HMRC - PTM145300 - Conditions For Authorised Surplus Payments

General conditions

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Section 177 Finance Act 2005

The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 - SI 2006/574

An authorised surplus payment is a payment made to a sponsoring employer of an occupational pension scheme, which:

meets conditions relating to section 37 of the Pensions Act 1995 (PA1995) for schemes that are not winding up, or

meets conditions relating to section 76 of PA1995 for schemes that are winding up, or

the scheme is otherwise winding up and meets certain other conditions.

All of these conditions are subject to a qualification regarding surplus payments solely in respect of the death of a member - see more details under the heading below.

Sections 37 and 76 of PA1995 allow for surplus assets to be returned from trust-based pension schemes to an employer. Certain requirements have to be met, such as those set out in the Occupational pension schemes (Payments to Employer) Regulations 2006 - SI 2006/802.

Where a scheme is subject to Northern Ireland legislation, sections 37 and 76 of PA1995 should be construed as a reference to the corresponding enactment in Northern Ireland.

A summary of the conditions is as follows:

the rules of the scheme allow for a surplus payment to be made, and

the scheme rules limit the maximum amount of benefits that can be paid to or in respect of the members, and

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A summary of the conditions is as follows:

the rules of the scheme allow for a surplus payment to be made, and

the scheme rules limit the maximum amount of benefits that can be paid to or respect of the members, and

the liabilities of the scheme have been fully discharged (including any tax liability), and

A limit to the maximum amount of benefits in these circumstances does not include a limit on benefits solely by reference to the size of the member’s fund in the scheme, such as in the case of a money purchase arrangement.

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Surplus solely in respect of the death of a member

There is a qualification where an occupation pension scheme, makes a surplus payment to a sponsoring employer solely in respect of the death of a member.

As well as the payment having to meet the ‘general conditions’ for an authorised surplus payment, as described above, the payment will be an authorised surplus payment only if the member had not been connected with the sponsoring employer at the date of his or her death.

Also, there were further conditions for alternatively secured pensions up to 5 April 2011, see page RPSM04102025 in the National Archives (external users please refer to [http://webarchive.nationalarchives.gov.uk//http://hmrc.gov.uk/manuals/r…](http://webarchive.nationalarchives.gov.uk//http://hmrc.gov.uk/manuals/rpsmmanual/RPSM04102025.htm)).

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Meaning of connected

For this purpose a member is ‘connected’ to a sponsoring employer at the date of death where:

the member is ‘connected’ with a partner in the partnership, or

‘connected’ with a person who was a partner in the partnership at any time during the year preceding the member’s death

or

the member is, at the date of death, a ‘controlling director’ of the company, or

was a ‘controlling director’ of the company at any time in the year preceding the member’s death, or

the member is ‘connected’ with a person who is a ‘controlling director’ of the company at the date of the member’s death, or

was a ‘controlling director’ of the company at any time during the year preceding the member’s death.

Guidance on whether a person is ‘connected’ with another person is at PTM027000

A ‘controlling director’ is a director to whom section 450 and 452 Corporation Tax Act 2010 applies (re-written from section 417(5)(b) with (3),(4)and(6)) of the Income and Corporation Taxes Act 1988).

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