



Finance Act 2004

2004 CHAPTER 12

PART 4

PENSION SCHEMES ETC

CHAPTER 3

PAYMENTS BY REGISTERED PENSION SCHEMES

Modifications etc. (not altering text)

C10 Pt. 4 modified (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 18 para. 14\(3\)](#)

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 [^{F1}person who is or has been 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 [^{F2}person who is or has been 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 [^{F3}person who is or has been a] member of the pension scheme under [^{F4}this Part].
- (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 [^{F5}person who is or has been a] sponsoring employer are those specified in section 175.

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- (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 [^{F6}person who is or has been a] sponsoring employer, which is not authorised by section 175, and
 - (b) anything which is to be treated as an unauthorised payment to a [^{F7}person who is or has been a] sponsoring employer under section 181.
- [^{F8}(4A) If an unauthorised member payment or unauthorised employer payment made to or in respect of a person would have been greater but for a reduction made in respect of the whole, or any proportion, of the amount which the scheme administrator considers may be the amount of the liability to the scheme sanction charge in respect of it, it is to be regarded for the purposes of this Part as increased by the amount of the reduction.
- (4B) But if the amount, or that proportion of the amount, of that liability is in fact less than the amount of the reduction, a subsequent payment of an amount not exceeding the difference between that amount and the amount of the reduction made—
- (a) to or in respect of the same person, and
 - (b) before the end of the period of two years beginning with the date on which the unauthorised member payment or unauthorised employer payment was made,
- is not to be regarded for the purposes of this Part as an unauthorised member payment or unauthorised employer payment.]
- (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.
- [^{F9}(7A) Sections 185A to 185I contain provision about the receipt of income and gains from taxable property.]
- (8) As well as section 157, sections 239 and 242 specify consequences of unauthorised borrowing [^{F10}and the receipt of income and gains from taxable property].
- (9) Schedule 36 contains (in Parts 3 and 4) transitional provision about unauthorised payments.

Textual Amendments

- F1** Words in s. 160(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 3\(2\)](#)
- F2** Words in s. 160(2)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 3\(3\)\(a\)](#)

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- F3** Words in s. 160(2)(b) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 3\(3\)\(a\)](#)
- F4** Words in s. 160(2)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 3\(3\)\(b\)](#)
- F5** Words in s. 160(3) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 3\(4\)](#)
- F6** Words in s. 160(4)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 3\(4\)](#)
- F7** Words in s. 160(4)(b) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 3\(4\)](#)
- F8** S. 160(4A)(4B) inserted (19.7.2007) (with effect in accordance with Sch. 20 para. 24(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 para. 5](#)
- F9** S. 160(7A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 158(2), [Sch. 21 para. 3\(2\)](#)
- F10** Words in s. 160(8) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 158(2), [Sch. 21 para. 3\(3\)](#)

Commencement Information

- II** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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 [^{F11}or in respect of] a person who—
 - (a) is connected with a [^{F12}person who is or has been a] member or sponsoring employer (or was connected with [^{F13}such a person at the date of the person’s] death), and
 - (b) is not a [^{F12}person who is or has been a] member or sponsoring employer,is to be treated as made in respect of the [^{F12}person who is or has been a] member or sponsoring employer.
- (6) Any asset held by a person connected with a [^{F14}person who is or has been a] member or sponsoring employer (or who was connected with [^{F15}such a person at the date of the person’s] death) is to be treated as held for the benefit of the [^{F14}person who is or has been a] 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 [^{F16}person who is or has been a] member or sponsoring employer (or who was connected with [^{F17}such a person at the date of the person’s] death) is to be treated as an increase or reduction for the benefit of the [^{F16}person who is or has been a] member or sponsoring employer.

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[^{F18}(8) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]

Textual Amendments

- F11** Words in s. 161(5) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 5](#), 64(1)
- F12** Words in s. 161(5) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 4\(2\)\(a\)](#)
- F13** Words in s. 161(5) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 4\(2\)\(b\)](#)
- F14** Words in s. 161(6) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 4\(3\)\(a\)](#)
- F15** Words in s. 161(6) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 4\(3\)\(b\)](#)
- F16** Words in s. 161(7) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 4\(3\)\(a\)](#)
- F17** Words in s. 161(7) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 4\(3\)\(b\)](#)
- F18** S. 161(8) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 467](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

- C16** S. 161 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [2\(1\)-\(3\)](#)
- C17** S. 161(4) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [2\(4\)\(5\)](#)

Commencement Information

- I2** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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 [^{F19}section 1005 of ITA 2007]), or
 - (b) offered to the public.
- (3) A guarantee of a loan made to or in respect of a [^{F20}person who is or has been a] member or sponsoring employer of a registered pension scheme [^{F21}, or to or in respect of a person who is connected with a [^{F20}person who is or has been a] member or sponsoring employer of a registered pension scheme but is not [^{F22}such a person].] is to be treated as a loan to or in respect of the [^{F20}person who is or has been a] member or sponsoring employer of an amount equal to the amount guaranteed.
- (4) If a [^{F23}person who is or has been a] member or sponsoring employer of a registered pension scheme [^{F24}or a person who is connected with a [^{F23}person who is or has been

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a] member or sponsoring employer of a registered pension scheme but is not [^{F25}such a person]]—

(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 [^{F23}person who is or has been a] 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.

[^{F26}(6) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]

Textual Amendments

F19 Words in s. 162(2)(a) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 468(2)** (with Sch. 2)

F20 Words in s. 162(3) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), **Sch. 23 para. 5(a)**

F21 Words in s. 162(3) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 6(2)**, 64(1)

F22 Words in s. 162(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), **Sch. 23 para. 5(b)**

F23 Words in s. 162(4) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), **Sch. 23 para. 5(a)**

F24 Words in s. 162(4) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 6(3)**, 64(1)

F25 Words in s. 162(4) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), **Sch. 23 para. 5(b)**

F26 S. 162(6) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 468(3)** (with Sch. 2)

Commencement Information

I3 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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.

Modifications etc. (not altering text)

C18 S. 163(2) applied (retrospective to 6.4.2011) by [Finance Act 2011 \(c. 11\)](#), s. 68(5)(6)

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Commencement Information

- I4** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

Authorised member payments

164 Authorised member payments

[^{F27}(1)] The only payments a registered pension scheme is authorised to make to or in respect of a [^{F28}person who is or has been a] member of the pension scheme are—

- (a) pensions permitted by the pension rules or the pension death benefit rules [^{F29}to be paid to or in respect of a member] (see sections 165 and 167),
- (b) lump sums permitted by the lump sum rule or the lump sum death benefit rule [^{F30}to be paid to or in respect of a member] (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.

[^{F31}(2) Regulations under subsection (1)(f) may—

- (a) provide that for the purposes of Part 9 of ITEPA 2003 all or part of a prescribed payment is to be treated as pension under a registered pension scheme, or as a lump sum of a prescribed description,
- (b) provide that all or part of a prescribed payment is subject to the short service refund lump sum charge^{F32}... or the special lump sum death benefits charge,
- (c) provide that a prescribed event in relation to a prescribed payment is to be treated for the purposes of the lifetime allowance charge as a benefit crystallisation event, and make provision as to the amount crystallised by that event,

^{F33}(d)

and “prescribed” means prescribed in regulations under subsection (1)(f).]

[^{F34}(3) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision—

- (a) having the effect that the making of a prescribed authorised payment does not (directly or indirectly) result in an individual first flexibly accessing pension rights for the purposes of sections 227B to 227F,
- (b) having the effect that the making of a prescribed authorised payment is not a relevant withdrawal for the purposes of section 579CA of ITEPA 2003, and
- (c) having the effect that the making of a prescribed payment by a pension scheme that is not a registered pension scheme, where the payment would be an authorised payment if the scheme were a registered pension scheme, is not a relevant withdrawal for the purposes of section 576A of ITEPA 2003.

(4) In subsection (3)—

“authorised payment” means a payment specified in subsection (1), and
“prescribed” means prescribed in regulations under subsection (3).]

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Textual Amendments

- F27** S. 164(1): s. 164 renumbered as s. 164(1) (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 29 para. 1\(2\)\(a\)](#)
- F28** Words in s. 164 inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 6\(a\)](#)
- F29** Words in s. 164(a) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 6\(b\)](#)
- F30** Words in s. 164(b) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 6\(c\)](#)
- F31** S. 164(2) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 29 para. 1\(2\)\(b\)](#)
- F32** Words in [s. 164\(2\)\(b\)](#) omitted (with effect in accordance with Sch. 5 para. 4 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 5 para. 3\(1\)\(a\)](#)
- F33** S. 164(2)(d) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [s. 75\(2\)\(a\)](#)
- F34** S. 164(3)(4) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 85](#)

Modifications etc. (not altering text)

- C19** S. 164 applied (with modifications) (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), [regs. 1, 8](#)
- C20** S. 164(1) modified (6.4.2023) by [The Public Service Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) Regulations 2023 \(S.I. 2023/113\)](#), [regs. 1\(2\), 23\(2\), 24\(2\), 26\(2\), 28\(2\)](#) (with [reg. 1\(3\)](#)) (as amended (14.9.2023) by [The Public Service Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) \(No. 2\) Regulations 2023 \(S.I. 2023/912\)](#), [regs. 1\(2\), 28\(a\)](#) (with [reg. 1\(3\)](#)))
- C21** S. 164(1) modified (14.9.2023) by [The Public Service Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) \(No. 2\) Regulations 2023 \(S.I. 2023/912\)](#), [regs. 1\(2\), 9\(2\), 11\(2\), 16\(2\), 19\(2\)](#) (with [reg. 1\(3\)](#))

Commencement Information

- I5** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

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 [^{F35}or an annuity], [^{F36}and if in the case of an annuity that day was before 6 April 2015,] payment of the scheme pension [^{F37}or annuity] may continue to be made (to any person) until the end of that period.

[^{F38}If the member becomes entitled to an annuity on or after 6 April 2015 and the annuity is payable until the later of the member's death and the end of a term certain, payment of the annuity may continue to be made (to any person) until the end of that term.]

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[^{F39}Except as provided by the preceding provisions of this rule, no] 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 [^{F40}or a collective money purchase arrangement].

Pension rule 4

[^{F41}No payment of pension] other than—

- (a) a scheme pension,
- (b) a lifetime annuity, or
- (c) [^{F42}drawdown pension]

may be made in respect of a money purchase arrangement [^{F43}that is not a collective money purchase arrangement]; but a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead.

[^{F44}*Pension rule 5*

The total amount of drawdown pension paid in each drawdown pension year [^{F45}from, or under a short-term annuity purchased using sums or assets out of, the member's drawdown pension fund] in respect of a money purchase arrangement must not exceed [^{F46}150%] of the basis amount for the drawdown pension .]

^{F47}

^{F47}

- (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 [^{F48}drawdown pension], and
 - (b) in any other case, when the person first acquires an actual (rather than a prospective) right to receive the pension

[^{F49}and, for this purpose, the abatement of a scheme pension under a public service pension scheme is not to be taken to affect the right to receive it].

^{F50}(3A)

^{F50}(3B)

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

Textual Amendments

- F35** Words in s. 165(1) substituted (with effect as specified in Sch. 19 para. 29(1) to the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 2\(2\)\(a\)](#)
- F36** Words in s. 165(1) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 41\(a\)](#)
- F37** Words in s. 165(1) substituted (with effect as specified in Sch. 19 para. 29(1) to the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 2\(2\)\(b\)](#)
- F38** Words in s. 165(1) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 41\(b\)](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F39** Words in s. 165(1) substituted (17.12.2014) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 41(c)**
- F40** Words in s. 165(1) inserted (1.8.2022) by Finance Act 2021 (c. 26), **Sch. 5 paras. 3(2)**, 25(1); S.I. 2022/874, reg. 2
- F41** Words in s. 165(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 1(2)(a)(i)**
- F42** Words in s. 165(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 1(2)(a)(ii)**
- F43** Words in s. 165(1) inserted (1.8.2022) by Finance Act 2021 (c. 26), **Sch. 5 paras. 3(3)**, 25(1); S.I. 2022/874, reg. 2
- F44** Words in s. 165(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 1(2)(b)**
- F45** Words in s. 165(1) inserted (17.12.2014) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 1**
- F46** Word in s. 165(1) substituted (with effect in accordance with s. 41(6) of the amending Act) by Finance Act 2014 (c. 26), **s. 41(1)**
- F47** Words in s. 165(1) omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 16 para. 1(2)(c)**; and omitted (6.4.2015) by virtue of Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 32(1)(a)(4)**
- F48** Words in s. 165(3)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 64**
- F49** Words in s. 165(3) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 7**, 64(1)
- F50** S. 165(3A)(3B) omitted (6.4.2015) by virtue of Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 32(1)(b)(4)**

Modifications etc. (not altering text)

- C22** S. 165 modified (6.4.2006) by The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (S.I. 2006/207), regs. 1(1), **6**
- C23** S. 165 modified (27.7.2010) by Finance (No. 2) Act 2010 (c. 31), Sch. 3 para. 2(1)(2)(a) (with Sch. 2 para. 2(1))
- C24** S. 165 modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 90(2)(a)**
- C25** S. 165 modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 91(2)(a)**
- C26** S. 165 modified by The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (S.I. 2006/207), reg. 6 (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by S.I. 2012/1795, regs. 1(1), **3**)
- C27** S. 165(1) modified (6.4.2006) by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), arts. 1(1), **3**, 4(1)(2)

Commencement Information

- I6** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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,

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- (b) a serious ill-health lump sum,
 - [^{F51}(ba) an uncrystallised funds pension 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, ^{F52}...
 - (g) a lifetime allowance excess lump sum [^{F53}, or
 - (h) a transitional 2013/14 lump sum.]
- (2) For the purposes of this Part, a person becomes entitled to a lump sum under a registered pension scheme—
- [^{F54}(za) in the case of a pension commencement lump sum to which paragraph 1B of Schedule 29 applies (certain sums paid before 6 April 2015), immediately before the person becomes entitled to the actual pension (see paragraph 1B(2) (h) of that Schedule),]
 - (a) in the case [^{F55}of any other] pension commencement lump sum, immediately before the person becomes entitled to the pension in connection with which it is paid [^{F56}(or, if the person dies before becoming entitled to the pension in connection with which it was anticipated it would be paid, immediately before death)],
 - [^{F57}(aa) in the case of an uncrystallised funds pension lump sum, immediately before 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.
- [^{F58}(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations amend Part 1 of Schedule 29, or Part 3 of Schedule 36, in connection with cases involving a lump sum within subsection (6).
- (6) A lump sum is within this subsection if—
- (a) the sum is paid on or after 19 September 2013 and before 6 April 2015, or
 - (b) the sum is paid before 19 September 2013, a contract for a lifetime annuity is entered into to provide the pension in connection with which the sum is paid, and on or after 19 March 2014 the contract is cancelled.
- (7) The provision that may be made under subsection (5) includes provision altering the effect of amendments made by the Finance Act 2014.]

Textual Amendments

- F51** S. 166(1)(ba) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 54**
- F52** Word in s. 166(1) omitted (19.3.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), **Sch. 5 paras. 5(1), 15**
- F53** S. 166(1)(h) and preceding word inserted (19.3.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 5 paras. 5(1), 15**
- F54** S. 166(2)(za) inserted (19.3.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 5 paras. 2(2)(a), 15**
- F55** Words in s. 166(2)(a) substituted (19.3.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 5 paras. 2(2)(b), 15**
- F56** Words in s. 166(2)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), **Sch. 20 paras. 9, 24(3)**

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F57 S. 166(2)(aa) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\), Sch. 1 para. 55](#)

F58 S. 166(5)-(7) inserted (19.3.2014) by [Finance Act 2014 \(c. 26\), Sch. 5 paras. 13, 15](#)

Modifications etc. (not altering text)

C28 S. 166 applied (with modifications) (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\), regs. 1, 11](#)

C29 S. 166(1) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\), arts. 1\(1\), 25\(1\)-\(3\)](#)

C30 S. 166(2) modified by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\), art. 23B \(as inserted \(1.6.2009\) by S.I. 2009/1172, arts. 1, 3\)](#)

C31 S. 166(2)(a) modified by S.I. 2006/572, art. 23ZE(2) (as inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\), arts. 1\(1\), 3](#))

C32 S. 166(2)(a) modified by S.I. 2006/572, art. 23ZC(2) (as inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2011 \(S.I. 2011/732\), arts. 1\(1\), 3](#))

Commencement Information

I7 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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^[F59], or nominee or successor,] 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 ^[F60]or a collective money purchase arrangement].

Pension death benefit rule 3

^[F61]No payment of pension death benefit] other than—

- (a) a dependants' scheme pension,
- (b) a dependants' annuity, or
- (c) ^[F62]dependants' drawdown pension,]

may be made to ^[F63]a dependant] in respect of a money purchase arrangement ^[F64]that is not a collective 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.

^[F65]*Pension death benefit rule 3A*

No payment of pension death benefit, other than ^[F66]a nominees' annuity in respect of a money purchase arrangement or] nominees' drawdown pension in respect of a money purchase arrangement, may be made to a nominee of the member.]

^[F65]*Pension death benefit rule 3B*

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No payment of pension death benefit, other than ^{F67}a successors' annuity in respect of a money purchase arrangement or] successors' drawdown pension in respect of a money purchase arrangement, may be made to a successor of the member.]

^{F68}*Pension death benefit rule 4*

The total amount of dependants' drawdown pension paid to a dependant in each drawdown pension year ^{F69}from, or under a dependants' short-term annuity purchased using sums or assets out of, the dependant's drawdown pension fund] in respect of a money purchase arrangement must not exceed ^{F70}150%] of the basis amount for the drawdown pension year.

^{F71} ...]
^{F72}
^{F72}

^{F73}(1A) For the purposes of this Part, a person becomes entitled to dependants' income withdrawal, nominees' income withdrawal or successors' income withdrawal under a registered 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 (as the case may be) dependants' drawdown pension, nominees' drawdown pension or successors' drawdown pension.]

(2) ^{F74}In this part “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)^{F75}, or a pension payable in respect of the member on the subsequent death of a dependant, nominee or successor of the member].

^{F76}(2A)

^{F76}(2B)

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

Textual Amendments

- F59** Words in s. 167 inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 2(2)**
- F60** Words in s. 167(1) inserted (1.8.2022) by [Finance Act 2021 \(c. 26\)](#), **Sch. 5 paras. 4(2)**, 25(1); S.I. 2022/874, reg. 2
- F61** Words in s. 167(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 11(2)(a)(i)**
- F62** Words in s. 167(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 11(2)(a)(ii)**
- F63** Words in s. 167(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 11(2)(a)(iii)**
- F64** Words in s. 167(1) inserted (1.8.2022) by [Finance Act 2021 \(c. 26\)](#), **Sch. 5 paras. 4(3)**, 25(1); S.I. 2022/874, reg. 2
- F65** Words in s. 167 inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 2(3)**
- F66** Words in s. 167(1) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), **Sch. 4 para. 2(2)**
- F67** Words in s. 167(1) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), **Sch. 4 para. 2(3)**
- F68** Words in s. 167(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 11(2)(b)**
- F69** Words in s. 167(1) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 1 para. 6**

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- F70** Word in s. 167(1) substituted (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 41\(2\)](#)
- F71** Words in s. 167(1) omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\), Sch. 1 para. 32\(1\)\(c\)\(4\)](#)
- F72** Words in s. 167(1) omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\), Sch. 16 para. 11\(2\)\(c\)](#)
- F73** S. 167(1A) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\), Sch. 2 para. 2\(4\)](#)
- F74** Words in s. 167(2) substituted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 22\(1\), 24\(3\)](#)
- F75** Words in s. 167(2) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\), Sch. 2 para. 2\(5\)](#)
- F76** S. 167(2A)(2B) omitted (6.4.2015) by virtue of [Taxation of Pensions Act 2014 \(c. 30\), Sch. 1 para. 32\(1\)\(d\)\(4\)](#)

Modifications etc. (not altering text)

- C33** S. 167 modified (6.4.2006) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\) Regulations 2006 \(S.I. 2006/207\), regs. 1\(1\), 7](#)
- C34** S. 167 modified (27.7.2010) by [Finance \(No. 2\) Act 2010 \(c. 31\), Sch. 3 para. 2\(1\)\(2\)\(c\)](#) (with [Sch. 2 para. 2\(1\)](#))
- C35** S. 167 modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 16 para. 99\(2\)\(a\)](#)
- C36** S. 167 modified (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 16 para. 98\(2\)\(a\)](#)
- C37** S. 167 modified by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\) Regulations 2006 \(S.I. 2006/207\), reg. 7](#) (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2012/1795, regs. 1\(1\), 4](#))
- C38** S. 167(1) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\), arts. 1\(1\), 3, 4\(3\)\(4\)](#)

Commencement Information

- I8** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

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,
- [^{F77}(e) a drawdown pension fund lump sum death benefit,]
- [^{F78}(ea) a flexi-access drawdown fund lump sum death benefit,]
- (f) a charity lump sum death benefit,
- ^{F79}(g)
- (h) a trivial commutation lump sum death benefit, or
- (i) a winding-up lump sum death benefit.

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- (2) In this Part “lump sum death benefit” means a lump sum payable on the death of the member [F80], or a lump sum payable in respect of the member on the subsequent death of a dependant, nominee or successor 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.

Textual Amendments

- F77** S. 168(1)(e) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 65](#)
- F78** S. 168(1)(ea) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 7](#)
- F79** S. 168(1)(g) repealed (19.7.2007) (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 5](#), [Sch. 27 Pt. 3\(1\)](#)
- F80** Words in [s. 168\(2\)](#) inserted (15.7.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [s. 22\(9\)\(13\)](#)

Modifications etc. (not altering text)

- C39** S. 168 applied (with modifications) (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), [regs. 1, 14](#)
- C40** S. 168(1) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), [arts. 1\(1\), 6, 8\(1\)\(2\)](#)

Commencement Information

- I9** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

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.
- [F81(1A) A transfer of sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme to an insurance company is to be treated as a recognised transfer if the sums or assets had been applied by the pension scheme towards the provision of a scheme pension or a dependants' scheme pension (but subject to regulations under subsections (1B) and (1C)).
- (1B) The Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent rights in respect of a scheme pension to which a member of a registered pension scheme has become entitled (“the original scheme pension”)—
- (a) the transfer is not a recognised transfer unless those sums and assets are, after the transfer, applied towards the provision of a scheme pension (a “new scheme pension”), and

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- (b) if they are so applied, the new scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original scheme pension.
- (1C) The Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent rights in respect of a dependants' scheme pension to which a dependant of a member of a registered pension scheme has become entitled in respect of the member (“the original dependants' scheme pension”)—
- (a) the transfer is not a recognised transfer unless those sums and assets are, after the transfer, applied towards the provision of a dependants' scheme pension (a “new dependants' scheme pension”), and
 - (b) if they are so applied, the new dependants' scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original dependants' scheme pension.
- (1D) The Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent—
- (a) a [^{F82}member's drawdown pension fund or dependant's drawdown pension fund], ^{F83}... [^{F84}or
 - (aa) a member's flexi-access drawdown fund or dependant's flexi-access drawdown fund,]^{F85}or
 - (ab) a nominee's flexi-access drawdown fund, or
 - (ac) a successor's flexi-access drawdown fund,]
- ^{F83}(b)
- under an arrangement (“the old arrangement”), the transfer is not a recognised transfer unless all of those sums and assets become held under an arrangement under which no other sums or assets are held (“the new arrangement”).
- (1E) If regulations so provide they may make in relation to cases in which the sums and assets become so held provision as to the treatment for the purposes of any provision of this Part of—
- (a) the sums and assets transferred, and
 - (b) the new arrangement,
- including provision for treating the sums and assets transferred as remaining, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, sums and assets held under the old arrangement.]
- ^{F86}(1F) The Commissioners for His Majesty’s Revenue and Customs may by regulations make provision as to the treatment for the purposes of any provision of this Part of a CMP-derived drawdown pension.
- (1G) The provision that may be made under subsection (1F) includes provision for treating sums or assets held for the purposes of a CMP-derived drawdown pension as remaining, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, held for the purposes of the collective money purchase arrangement under the pension scheme from which they were transferred.]
- (2) For the purposes of this Part a recognised overseas pension scheme is a qualifying recognised overseas pension scheme if—

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- (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,
 - [^{F87}(ba) the scheme manager has confirmed to an officer of Revenue and Customs that the scheme manager understands the scheme manager's potential liability to overseas transfer charge and has undertaken to such an officer to operate the charge including by meeting the scheme manager's liabilities to the charge,]
 - (c) the scheme manager has undertaken to the Inland Revenue to comply with [^{F88}any requirements imposed under subsection (4)], and
 - (d) the recognised overseas pension scheme is not excluded from being a qualifying recognised overseas pension scheme by subsection (5).
- [^{F89}(2A) Regulations may make provision as to—
- (a) information that is to be included in, or is to accompany, a notification under subsection (2)(a);
 - (b) the way and form in which such a notification, or any required information or evidence, is to be given or provided.]
- (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.
- [^{F90}(4) Regulations may require the scheme manager of a QROPS or former QROPS to—
- (a) give the Commissioners information of a prescribed description,
 - (b) give the Commissioners such evidence as they may require of a prescribed matter,
 - [^{F91}(ba) give information of a prescribed description to the scheme manager of a QROPS or former QROPS,
 - (bb) give information of a prescribed description to the scheme administrator of a registered pension scheme,
 - (bc) give information of a prescribed description to a member, or former member, of the QROPS or former QROPS,] and
 - (c) give a prescribed authority, in prescribed circumstances, information of a prescribed description.
- [^{F92}(4ZA) Regulations may require a member, or former member, of a QROPS or former QROPS to give information of a prescribed description to the scheme manager of a QROPS or former QROPS.]
- (4A) Regulations under subsection (4) [^{F93}or (4ZA)] may make provision as to—
- (a) the way and form in which information or evidence is to be given, and
 - (b) the times or intervals at which information or evidence is to be given.
- (4B) The regulations may apply any provision of Part 7 of Schedule 36 to FA 2008 (penalties), with or without modifications, in relation to requirements imposed under the regulations on a former QROPS.]
- [^{F94}(4C) Provision under subsection (2A)(b) or (4A)(a) may, in particular, provide for use of a way or form specified by the Commissioners.]

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(5) A recognised overseas pension scheme is excluded from being a qualifying recognised overseas pension scheme by this subsection if [^{F95}the Commissioners have] decided that—

- (a) [^{F96}any of the following conditions is met in relation to the scheme—
 - (i) there has been a failure to comply with a relevant requirement and the failure is significant,
 - (ii) any information given pursuant to a relevant requirement is [^{F97}inaccurate] in a material respect,
 - (iii) any declaration given pursuant to a relevant requirement is false in a material respect,
 - (iv) there is no scheme manager,] and
- (b) by reason of [^{F98}that condition being met] 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).

[^{F99}(6) A failure to comply with a requirement is significant if—

- (a) it is a failure to give information or evidence that is (or may be) of significance, or
- (b) there are reasonable grounds for believing that the failure prejudices (or might prejudice) the assessment or collection of tax by the Commissioners.]

(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.

[^{F100}(7A) Regulations may, in a case where—

- (a) any of the sums and assets transferred by a relevant overseas transfer represent rights in respect of a pension to which a person has become entitled under the transferring scheme (“the original pension”), and
- (b) those sums and assets are, after the transfer, applied towards the provision of a pension under the other scheme (“the new pension”),

provide that the new pension is to be treated, to such extent as is prescribed and for such of the purposes of this Part as are prescribed, as if it were the original pension.

(7B) For the purposes of subsection (7A), a “relevant overseas transfer” is a transfer of sums or assets held for the purposes of, or representing accrued rights under, a relevant overseas scheme (“the transferring scheme”) so as to become held for the purposes of, or to represent rights under—

- (a) another relevant overseas scheme, or
- (b) a registered pension scheme,

in connection with a member of that pension scheme.

(7C) In subsection (7B) “relevant overseas scheme” means—

- (a) a QROPS, or

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(b) a relevant non-UK scheme (see paragraph 1(5) of Schedule 34).

(7D) Regulations under subsection (7A) may—

- (a) apply generally or only in specified cases, and
- (b) make different provision for different cases.]

[^{F101}(8) In subsections (4) to (6) [^{F102}, (7A) to (7D)] and this subsection—

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“prescribed” means prescribed by regulations;

“QROPS” means a qualifying recognised overseas pension scheme, and “former QROPS” means a scheme that has at any time been a QROPS;

“regulations” means regulations made by the Commissioners;

“relevant requirement” means—

- (a) a requirement imposed by regulations under subsection (4), or
- (b) a requirement imposed by virtue of Part 1 of Schedule 36 to FA 2008 (powers to obtain information and documents)^{F103}, or
- (c) a requirement to pay overseas transfer charge, or interest on overseas transfer charge, imposed by regulations under section 244L(2) or by an assessment under such regulations.]]

Textual Amendments

- F81** S. 169(1A)-(1E) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 36](#), 64(1)
- F82** Words in s. 169(1D)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 66\(a\)](#)
- F83** S. 169(1D)(b) and preceding word omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 66\(b\)](#)
- F84** S. 169(1D)(aa) and preceding word inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 8](#)
- F85** S. 169(1D)(ab)(ac) and preceding word inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 4](#)
- F86** S. 169(1F)(1G) inserted (11.7.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), [s. 24\(3\)](#)
- F87** [S. 169\(2\)\(ba\)](#) inserted (with effect in accordance with Sch. 4 para. 25 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 paras. 13\(2\)](#), 25(3)
- F88** Words in s. 169(2)(c) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [s. 53\(3\)](#)
- F89** S. 169(2A) inserted (retrospective to 9.3.2017 and with effect in accordance with Sch. 4 para. 25 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 13\(3\)](#)
- F90** S. 169(4)-(4B) substituted for s. 169(4) (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [s. 53\(4\)](#)
- F91** S. 169(4)(ba)-(bc) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 92](#)
- F92** S. 169(4ZA) inserted (retrospective to 9.3.2017 and with effect in accordance with Sch. 4 para. 25 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 13\(4\)](#)
- F93** Words in s. 169(4A) inserted (retrospective to 9.3.2017 and with effect in accordance with Sch. 4 para. 25 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 13\(5\)](#)
- F94** S. 169(4C) inserted (retrospective to 9.3.2017 and with effect in accordance with Sch. 4 para. 25 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 13\(6\)](#)
- F95** Words in s. 169(5) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [s. 53\(5\)\(a\)](#)
- F96** S. 169(5)(a) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [s. 53\(5\)\(b\)](#)
- F97** Word in s. 169(5)(a)(ii) substituted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 para. 23\(a\)](#)
- F98** Words in s. 169(5)(b) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [s. 53\(5\)\(c\)](#)
- F99** S. 169(6) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [s. 53\(6\)](#)

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- F100** S. 169(7A)-(7D) inserted (retrospective to 9.3.2017 and with effect in accordance with Sch. 4 para. 25 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 13\(7\)](#)
- F101** S. 169(8) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [s. 53\(7\)](#)
- F102** Words in s. 169(8) inserted (retrospective to 9.3.2017 and with effect in accordance with Sch. 4 para. 25 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 13\(8\)\(a\)](#)
- F103** Words in s. 169(8) inserted (retrospective to 9.3.2017 and with effect in accordance with Sch. 4 para. 25 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 13\(8\)\(b\)](#)

Commencement Information

- I10** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

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.
- ^{F104}(3)
- ^{F104}(4)
- (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) [^{F105}On an appeal that is notified to the tribunal, the tribunal] must consider whether the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme.
- (7) If [^{F106}the tribunal decides] that the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme, [^{F107}the tribunal must] dismiss the appeal.
- (8) If [^{F108}the tribunal decides] 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 ^{F109}...).

Textual Amendments

- F104** S. 170(3)(4) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 425\(2\)](#)
- F105** Words in s. 170(6) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 425\(3\)](#)
- F106** Words in s. 170(7) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 425\(4\)\(a\)](#)
- F107** Words in s. 170(7) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 425\(4\)\(b\)](#)
- F108** Words in s. 170(8) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 425\(5\)\(a\)](#)
- F109** Words in s. 170(8) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 425\(5\)\(b\)](#)

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Commencement Information

I11 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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 [^{F110}person who is or has been 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 [^{F111}person who is or has been 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.

Textual Amendments

F110 Words in s. 171(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 7](#)

F111 Words in s. 171(4) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 7](#)

Commencement Information

I12 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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
 - [^{F112}(a) any benefit, other than an excluded pension, to which the member (or any dependant]^{F113}, nominee or successor] of the member) has an actual or prospective entitlement under the pension scheme, or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement under the pension scheme].

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- (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
- [^{F114}(a) any benefit, other than an excluded pension, to which the person has [^{F115}a] prospective entitlement under the pension scheme in respect of a member of the pension scheme, or
- (b) any right in respect of any sums or assets held for the purposes of any arrangement relating to [^{F116}a member of the pension scheme] under 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
- (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 [^{F117} and any power to reduce the entitlement to the benefit or right did not exist].
- (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 [^{F118} or right] assigned (or agreed to be assigned) are not unauthorised payments.
- [^{F119}(6A) References in this section to a benefit to which the member or a person has an entitlement under the pension scheme includes rights to payments under—
- (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or
- (b) a lifetime annuity or dependants' annuity [^{F120}, or nominees' annuity or successors' annuity,] purchased by the application of sums or assets held for the purposes of the pension scheme.]
- [^{F121}(7) An excluded pension is so much of any pension which under pension rule 2 may continue to be paid after the member's death as may be so paid.]
- (8) "Assignment" includes assignation and related expressions are to be read accordingly.

Textual Amendments

F112 S. 172(1)(a)(b) substituted for words (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 37\(2\), 64\(1\)](#)

F113 Words in s. 172(1)(a) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 5](#)

F114 S. 172(3)(a)(b) substituted for words (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 37\(3\), 64\(1\)](#)

F115 Word in s. 172(3)(a) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 2\(2\)\(a\)](#)

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- F116** Words in s. 172(3)(b) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 2(2)(b)**
- F117** Words in s. 172(5)(b) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 37(4)**, 64(1)
- F118** Words in s. 172(6) inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 37(5)**, 64(1)
- F119** S. 172(6A) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 2(3)**
- F120** Words in s. 172(6A)(b) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), **Sch. 4 para. 8**
- F121** S. 172(7) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), **Sch. 10 paras. 37(6)**, 64(1)

Commencement Information

- I13** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

[^{F122}172A Surrender

- (1) Subsection (2) applies if a member of a registered pension scheme surrenders or agrees to surrender—
- (a) any benefit, other than an excluded pension, to which the member (or any dependant^{F123}, nominee or successor] of the member) has a prospective entitlement under an arrangement under the pension scheme,
 - ^{F124}(aa) [any rights to payments under a lifetime annuity or dependants' annuity^{F125}, or nominees' annuity or successors' annuity,] purchased by the application of sums or assets held for the purposes of the pension scheme,] or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement under the pension scheme.
- (2) The pension scheme is to be treated as making an unauthorised payment to the member.
- (3) Subsection (4) applies if a person surrenders or agrees to surrender—
- (a) any benefit, other than an excluded pension, to which the person has a prospective entitlement under an arrangement under the pension scheme [^{F126}in respect of] a member of a pension scheme, or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement relating to a member of the pension scheme under the pension scheme.
- (4) The pension scheme is to be treated as making an unauthorised payment to the person in respect of the member.
- (5) Subsections (2) and (4) do not apply to—
- (a) a surrender pursuant to a pension sharing order or provision,
 - (b) a surrender (or agreement to surrender) by the member in return for the conferring on a dependant^{F127}, or nominee,] of an entitlement to benefits after the member's death,
 - ^{F128}(ba) [a surrender (or agreement to surrender) by a dependant, nominee or successor of the member (“the beneficiary”) in return for the conferring, on a successor of the member, of an entitlement to benefits after the beneficiary's death,]
 - (c) a transfer of (or agreement to transfer) benefits or rights so as to become benefits or rights under another arrangement under the pension scheme relating to the member^{F129}, dependant, nominee or successor],

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^{F130}(ca) [a surrender of (or agreement to surrender) rights to payments under an annuity in any case covered by regulations under paragraph 3(2B) or 17(3) of Schedule 28;]

^{F131}(d)

^{F132}(da) [a surrender made as part of a retirement-benefit activities compliance exercise,

(db) a surrender of a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) made in order to comply with [^{F133}Part 5 of the Equality Act 2010, so far as relating to age, or the] Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing [^{F134}those Regulations])]

(e) a surrender (or agreement to surrender) which constitutes an assignment (or agreement to assign) within section 172, or

(f) any surrender (or agreement to surrender) of a description prescribed by regulations made by the Board of Inland Revenue.

[Subsection (5)(b) applies only if the entitlement is held (or is to be held) by the ^{F135}(5A) dependant [^{F136}, or nominee,] under an arrangement under the pension scheme relating to the member or dependant [^{F137} or nominee].]

[Subsection (5)(ba) applies only if the entitlement is held (or is to be held) by the ^{F138}(5B) successor under an arrangement under the pension scheme relating to the beneficiary or successor.]

(6) Regulations under subsection (5)(f) may include provision having effect in relation to times before they are made.

(7) Subsections (2) and (4) do not apply to the surrender of a benefit to which the member (or a dependant [^{F139} or nominee or successor] of the member) has a prospective entitlement, or to which the person has a prospective entitlement in respect of a member, under an arrangement that is a defined benefits arrangement or cash balance arrangement unless—

(a) in consequence of the surrender, the actual or prospective entitlement of another member (or dependant [^{F140}, or nominee or successor,] of another member) of the pension scheme, or of another person in respect of another member, to benefits under the scheme is increased, and

(b) the two members are or have been connected persons.

(8) The amount of the unauthorised payment is the consideration that might be expected to be received if what is surrendered were assigned by a transaction between parties at arm's length and any power to reduce the entitlement to the benefit or right did not exist.

(9) In this section “surrender”, in relation to any benefit or right of a member (or dependant of a member) of a pension scheme or other person, includes any schemes, arrangements or understandings of any kind (whether or not legally enforceable) the main purpose, or one of the main purposes, of which is to reduce the member's (or dependant's), or person's, entitlement to the benefit or right.

[References in this section to a benefit to which the member or a person has an ^{F141}(9A) entitlement under the pension scheme includes rights to payments under—

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- (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or
 - (b) a lifetime annuity or dependants' annuity^{F142}, or nominees' annuity or successors' annuity,] purchased by the application of sums or assets held for the purposes of the pension scheme.]
- (10) ^{F143}For the purposes of this section an] excluded pension is so much of any pension which under pension rule 2 may continue to be paid after the member's death as may be so paid.
- [For the purposes of this section a surrender relating to an arrangement under the
- ^{F144}(10A) pension scheme (“the old arrangement”) is made as part of a retirement-benefit activities compliance exercise if—
- (a) it is made in connection with the making of an arrangement under another pension scheme relating to the member (“the new arrangement”),
 - (b) the old arrangement and the new arrangement relate to the same employment,
 - (c) both the rights surrendered and the rights conferred under the new arrangement consist of or include a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both),
 - (d) the surrender and the making of the new arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
 - (e) the rights surrendered and the rights conferred under the new arrangement are not significantly different.]
- ^{F145}(11) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]

Textual Amendments

- F122** Ss. 172A-172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 38](#), 64(1)
- F123** Words in s. 172A(1)(a) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 6](#)
- F124** S. 172A(1)(aa) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 3\(2\)](#)
- F125** Words in s. 172A(1)(aa) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 9\(2\)](#)
- F126** Words in s. 172A(3)(a) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 3\(3\)](#)
- F127** Words in s. 172A(5)(b) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 7\(a\)](#)
- F128** S. 172A(5)(ba) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 7\(b\)](#)
- F129** Words in s. 172A(5)(c) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 7\(c\)](#)
- F130** S. 172A(5)(ca) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 3\(4\)](#)
- F131** S. 172A(5)(d) omitted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 7 para. 10\(2\)](#)
- F132** S. 172A(5)(da)(db) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 6\(2\)](#), 24(3)

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- F133** Words in s. 172A(5)(db) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 58(a) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))
- F134** Words in s. 172A(5)(db) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 58(b) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 5](#) (see S.I. 2010/2317, art. 2))
- F135** S. 172A(5A) inserted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 para. 10\(3\)](#)
- F136** Words in s. 172A(5A) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 8\(a\)](#)
- F137** Words in s. 172A(5A) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 8\(b\)](#)
- F138** S. 172A(5B) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 9](#)
- F139** Words in s. 172A(7) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 10\(a\)](#)
- F140** Words in s. 172A(7)(a) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 10\(b\)](#)
- F141** S. 172A(9A) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 3\(5\)](#)
- F142** Words in s. 172A(9A)(b) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 9\(3\)](#)
- F143** Words in s. 172A(10) substituted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 6\(3\), 24\(3\)](#)
- F144** S. 172A(10A) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 6\(4\), 24\(3\)](#)
- F145** S. 172A(11) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 469](#) (with Sch. 2)

172B Increase in rights of connected person on death

- (1) This section applies if—
- (a) at any time after the death of a relevant member of a registered pension scheme, there is an increase in the pension rights of another member of the pension scheme which is attributable to the death, and
 - (b) the dead member and other member were connected persons immediately before the death.
- (2) A member of a registered pension scheme is a relevant member if, immediately before his death, any of his rights under the pension scheme are—
- (a) rights to benefit to which the member (or any dependant [^{F146}or nominee or successor] of the member) has a prospective entitlement under an arrangement under the pension scheme,
 - ^{F147}(aa) [rights to payments under a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme or under a lifetime annuity or dependants' annuity [^{F148}, or nominees' annuity or successors' annuity,] purchased by the application of sums or assets held for the purposes of the pension scheme,] ^{F149}...
 - ^{F150}(ab) [rights representing the nominee's flexi-access drawdown fund or successor's flexi-access drawdown fund in respect of an arrangement under the pension scheme,]

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- (b) rights representing the [^{F151}member's drawdown pension fund or dependant's drawdown pension fund] in respect of an arrangement under the pension scheme^{F152}, or
 - (c) rights representing the member's flexi-access drawdown fund or dependant's flexi-access drawdown fund in respect of an arrangement under the pension scheme.]
- (3) There is at any time an increase in the pension rights of the other member of the pension scheme which is attributable to the death if—
- (a) the consideration which might be expected to be received in respect of an assignment (or assignation) of the benefits to which he [^{F153}has an actual or prospective entitlement] under the pension scheme at that time, exceeds
 - (b) the consideration which might be expected to be received in respect of such an assignment (or assignation) immediately before that time,
- in consequence of the death (ignoring for the purposes of paragraphs (a) and (b) any power to reduce the entitlement to the benefits).
- (4) The pension scheme is to be treated as making an unauthorised payment to the other member (or to the other member's personal representatives) of an amount equal to the excess (but subject to subsection [^{F154}(5)]).
- (5) The amount which would (apart from this subsection) constitute the unauthorised payment is to be reduced by so much of the excess as arises—
- ^{F155}(a)
 - (b) from the other member becoming entitled to pension death benefits or lump sum death benefits in respect of the dead member, or
 - (c) in any manner prescribed by regulations made by the Board of Inland Revenue.
- (6) Regulations under subsection (5)(c) may include provision having effect in relation to times before they are made.
- (7) This section does not apply if—
- ^{F156}(a)
 - (b) the benefits to which each of [^{F157}at least 20 members of the pension scheme][^{F158}has an actual or prospective entitlement] under the pension scheme are increased at the same rate in consequence of the death.
- [This section does not apply if—
- ^{F159}(7A) (a) the increase mentioned in subsection (1)(a) is an increase in the rate of a dependants' annuity^{F160}, nominees' annuity, successors' annuity] or dependants' scheme pension or in rights representing a [^{F161}nominee's flexi-access drawdown fund, successor's flexi-access drawdown fund,][^{F162}dependant's drawdown pension fund][^{F163}or dependant's flexi-access drawdown fund], and
- (b) the increase is attributable to rights of the dead member to payments under a dependants' annuity^{F160}, nominees' annuity, successors' annuity] or dependants' scheme pension or rights representing a [^{F161}nominee's flexi-access drawdown fund, successor's flexi-access drawdown fund,][^{F164}dependant's drawdown pension fund][^{F163}or dependant's flexi-access drawdown fund].

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(7B) References in this section to a benefit to which the member or a person has an entitlement under the pension scheme includes rights to payments under—

- (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or
- (b) a lifetime annuity or dependants' annuity^{F165}, or nominees' annuity or successors' annuity,] purchased by the application of sums or assets held for the purposes of the pension scheme.]

(8) This section does not apply if the increase in the pension rights of the other member is brought about by an assignment (or agreement to assign) within section 172.

^{F166}(8A)

[^{F167}(9) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]

Textual Amendments

- F122** Ss. 172A–172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 38](#), 64(1)
- F146** Words in s. 172B(2)(a) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 11\(a\)](#)
- F147** S. 172B(2)(aa) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 4\(2\)](#)
- F148** Words in s. 172B(2)(aa) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 10\(2\)](#)
- F149** Word in s. 172B(2)(aa) omitted (17.12.2014) by virtue of [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 9\(a\)](#)
- F150** S. 172B(2)(ab) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 11\(b\)](#)
- F151** Words in s. 172B(2)(b) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 67\(2\)](#)
- F152** S. 172B(2)(c) and preceding word inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 9\(b\)](#)
- F153** Words in s. 172B(3)(a) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 4\(3\)](#)
- F154** Word in s. 172B(4) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 12\(3\)](#)
- F155** S. 172B(5)(a) repealed (19.7.2007) (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 19 para. 6](#), [Sch. 27 Pt. 3\(1\)](#)
- F156** S. 172B(7)(a) omitted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 4\(4\)\(a\)](#)
- F157** Words in s. 172B(7)(b) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 4\(4\)\(b\)](#)
- F158** Words in s. 172B(7)(b) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 4\(3\)](#)
- F159** S. 172B(7A)(7B) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 28 para. 4\(5\)](#)
- F160** Words in s. 172B(7A) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 10\(3\)](#)
- F161** Words in s. 172B(7A) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 2 para. 12](#)
- F162** Words in s. 172B(7A)(a) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 67\(3\)\(a\)](#)
- F163** Words in s. 172B(7A) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), [Sch. 1 para. 10](#)
- F164** Words in s. 172B(7A)(b) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 67\(3\)\(b\)](#)
- F165** Words in s. 172B(7B)(b) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 4 para. 10\(4\)](#)

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F166 S. 172B(8A) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 67\(4\)](#)

F167 S. 172B(9) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 470](#) (with [Sch. 2](#))

F168 172B Increase in rights on death arising from alternatively secured pension fund etc

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Textual Amendments

F122 Ss. 172A-172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 38, 64\(1\)](#)

F168 S. 172BA omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 68](#)

172C Allocation of unallocated employer contributions

- (1) This section applies if—
- (a) contributions are paid under a registered pension scheme by an employer otherwise than in respect of any individual,
 - (b) in any tax year any of the contributions become held for the purposes of the provision of benefits to or in respect of a member of the pension scheme under any relevant arrangement or arrangements (“the allocated contributions”),
 - (c) the amount of the allocated contributions exceeds the permitted maximum, and
 - (d) the member and the employer, or the member and any person connected with the employer at any time during the tax year, are connected persons at any time during the tax year.
- (2) An arrangement is a relevant arrangement if it is—
- (a) a money purchase arrangement that is not a cash balance arrangement [^{F169}or a collective money purchase arrangement], or
 - (b) a hybrid arrangement under which the benefits that may be provided to or in respect of the member are, or include, money purchase benefits [^{F170}that are not cash balance benefits or collective money purchase benefits].
- (3) “The permitted maximum” is—
- (a) the maximum amount of relief to which the member is entitled under section 188 (relief for contributions) in respect of relievable pension contributions paid during the tax year (see section 190), less
 - (b) the amount of any contributions paid by employers under any registered pension scheme in respect of the member in the tax year.
- (4) But if the member is also a member of one or more other registered pension schemes, the permitted maximum in relation to each of the registered pension schemes of which he is a member is—

$$\frac{PM}{N}$$

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where—

PM is the amount arrived at under subsection (3), and

N is the number of registered pension schemes of which he is a member.

(5) The pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives).

(6) The amount of the unauthorised payment is the amount by which the amount of the allocated contributions exceeds the permitted maximum.

[^{F171}(7) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]

Textual Amendments

F122 Ss. 172A-172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 38](#), 64(1)

F169 Words in s. 172C(2)(a) inserted (1.8.2022) by [Finance Act 2021 \(c. 26\)](#), [Sch. 5 paras. 5\(2\)\(a\)](#), 25(1); [S.I. 2022/874](#), reg. 2

F170 Words in s. 172C(2)(b) substituted (1.8.2022) by [Finance Act 2021 \(c. 26\)](#), [Sch. 5 paras. 5\(2\)\(b\)](#), 25(1); [S.I. 2022/874](#), reg. 2

F171 S. 172C(7) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 471](#) (with [Sch. 2](#))

172D Limit on increase in benefits

(1) This section applies where, at any time during any pension input period in respect of a relevant arrangement relating to a member of an occupational pension scheme that is a registered pension scheme, the member and—

- (a) a sponsoring employer, or
- (b) a person connected with a sponsoring employer.

are connected persons.

(2) If—

- (a) the pension input amount for the pension input period in respect of the relevant arrangement, exceeds
- (b) the notional unconnected person input amount for the pension input period in respect of the relevant arrangement,

the pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives) of an amount equal to the excess.

(3) A relevant arrangement is an arrangement under the pension scheme that is—

- (a) a defined benefits arrangement,
- (b) a cash balance arrangement, or
- (c) a hybrid arrangement under which the benefits that may be provided to or in respect of the member are, or include, defined benefits or cash balance benefits.

(4) The pension input amount for a pension input period in respect of the relevant arrangement is to be determined in accordance with—

- (a) sections 230 to 232 if the relevant arrangement is a cash balance arrangement,

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- (b) sections 234 to [F172236A] if it is a defined benefits arrangement, and
 - (c) section 237 if it is a hybrid arrangement,
- treating references in those sections to the individual as to the member and treating section 237 as if the references to input amount B were omitted.
- (5) The notional unconnected person input amount for the pension input period in respect of the relevant arrangement is what the pension input amount, as so determined, would have been if the member were connected with—
- (a) a sponsoring employer, or
 - (b) a person connected with a sponsoring employer,
- at no time during the pension input period.
- [F173(6) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]]

Textual Amendments

- F122** Ss. 172A-172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 38, 64\(1\)](#)
- F172** Word in s. 172D(4)(b) substituted (with effect in accordance with Sch. 17 Pt. 2 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 17 para. 2](#)
- F173** S. 172D(6) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 472](#) (with [Sch. 2](#))

173 Benefits

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to a [F174person who is or has been 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 [F175person], or
 - (b) a member of the [F176person's] family or household.
- (2) If the benefit is received by reason of an employment which is not [F177lower-paid employment as a minister of religion], subsection (1) does not apply.
- (3) If the benefit is received by reason of [F178an employment which is lower-paid employment as a minister of religion], 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 [F179lower-paid employment as a minister of religion],
 - (b) the pension scheme is an occupational pension scheme, and
 - (c) the [F180person], or a member of the [F181person'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 [F182person who is or has been a] member of the pension scheme if, after the [F183person'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 [F183person's] death, was a member of the [F183person's] family or household.
- (5) The person who receives the benefit is to be treated as having received the unauthorised payment.

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- (6) If the benefit is received by reason of an employment which is not [F184]lower-paid employment as a minister of religion], subsections (4) and (5) do not apply.
- (7) If the benefit is received by reason of [F185]an employment which is lower-paid employment as a minister of religion], subsections (4) and (5) only apply if—
- (a) paragraphs (a) and (b) of subsection (3) apply, and
 - (b) at the date of the [F186]person's] death the [F187]person], or a member of the [F186]person's] family or household, was a director of, and had a material interest in, a sponsoring employer.
- [F188](7A) This section does not apply if—
- (a) the pension scheme is an investment-regulated pension scheme, and
 - (b) the asset consists of taxable property.]
- (8) The amount of an unauthorised payment treated as having been made by this section—
- (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 [F189]person who is or has been a] 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,
 - [F190]“lower-paid employment as a minister of religion” has the meaning given by section 290D 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.

Textual Amendments

- F174** Words in s. 173(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 8\(2\)\(a\)](#)
- F175** Word in s. 173(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 8\(2\)\(b\)](#)
- F176** Word in s. 173(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 8\(2\)\(c\)](#)
- F177** Words in s. 173(2) substituted (with effect in accordance with s. 13(4) of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 1 para. 25\(2\)](#)
- F178** Words in s. 173(3) substituted (with effect in accordance with s. 13(4) of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 1 para. 25\(3\)\(a\)](#)
- F179** Words in s. 173(3)(a) substituted (with effect in accordance with s. 13(4) of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 1 para. 25\(3\)\(b\)](#)

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- F180** Word in s. 173(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(3\)\(a\)](#)
- F181** Word in s. 173(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(3\)\(b\)](#)
- F182** Words in s. 173(4) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(4\)\(a\)](#)
- F183** Word in s. 173(4) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(4\)\(b\)](#)
- F184** Words in s. 173(6) substituted (with effect in accordance with s. 13(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 1 para. 25\(4\)](#)
- F185** Words in s. 173(7) substituted (with effect in accordance with s. 13(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 1 para. 25\(5\)](#)
- F186** Word in s. 173(7)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(5\)\(a\)](#)
- F187** Word in s. 173(7)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(5\)\(b\)](#)
- F188** S. 173(7A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 158(2), [Sch. 21 para. 4](#)
- F189** Words in s. 173(9)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(6\)](#)
- F190** Words in s. 173(10) substituted (with effect in accordance with s. 13(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 1 para. 25\(6\)](#)

Commencement Information

- I14** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

174 Value shifting

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to a [^{F191}person who is or has been 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 [^{F192}person] is increased, a liability of the [^{F192}person] is reduced, or a liability of another person is reduced for the benefit of the [^{F192}person].
- (2) But if the event or the change in the value of the currency occurs after the [^{F193}person's] death—
- (a) the pension scheme is to be treated as having made an unauthorised payment in respect of the [^{F194}person] (rather than to the [^{F194}person]), 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),

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- (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
 - (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).

Textual Amendments

- F191** Words in s. 174(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 9\(2\)\(a\)](#)
- F192** Word in s. 174(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 9\(2\)\(b\)](#)
- F193** Word in s. 174(2) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 9\(3\)\(a\)](#)
- F194** Word in s. 174(2) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 9\(3\)\(b\)](#)

Commencement Information

- I15** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

[^{F195}174A] Taxable property held by investment-regulated pension schemes

- (1) An investment-regulated pension scheme is to be treated as making an unauthorised payment to a member of the pension scheme if—
 - (a) the pension scheme acquires an interest in taxable property, and
 - (b) the interest is held by the pension scheme for the purposes of an arrangement under the pension scheme relating to the member.
- (2) An investment-regulated pension scheme is to be treated as making an unauthorised payment to a member of the pension scheme if—
 - (a) an interest in taxable property is held by the pension scheme for the purposes of an arrangement under the pension scheme relating to the member, and
 - (b) the property is improved.
- (3) An investment-regulated pension scheme is to be treated as making an unauthorised payment to a member of the pension scheme if—

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- (a) an interest in property which is not residential property is held by the pension scheme for the purposes of an arrangement under the pension scheme relating to the member, and
 - (b) the property is converted or adapted to become residential property.
- (4) Schedule 29A makes provision supplementing this section; and in that Schedule—
- (a) Part 1 defines “investment-regulated pension scheme”,
 - (b) Part 2 defines “taxable property” (and “residential property”),
 - (c) Part 3 explains what it means to acquire, and to hold, an interest in taxable property, and
 - (d) Part 4 contains provision for calculating the amounts of unauthorised payments treated as made by this section and explains when the unauthorised payments are treated as made.]

Textual Amendments

F195 S. 174A inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 158\(2\)](#), [Sch. 21 para. 5](#)

Authorised employer payments

175 Authorised employer payments

The only payments which a registered pension scheme that is an occupational pension scheme is authorised to make to or in respect of a [^{F196}person who is or has been a] sponsoring employer are—

- (a) public service scheme payments (see section 176),
- (b) authorised surplus payments (see section 177),
- (c) compensation payments (see section 178),
- (d) authorised employer loans (see section 179),
- (e) scheme administration employer payments (see section 180), and
- (f) payments of a description prescribed by regulations made by the Board of Inland Revenue.

Textual Amendments

F196 Words in s. 175 inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\)](#), [Sch. 23 para. 10](#)

Modifications etc. (not altering text)

C41 Ss. 175-181 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), [regs. 1, 15](#)

Commencement Information

I16 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

176 Public service scheme payment

A payment is a public service scheme payment if—

- (a) it is made by a public service pension scheme, and
- (b) it is not of a description prescribed by regulations made by the Board of Inland Revenue.

Modifications etc. (not altering text)

C41 Ss. 175-181 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, 15

Commencement Information

I17 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

177 Authorised surplus payment

For the purposes of this Part a payment is an authorised surplus payment if it is of a description prescribed by regulations made by the Board of Inland Revenue.

Modifications etc. (not altering text)

C41 Ss. 175-181 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, 15

Commencement Information

I18 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

178 Compensation payments

A payment is a compensation payment if it is made in respect of a member's liability to a sponsoring employer in respect of a criminal, fraudulent or negligent act or omission by the member.

Modifications etc. (not altering text)

C41 Ss. 175-181 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, 15

Commencement Information

I19 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

179 Authorised employer loan

- (1) A loan made to or in respect of a ^{F197}person who is or has been a] sponsoring employer is an authorised employer loan if—

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- (a) the amount loaned does not exceed an amount equal to 50% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme immediately before the loan is made,
 - (b) the loan is secured by a charge which is of adequate value, and
 - (c) the repayment terms comply with subsection (2).
- (2) The repayment terms comply with this subsection if—
- (a) the rate of interest payable on the loan is not less than the rate prescribed by regulations made by the Board of Inland Revenue,
 - (b) the loan repayment date is before the end of the period of five years beginning with the date on which the loan is made, or has been postponed to a date after the end of that period under subsection (3), and
 - (c) the amount payable in each period beginning with the date on which the loan is made, and ending with the last day of a loan year, is not less than the required amount.
- (3) If on a standard loan repayment date any amount (including interest) is owing, the loan repayment date may be postponed to a date before the end of the period of five years beginning with the standard loan repayment date.
- (4) The loan repayment date may be postponed under subsection (3) only once.
- (5) If the amount of a loan to or in respect of a [^{F198}person who is or has been a] sponsoring employer is increased, the amount of the increase is to be treated as a loan made on the date of the increase.
- (6) Schedule 30 gives the meaning of expressions used in this section and explains how to calculate the amount of the unauthorised payment when a loan to or in respect of a [^{F199}person who is or has been a] sponsoring employer does not comply with subsection (1).
- (7) In this section and that Schedule “charge” includes a right in security or an agreement to create a right in security; and any reference to assets subject to a charge or assets charged includes a reference to the property over which such a right is granted.
- (8) Schedule 36 contains (in Part 4) transitional provision about loans to sponsoring employers.

Textual Amendments

F197 Words in s. 179(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 11](#)

F198 Words in s. 179(5) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 11](#)

F199 Words in s. 179(6) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 11](#)

Modifications etc. (not altering text)

C41 Ss. 175-181 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, [15](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

I20 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

180 Scheme administration employer payments

- (1) A “scheme administration employer payment” is a payment made—
 - (a) by a registered pension scheme that is an occupational pension scheme, and
 - (b) to or in respect of a [^{F200}person who is or has been a] sponsoring employer, 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 employer payment.
- (3) Scheme administration employer 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 [^{F201}person who is or has been a] sponsoring employer is not a scheme administration employer payment.
- (5) Payments made to acquire shares in a sponsoring employer are not scheme administration employer payments if, when the payment is made—
 - (a) the market value of shares in the sponsoring employer held for the purposes of the pension scheme is equal to or greater than 5% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme, or
 - (b) the total market value of shares in sponsoring employers held for the purposes of the pension scheme is equal to or greater than 20% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme.
- (6) 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 employer payments.

Textual Amendments

F200 Words in s. 180(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 12](#)

F201 Words in s. 180(4) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 12](#)

Modifications etc. (not altering text)

C41 Ss. 175-181 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\), regs. 1, 15](#)

C42 S. 180 modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Finance Act 2004, Section 180\(5\) \(Modification\) Regulations 2012 \(S.I. 2012/1258\), regs. 1, 2](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Commencement Information

I21 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

Unauthorised employer payments

181 Value shifting

- (1) A registered pension scheme that is an occupational pension scheme is to be treated as having made an unauthorised payment to a [^{F202}person who is or has been a] sponsoring employer if, in connection with any of the events mentioned in subsection (2) 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 [^{F203}person] is increased, a liability of the [^{F203}person] is reduced, or a liability of another person is reduced for the benefit of the [^{F203}person].
- (2) 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
 - (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.
- (3) 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.
- (4) 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).

Textual Amendments

- F202** Words in s. 181(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 13\(a\)](#)
- F203** Word in s. 181(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 13\(b\)](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Modifications etc. (not altering text)

C41 Ss. 175-181 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **15**

Commencement Information

I22 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

[^{F204}Alternatively secured pensions]

Textual Amendments

F204 S. 181A and cross-heading inserted (19.7.2007) (with effect in accordance with Sch. 19 para. 29(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 19 para. 14**

^{F205}**181** **Minimum level of payment**

Textual Amendments

F205 S. 181A omitted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 69**

Borrowing

182 **Unauthorised borrowing: money purchase arrangements [^{F206}other than collective money purchase arrangements]**

- (1) A registered pension scheme is not authorised to borrow an amount in respect of a money purchase arrangement [^{F207}that is not a collective money purchase arrangement] unless the arrangement borrowing condition is met.
- (2) The arrangement borrowing condition is met if—

$$\left(APB + PB \right) < \frac{VA}{2}$$

where—

APB is the aggregate of the amounts previously borrowed in respect of the arrangement (excluding any amounts which have been repaid),

PB is the amount proposed to be borrowed in respect of the arrangement, and

VA is the value of the arrangement.

- (3) The value of the arrangement is the aggregate of—

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- (a) the amount of such of the sums and the market value of such of the assets as represent the [F208 member's drawdown pension fund] in respect of the arrangement (if any),
 - [F209(aa) the amount of such of the sums and the market value of such of the assets as represent the member's flexi-access drawdown fund in respect of the arrangement (if any),]
 - (b) the amount of such of the sums and the market value of such of the assets as represent [F210 dependants' drawdown pension funds][F211 or dependants' flexi-access drawdown funds] in respect of the arrangement (if any),
 - [F212(ba) the amount of such of the sums and the market value of such of the assets as represent nominees' flexi-access drawdown funds in respect of the arrangement (if any),
 - (bb) the amount of such of the sums and the market value of such of the assets as represent successors' flexi-access drawdown funds in respect of the arrangement (if any),]
 - (c) the aggregate of the value of each scheme pension or dependants' scheme pension payable in respect of the arrangement, and
 - (d) the value of the uncrystallised rights under the arrangement.
- (4) The value of a scheme pension or dependants' scheme pension payable in respect of the arrangement is—

$$RVF \times ARP$$

where—

RVF is the relevant valuation factor (see section 276), and

ARP is the annual rate at which the pension is payable.

- (5) Rights are uncrystallised if no-one has become entitled to the present payment of benefits in respect of the rights; and a person is to be treated as entitled to the present payment of benefits in respect of the sums and assets representing the person's [F213 drawdown pension fund][F214 or the person's flexi-access drawdown fund].
- (6) If the arrangement is a cash balance arrangement, the value of the uncrystallised rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits in respect of those rights if a person became entitled to benefits in respect of those rights.
- (7) If the arrangement is a money purchase arrangement other than a cash balance arrangement, the value of the uncrystallised rights under the arrangement is the aggregate of the amount of such of the sums, and the market value of such of the assets, held for the purposes of the arrangement as represent those rights.
- (8) If the arrangement is a hybrid arrangement under which either cash balance benefits or other money purchase benefits (but not defined benefits [F215 or collective money purchase benefits]) may be provided, the value of the uncrystallised rights under the arrangement is the greater of—
 - (a) their value calculated under subsection (6) (on the assumption that cash balance benefits are provided), and
 - (b) their value calculated under subsection (7) (on the assumption that other money purchase benefits are provided).

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F206** Words in s. 182 heading inserted (1.8.2022) by Finance Act 2021 (c. 26), **Sch. 5 paras. 6(2)**, 25(1); S.I. 2022/874, reg. 2
- F207** Words in s. 182(1) inserted (1.8.2022) by Finance Act 2021 (c. 26), **Sch. 5 paras. 6(3)**, 25(1); S.I. 2022/874, reg. 2
- F208** Words in s. 182(3)(a) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 70(2)(a)**
- F209** S. 182(3)(aa) inserted (17.12.2014) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 11(a)**
- F210** Words in s. 182(3)(b) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 70(2)(b)**
- F211** Words in s. 182(3)(b) inserted (17.12.2014) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 11(b)**
- F212** S. 182(3)(ba)(bb) inserted (17.12.2014) by Taxation of Pensions Act 2014 (c. 30), **Sch. 2 para. 13**
- F213** Words in s. 182(5) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 16 para. 70(3)**
- F214** Words in s. 182(5) inserted (17.12.2014) by Taxation of Pensions Act 2014 (c. 30), **Sch. 1 para. 12**
- F215** Words in s. 182(8) inserted (1.8.2022) by Finance Act 2021 (c. 26), **Sch. 5 paras. 6(4)**, 25(1); S.I. 2022/874, reg. 2

Modifications etc. (not altering text)

- C43** Ss. 182-185 excluded (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **16**
- C44** S. 182 modified (retrospective to 6.4.2011) by Finance Act 2011 (c. 11), **s. 68(2)(6)**
- C45** S. 182 restricted (retrospective to 6.4.2011) by Finance Act 2011 (c. 11), **s. 68(1)(6)**

Commencement Information

- I23** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

183 Effect of unauthorised borrowing: money purchase arrangements [^{F216}other than collective money purchase arrangements]

- (1) Subsection (2) applies if a registered pension scheme borrows in respect of a money purchase arrangement an amount which it is not authorised to borrow under section 182.
- (2) The pension scheme is to be treated as having made a scheme chargeable payment—
 - (a) if subsection (3) applies, of an amount calculated in accordance with subsection (4), and
 - (b) otherwise, of the amount borrowed.
- (3) This subsection applies if, immediately before the amount is borrowed—

$$APB < \frac{VA}{2}$$

- (4) If subsection (3) applies, the amount of the scheme chargeable payment is—

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

$$APB + AB - \frac{VA}{2}$$

(5) In subsections (3) and (4)—

APB is the aggregate of the amounts previously borrowed in respect of the arrangement (excluding any amounts which have been repaid),

AB is the amount borrowed, and

VA is the value of the arrangement, calculated in accordance with section 182(3), immediately before the amount is borrowed.

Textual Amendments

F216 Words in s. 183 heading inserted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 7(2), 25(1); S.I. 2022/874, reg. 2

Modifications etc. (not altering text)

C43 Ss. 182-185 excluded (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, 16

C46 S. 183 modified (retrospective to 6.4.2011) by Finance Act 2011 (c. 11), s. 68(2)(6)

Commencement Information

I24 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

184 Unauthorised borrowing: other arrangements

(1) A registered pension scheme is not authorised to borrow an amount in respect of any [^{F217}relevant arrangement] unless the scheme borrowing condition is met.

[^{F218}(1A) In this section “relevant arrangement” means an arrangement that—

- (a) is not a money purchase arrangement, or
- (b) is a collective money purchase arrangement.]

(2) The scheme borrowing condition is met if—

$$(APB + PB) < \frac{AARA}{2}$$

where—

APB is the aggregate of the amounts previously borrowed by the pension scheme in respect of [^{F219}relevant arrangements] (excluding any amounts which have been repaid),

PB is the amount proposed to be borrowed by the pension scheme, and

AARA is the aggregate amount of the relevant sums and assets.

(3) The aggregate amount of the relevant sums and assets is the aggregate of—

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- (a) the amount of the sums held for the purposes of such of the arrangements under the pension scheme as are [^{F220}relevant arrangements], and
- (b) the market value of the assets held for the purposes of such of the arrangements under the pension scheme as are [^{F221}relevant arrangements].

Textual Amendments

F217 Words in s. 184(1) substituted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 8(2), 25(1); S.I. 2022/874, reg. 2

F218 S. 184(1A) inserted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 8(3), 25(1); S.I. 2022/874, reg. 2

F219 Words in s. 184(2) substituted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 8(4), 25(1); S.I. 2022/874, reg. 2

F220 Words in s. 184(3)(a) substituted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 8(5), 25(1); S.I. 2022/874, reg. 2

F221 Words in s. 184(3)(b) substituted (1.8.2022) by Finance Act 2021 (c. 26), Sch. 5 paras. 8(5), 25(1); S.I. 2022/874, reg. 2

Modifications etc. (not altering text)

C43 Ss. 182-185 excluded (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, 16

Commencement Information

I25 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

185 Effect of unauthorised borrowing: other arrangements

- (1) Subsection (2) applies if a registered pension scheme borrows, in respect of an arrangement which is not a money purchase arrangement, an amount which it is not authorised to borrow under section 184.
- (2) The pension scheme is to be treated as having made a scheme chargeable payment—
 - (a) if subsection (3) applies, of an amount calculated in accordance with subsection (4), and
 - (b) otherwise, of the amount borrowed.
- (3) This subsection applies if, immediately before the amount is borrowed—

$$APB < \frac{AARA}{2}$$

- (4) If subsection (3) applies, the amount of the scheme chargeable payment is—

$$APB + AB - \frac{AARA}{2}$$

- (5) In subsections (3) and (4)—

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APB is the aggregate of the amounts previously borrowed by the pension scheme in respect of arrangements which are not money purchase arrangements (excluding any amounts which have been repaid),

AB is the amount borrowed, and

AARA is the aggregate amount of the relevant sums and assets, calculated in accordance with section 184(3), immediately before the amount is borrowed.

Modifications etc. (not altering text)

C43 Ss. 182-185 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, 16

Commencement Information

I26 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

^{F222}Income and gains from taxable property

Textual Amendments

F222 Ss. 185A-185I and cross-heading inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 158(2), [Sch. 21 para. 6](#)

185A Income from taxable property

- (1) An investment-regulated pension scheme is to be treated as having made a scheme chargeable payment if the pension scheme holds an interest in taxable property in a tax year.
- (2) The amount of the scheme chargeable payment depends on whether a person who holds the interest in the property directly receives profits arising from the interest in the tax year.
- (3) If a person who holds the interest in the property directly receives such profits in the tax year, the amount of the scheme chargeable payment is the greater of—
 - (a) an amount equal to the amount of the annual profits from the interest in the property (see section 185B(1)), and
 - (b) the amount of the deemed profits from the interest in the property for the year (see sections 185B(2) and 185C).
- (4) If no person who holds the interest in the property directly receives such profits in the tax year, the amount of the scheme chargeable payment is the amount of the deemed profits from the interest in the property for the year (see sections 185B(2) and 185C).
- (5) But where section 185D applies, the amount of the scheme chargeable payment is the amount found under subsection (3) or (4) as apportioned to the pension scheme in accordance with that section.
- (6) Section 185E makes provision for credits against income tax charged under section 239 (scheme sanction charge) in respect of a scheme chargeable payment treated as made by virtue of this section.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Modifications etc. (not altering text)

C47 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185B Annual profits and deemed profits

- (1) For the purposes of section 185A(3) the amount of the annual profits from the interest in the property is the total amount of profits received from the interest in the tax year—
 - (a) by each person who holds the interest directly, and
 - (b) at a time when the property is scheme-held taxable property.
- (2) For the purposes of section 185A(3) and (4) the amount of the deemed profits from the interest in the property for the tax year is—

$$\frac{DMV}{10} \times \frac{DTP}{DY}$$

where—

DMV is the deemed market value of the interest in the property for the year (see section 185C),

DTP is the number of days in the year for which the property is scheme-held taxable property, and

DY is the number of days in the year.

- (3) In this Part “scheme-held taxable property” means property—
 - (a) which is taxable property, and
 - (b) an interest in which is held by the pension scheme.

Modifications etc. (not altering text)

C47 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185C Deemed market value

- (1) For the purposes of section 185B(2), where no person who holds the interest in the property directly during the tax year does so by virtue of a lease of residential property, the deemed market value of the interest for the year is—

$$(MV + UP) \times (1 + RPI)$$

where—

MV is the opening market value (see subsection (2)),

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UP is the total of any unauthorised payments treated as made by the pension scheme under section 174A in relation to the property in the tax year, other than any such payment treated as made by virtue of the property becoming scheme-held taxable property in the year, and

RPI is the figure expressed as a decimal which represents the percentage increase in the retail prices index between the first day in the tax year on which the property is scheme-held taxable property and the last such day (or, if there is no such increase, is nil).

- (2) In subsection (1) “the opening market value” means—
- (a) if the property is not scheme-held taxable property immediately before the beginning of the tax year, the market value of the interest in the property immediately after the time during the year when the property first becomes scheme-held taxable property, and
 - (b) otherwise, the deemed market value of the interest for the previous tax year.
- (3) For the purposes of section 185B(2), where a person who holds the interest in the property directly during the tax year does so by virtue of a lease of residential property, the deemed market value of the interest for the year is the relevant rental value of the property calculated in accordance with paragraph 34 of Schedule 29A on the following assumptions—
- (a) that the lease was granted when the property first became scheme-held taxable property;
 - (b) that the term of the lease is 50 years;
 - (c) that a fully commercial rent is payable for the first five years of that term;
 - (d) that afterwards the rent is reviewed on an upwards-only basis.

Modifications etc. (not altering text)

C47 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185D Apportionment to pension scheme

- (1) This section applies where the pension scheme holds the interest in the property indirectly for the whole of the period in the tax year for which the property is scheme-held taxable property.
- (2) The amount that would otherwise be the amount of the scheme chargeable payment is to be apportioned to the pension scheme by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
 - (a) by the pension scheme,
 - (b) in connection with the acquisition of the interest in the property, and
 - (c) at the end of the last day in the tax year on which the property is scheme-held taxable property.
- (3) But where—

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- (a) the amount found in relation to the pension scheme on the day mentioned in paragraph (c) of subsection (2), differs from
- (b) the amount that would be found in relation to the pension scheme under that subsection on another day in the tax year on which the property is scheme-held taxable property,

the amount to be apportioned to the pension scheme under this section is the average of the amounts produced by applying subsection (2) in relation to the pension scheme on each day in the tax year on which the property is scheme-held taxable property.

Modifications etc. (not altering text)

C47 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185E Credit for tax paid

- (1) This section applies where—
 - (a) the pension scheme holds the interest in the property indirectly in the tax year,
 - (b) a person who holds the interest directly receives profits arising from the interest at a time in the tax year when the property is scheme-held taxable property,
 - (c) tax is payable on those profits by that person (assuming them to be the highest part of the person's income for the tax year in which they are received), and
 - (d) that tax has been paid.
- (2) The amount determined under subsection (3) is to be allowed as a credit against any income tax charged under section 239 in respect of the scheme chargeable payment treated as made by virtue of the pension scheme holding the interest in the property in the tax year.
- (3) That amount is a proportion of the tax payable and paid determined by reference to the proportion of the amount that would otherwise be the amount of the scheme chargeable payment that is apportioned to the pension scheme under section 185D.
- (4) Where—
 - (a) by virtue of this section an amount is allowed as a credit against income tax charged under section 239, and
 - (b) the amount of tax payable and paid by reference to which the amount of the credit was calculated is subsequently varied,

the amount of the credit is to be varied accordingly, and any necessary adjustments are to be made to give effect to the variation (whether by making assessments or otherwise).

Modifications etc. (not altering text)

C47 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

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185F Gains from taxable property

- (1) An investment-regulated pension scheme is to be treated as having made a scheme chargeable payment where—
 - (a) in a tax year the pension scheme holds an interest in property which is taxable property or which has been taxable property at any time whilst the interest has been held by the pension scheme (a “taxable interest”),
 - (b) a gain is treated as accruing to the pension scheme in respect of the taxable interest in the tax year, and
 - (c) the total amount of gains treated as accruing to the pension scheme in respect of taxable interests in the tax year exceeds the total amount of losses treated as accruing to the pension scheme in respect of taxable interests in the tax year.
- (2) The amount of the scheme chargeable payment is an amount equal to the difference between—
 - (a) the total amount of gains treated as accruing to the pension scheme in respect of taxable interests in the tax year, and
 - (b) the total amount of losses treated as accruing to the pension scheme in respect of taxable interests in the tax year,
 (but this is subject to section 185G(10)).
- (3) A gain or loss is treated as accruing to a pension scheme in respect of a taxable interest in a tax year if—
 - (a) by virtue of section 185G a chargeable gain or allowable loss is treated for the purposes of this section as accruing in the tax year to the person who holds the taxable interest directly, or
 - (b) in the tax year the pension scheme or another vehicle ceases to hold all or part of an interest in a vehicle through which the pension scheme holds the taxable interest indirectly (see section 185H).

Modifications etc. (not altering text)

C47 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185G Disposal by person holding directly

- (1) For the purposes of this section the person (“the transferor”) who holds the taxable interest directly is to be treated as holding an asset (a “taxable asset”) consisting of the interest.
- (2) For the purpose of determining—
 - (a) whether the transferor disposes of the taxable asset,
 - (b) when such a disposal takes place, and
 - (c) whether a chargeable gain or allowable loss is treated for the purposes of section 185F as accruing to the transferor on a disposal of the taxable asset in a tax year and, if so, the amount of the chargeable gain or allowable loss,
 TCGA 1992 is to be treated as applying to the transferor and the taxable asset, but subject as follows.

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- (3) TCGA 1992 is to be treated as applying as if—
- (a) throughout the tax year the transferor were resident^{F223} ... and domiciled in the United Kingdom,
 - (b) no allowable losses accrued to the transferor in any previous tax year,
 - ^{F224}(c)
 - (d) notice under section 16(2A) (losses) of that Act were given by the transferor in relation to the year in respect of any loss treated as accruing to the transferor in the year from a disposal of the taxable asset,
 - (e) section 45(1) (wasting assets) of that Act did not apply to a disposal of the taxable asset,
 - (f) for the purposes of section 53 (indexation allowance) of that Act the transferor were not chargeable to corporation tax in respect of any chargeable gain accruing to the transferor from a disposal of the taxable asset,
 - (g) section 171(1) (transfers within a group) of that Act did not apply to a disposal of the taxable asset (so that no election could be made in relation to such a disposal under section 171A (notional transfers within a group) of that Act), and
 - (h) sections 222 to 224 (relief on disposal of private residence) of that Act did not apply to a gain on a disposal of the taxable asset by virtue of section 225 (private residence occupied under terms of settlement) of that Act.
- (4) Where the taxable asset became taxable property whilst held directly by the pension scheme, TCGA 1992 is to be treated as applying to a disposal of the asset as if—
- (a) the asset had been acquired by the transferor at the time it became taxable property, and
 - (b) the amount deductible under section 38(1)(a) (consideration for acquisition of asset) of that Act in respect of the disposal were the amount of the unauthorised payment treated as made by the pension scheme at that time.
- (5) Subsections (6) to (8) apply where the pension scheme holds the taxable asset indirectly.
- (6) TCGA 1992 is to be treated as applying to a disposal of the asset as if the amount deductible under section 38(1) of that Act in respect of the disposal were—
- (a) the total amount of unauthorised payments treated as made by the pension scheme in respect of the taxable asset up to the time of the disposal, less
 - (b) the amount found under paragraph (a) to the extent that it has already been taken into account in calculating the gains or losses accruing to the pension scheme in respect of the taxable asset by virtue of this section or section 185H.
- (7) The amount that would otherwise be the amount of the consideration for which the disposal is made (or treated as made) is to be scaled down by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
- (a) by the pension scheme,
 - (b) in connection with the acquisition of the interest in the property which constitutes the taxable asset, and
 - (c) at the time of the disposal.

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- (8) Subsection (6) is subject to section 42 of TCGA 1992 (part disposals); but in the application of that section in relation to the taxable asset the amount of the consideration for the disposal is to be taken to be that amount apart from subsection (7).
- (9) Where the taxable asset was not taxable property for the whole period beginning with—
- (a) the time when the pension scheme acquired the asset, or
 - (b) if later, the time when the asset first became taxable property,
- and ending with the disposal, the amount that would otherwise be the amount of any chargeable gain or allowable loss treated as accruing on a disposal of the asset is to be reduced by reference to the proportion of the period for which the asset was not taxable property.
- (10) Where—
- (a) the taxable asset is a wasting asset consisting of tangible moveable property, and
 - (b) by virtue of section 185F, a loss is treated as accruing to the pension scheme from a disposal of the asset in a tax year,
- the loss is only to be allowed as a deduction from any gains treated as accruing to the pension scheme by virtue of that section from other disposals in the year of taxable assets which are wasting assets consisting of tangible moveable property.

Textual Amendments

- F223** Words in s. 185G(3)(a) omitted (with effect in accordance with Sch. 46 para. 132 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 120](#)
- F224** S. 185G(3)(c) omitted (21.7.2008) (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 53](#)

Modifications etc. (not altering text)

- C47** Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185H Disposal of interest in vehicle

- (1) This section applies for the purposes of section 185F where the pension scheme or another vehicle ceases to hold all or part of an interest in a vehicle through which the pension scheme holds the taxable interest indirectly.
- (2) The pension scheme is to be treated as disposing of the interest in the vehicle through which the pension scheme holds the taxable interest indirectly.
- (3) The amount of the gain or loss treated as accruing to the pension scheme on the disposal of the interest in the vehicle is the difference between—
 - (a) the deemed consideration received for the disposal of the interest, and
 - (b) the deemed consideration given for the interest.
- (4) The deemed consideration received for the disposal of the interest in the vehicle is the difference between—

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- (a) the market value of the taxable interest at the time of the disposal, apportioned to the pension scheme in accordance with subsection (5) immediately before that time, and
 - (b) the market value of the taxable interest at the time of the disposal, apportioned to the pension scheme in accordance with subsection (5) immediately after that time.
- (5) An amount mentioned in subsection (4) is to be apportioned to the pension scheme by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
- (a) by the pension scheme,
 - (b) in connection with the acquisition of the taxable interest, and
 - (c) at the time at which the amount is to be apportioned to the pension scheme in accordance with that subsection.
- (6) The deemed consideration given for the interest in the vehicle is—
- (a) the total amount of unauthorised payments treated as made by the pension scheme in respect of the taxable interest up to the time of the disposal, less
 - (b) the amount found under paragraph (a) to the extent that it has already been taken into account in calculating the gains or losses accruing to the pension scheme in respect of the taxable interest by virtue of section 185G or this section.

Modifications etc. (not altering text)

C47 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185I Credit for tax paid

- (1) This section applies where by virtue of section 185F a pension scheme is to be treated as making a scheme chargeable payment which is to any extent attributable—
- (a) to a chargeable gain treated by virtue of section 185G as accruing to another person on a disposal of a taxable asset, or
 - (b) to a gain treated by virtue of section 185H as accruing to the pension scheme as a result of another person disposing of an interest in a vehicle through which the pension scheme holds a taxable interest indirectly.
- (2) Where—
- (a) tax is payable in respect of the disposal by the person who makes the disposal, and
 - (b) that tax has been paid,
- the amount determined under subsection (3) or (4) (as appropriate) is to be allowed as a credit against any income tax charged under section 239 in respect of the scheme chargeable payment.
- (3) In a case within paragraph (a) of subsection (1), that amount is a proportion of the amount of tax paid and payable determined by reference to the proportion of the amount of consideration for the disposal that is apportioned under section 185G(7).

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- (4) In a case within paragraph (b) of subsection (1), that amount is the amount of tax paid and payable apportioned to the pension scheme by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
- (a) by the pension scheme,
 - (b) in connection with an acquisition of the taxable interest by the person disposing of the interest in the vehicle, and
 - (c) at the time of the disposal.
- (5) Where—
- (a) by virtue of this section an amount is allowed as a credit against income tax charged under section 239, and
 - (b) the amount of tax payable and paid by reference to which the amount of the credit was calculated is subsequently varied,
- the amount of the credit is to be varied accordingly, and any necessary adjustments are to be made to give effect to the variation (whether by making assessments or otherwise).]

Modifications etc. (not altering text)

C47 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

^{F225}Repayments of lump sums

Textual Amendments

F225 S. 185J and cross-heading inserted (19.3.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 5 paras. 3, 15](#)

185J Effect of repayment of certain pre-6 April 2015 lump sums

- (1) For the purposes of this Part—
- (a) a lump sum to which this section applies is treated as never having been paid, and
 - (b) the payment by which it is repaid is treated as not being a payment.
- (2) This section applies to a lump sum if—
- (a) the sum is paid by a registered pension scheme to a member of the scheme in respect of a money purchase arrangement,
 - (b) the sum is paid to the member in connection with a pension under the scheme to which it is expected that the member will become entitled (“the expected pension”),
 - (c) the expected pension is income withdrawal, a lifetime annuity or a scheme pension,
 - (d) the sum is paid before the member becomes entitled to the expected pension,
 - (e) either—

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- (i) the sum is paid on or after 19 September 2013 but before 6 April 2015, or
 - (ii) the sum is paid before 19 September 2013, a contract for a lifetime annuity is entered into to provide the expected pension, and on or after 19 March 2014 the contract is cancelled,
 - (f) before the member becomes entitled to the expected pension, the member repays the sum to the pension scheme that paid it, and
 - (g) the repayment is made before 6 October 2015.
- (3) For the purposes of subsection (2), if the circumstances are as described in subsection (2)(e)(ii), the member is treated as not having become entitled to the expected pension as a result of the cancelled contract having been entered into.]

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 236ZA inserted by [S.I. 2024/357 art. 2\(2\)](#)