme sanction charge), and
  - (d) section 242 (de-registration charge),
 specify consequences of making unauthorised payments.
- (7) Sections 182 to 185 contain provision about amounts that a registered pension scheme is not authorised to borrow.
- (8) As well as section 157, sections 239 and 242 specify consequences of unauthorised borrowing.
- (9) Schedule 36 contains (in Parts 3 and 4) transitional provision about unauthorised payments.

#### **161 Meaning of “payment” etc**

- (1) This section applies for the interpretation of this Chapter.
- (2) “Payment” includes a transfer of assets and any other transfer of money’s worth.
- (3) Subsection (4) applies to a payment made or benefit provided under or in connection with an investment (including an insurance contract or annuity) acquired using sums or assets held for the purposes of a registered pension scheme.
- (4) The payment or benefit is to be treated as made or provided from sums or assets held for the purposes of the pension scheme, even if the pension scheme has been wound up since the investment was acquired.
- (5) A payment made by a registered pension scheme to a person who—
  - (a) is connected with a member or sponsoring employer (or was connected with a member at the date of the member’s death), and
  - (b) is not a member or sponsoring employer,
 is to be treated as made in respect of the member or sponsoring employer.
- (6) Any asset held by a person connected with a member or sponsoring employer (or who was connected with a member at the date of the member’s death) is to be treated as held for the benefit of the member or sponsoring employer.
- (7) Any increase in the value of an asset held by, or reduction in the liability of, a person connected with a member or sponsoring employer (or who was connected with a member at the date of the member’s death) is to be treated as an increase or reduction for the benefit of the member or sponsoring employer.
- (8) Section 839 of ICTA (connected persons) applies for the purposes of this section.

#### **162 Meaning of “loan”**

- (1) This section applies for the interpretation of this Chapter.

- (2) “Loan” does not include the purchase of or subscription to debentures, debenture stock, loan stock, bonds, certificates of deposit or other instruments creating or acknowledging indebtedness which are—
  - (a) listed or dealt in on a recognised stock exchange (within the meaning of section 841 of ICTA), or
  - (b) offered to the public.
- (3) A guarantee of a loan made to or in respect of a member or sponsoring employer of a registered pension scheme is to be treated as a loan to or in respect of the member or sponsoring employer of an amount equal to the amount guaranteed.
- (4) If a member or sponsoring employer of a registered pension scheme—
  - (a) is liable to pay a debt, the right to payment of which constitutes an asset held for the purposes of the pension scheme, but
  - (b) is not required to pay it by the relevant date,the debt is to be treated as a loan made by the pension scheme to the member or sponsoring employer on that date.
- (5) The relevant date is the date by which a person at arm’s length from the pension scheme might be expected to be required to pay the debt.

### **163 Meaning of “borrowing” etc**

- (1) This section applies for the interpretation of this Chapter.
- (2) Borrowing is borrowing by a registered pension scheme if the amount borrowed is to be repaid from sums or assets held for the purposes of the pension scheme.
- (3) A liability is a liability of a registered pension scheme if the liability is to be met from sums or assets held for the purposes of the pension scheme.
- (4) Borrowing by a registered pension scheme is in respect of an arrangement if it is properly attributable to the arrangement in accordance with the provisions of the pension scheme and any just and reasonable apportionment.