



Finance Act 2004

2004 CHAPTER 12

PART 4

PENSION SCHEMES ETC

CHAPTER 3

PAYMENTS BY REGISTERED PENSION SCHEMES

Unauthorised member payments

173 Benefits

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to a [^{F1}person 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 [^{F2}person], or
 - (b) a member of the [^{F3}person's] family or household.
- (2) If the benefit is received by reason of an employment which is not [^{F4}lower-paid employment as a minister of religion], subsection (1) does not apply.
- (3) If the benefit is received by reason of [^{F5}an 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 [^{F6}lower-paid employment as a minister of religion],
 - (b) the pension scheme is an occupational pension scheme, and
 - (c) the [^{F7}person], or a member of the [^{F8}person's] family or household, is a director of, and has a material interest in, a sponsoring employer.

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- (4) A registered pension scheme is to be treated as having made an unauthorised payment in respect of a [^{F9}person who is or has been a] member of the pension scheme if, after the [^{F10}person'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 [^{F10}person's] death, was a member of the [^{F10}person's] family or household.
- (5) The person who receives the benefit is to be treated as having received the unauthorised payment.
- (6) If the benefit is received by reason of an employment which is not [^{F11}lower-paid employment as a minister of religion], subsections (4) and (5) do not apply.
- (7) If the benefit is received by reason of [^{F12}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 [^{F13}person's] death the [^{F14}person], or a member of the [^{F13}person's] family or household, was a director of, and had a material interest in, a sponsoring employer.
- [^{F15}(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 [^{F16}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,
 [^{F17}“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

- F1** Words in s. 173(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(2\)\(a\)](#)
- F2** Word in s. 173(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), [Sch. 23 para. 8\(2\)\(b\)](#)

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- F3** Word in s. 173(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 8\(2\)\(c\)](#)
- F4** 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\(2\)](#)
- F5** 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\(3\)\(a\)](#)
- F6** 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\(3\)\(b\)](#)
- F7** Word in s. 173(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 8\(3\)\(a\)](#)
- F8** Word in s. 173(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 8\(3\)\(b\)](#)
- F9** Words in s. 173(4) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 8\(4\)\(a\)](#)
- F10** Word in s. 173(4) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 161\(2\), Sch. 23 para. 8\(4\)\(b\)](#)
- F11** 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\(4\)](#)
- F12** 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\(5\)](#)
- F13** 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\(5\)\(a\)](#)
- F14** 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\(5\)\(b\)](#)
- F15** S. 173(7A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), s. 158\(2\), Sch. 21 para. 4](#)
- F16** 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\(6\)](#)
- F17** 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

- I1** 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

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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\(2\)](#)