HMRC - PTM031200 - Conditions For Registering A Pension Scheme

How a registered pension scheme is established

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Sections 153(3) and 270(1) Finance Act 2004

Tax law doesn’t set any restriction on the legal form for setting up a registered pension scheme. A pension scheme may be established by different methods, for example, by:

a trust

a contract

a board resolution

a deed poll.

The Department for Work and Pensions’ legislation does impose requirements on certain occupational pension schemes.

In practice most registered pension schemes are set up under trust.

In addition to the document establishing the scheme there will be a set of rules covering:

the type of benefits that are to be provided through the scheme

how these are to be funded

when they may be paid

to whom they may be paid

how funds may be invested.

The scheme documentation must make provision for the appointment of a scheme administrator, as this is a requirement of the definition of who is a scheme administrator.

To be registered, the scheme documentation cannot entitle any person to unauthorised payments. When the scheme administrator applies for registration of the scheme they have to make a declaration to this effect.

Purpose of a registered pension scheme

Section 153(5)(f) Finance Act 2004

To be registered, the pension scheme must have been set up and be maintained wholly or mainly for the purpose of providing authorised pension or lump sum benefits (as set out at section 164(1)(a) or (b) Finance Act 2004).

If it appears to HMRC that this is not the case HMRC can refuse to register the pension scheme.

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Where a registered pension scheme may be set up

A registered pension scheme can be set up in any country; it doesn’t have to be set up in the United Kingdom (UK). The same conditions for registering a pension scheme apply whether the scheme is set up in the UK or overseas, namely:

the requirement for an appropriate scheme administrator based in the UK, another EU member state or another state in the European Economic Area (EEA) (Liechtenstein, Iceland or Norway)

the restriction on who can set up a registered pension scheme, and

the making of required declarations by the scheme administrator - see PTM151000. If the scheme is a non-UK scheme that contains members who do not have UK-relieved funds, see PTM114000.

Where a registered pension scheme is not established in the UK it is a non-UK registered scheme. For such schemes the scope of Finance Act 2004 provision may be limited to a member’s UK-relieved funds.

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Who may set up a registered pension scheme

Section 154 Finance Act 2004

An application to register a pension scheme can only be made if the pension scheme:

is an occupational pension scheme - See PTM022000,

is a public service pension scheme -See PTM022000, or

has been set up by a person with permission from the Financial Conduct Authority (FCA) under the Financial Services and Markets Act 2000 to establish in the UK a personal pension scheme or a stakeholder pension scheme.

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Requirement for scheme administrator

Sections 153(5), 158(1)(zb) and (f) and 270 Finance Act 2004

A registered pension scheme must have a scheme administrator. This is the person appointed in accordance with the scheme rules to be responsible for complying with the functions and responsibilities of a scheme administrator under the Finance Act 2004. PTM151000 gives more information about the role of the scheme administrator.

The scheme administrator can be an individual or an organisation such as an employer or specialist pension administration company, or a mixture of both.

More than one person can be the scheme administrator. If more than one person is appointed as scheme administrator, each is jointly and severally liable for any tax charges or penalties due on the scheme administrator.

To be a scheme administrator you must be resident in one of the following countries:

the United Kingdom

another EU member state, or

a European Economic Area (EEA) state which is not a member of the EU (that is, Norway, Iceland or Liechtenstein).

All the persons that make up the scheme administrator must be a fit and proper person to be a pension scheme administrator. HMRC can refuse to register a pension scheme if it appears that any person who makes up the scheme administrator is not a fit and proper person. PTM153000 describes the factors that HMRC will consider in deciding if someone is a fit and proper person to be a scheme administrator.

In addition to being appointed in accordance with the scheme rules the tax legislation also requires the person(s) who is (are) to be the scheme administrator to make a declaration that they:

understand they will be responsible for discharging the functions conferred or imposed on the scheme administrator of the pension scheme by and under Part 4 Finance Act 2004

intend to discharge those functions at all times, whether resident in the United Kingdom or another state which is a member State or a non-member EEA State, and

any other declaration that is reasonably required by HMRC.

The scheme administrator will make this declaration when they either apply to register a pension scheme or add themselves as a scheme administrator to an existing registered pension scheme that was registered using Pension Schemes Online.

PTM032100 gives more information about the declaration a scheme administrator will have to make when they apply to register a pension scheme.

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