ADVISER GUIDE

Unauthorised payments in pensions

In this guide:

This information is based our current understanding of HMRC legislation, which can be subject to change. Tax treatment depends on individual circumstances and rules may change.

What makes a payment unauthorised?

Any payment from a pension that is not an authorised payment is, by definition, an unauthorised payment. Pension legislation sets out the authorised payments – broadly speaking, these are:

- member benefits;
- death benefits;
- recognised transfers;
- payments relating to pension sharing orders (on divorce);
- scheme administration payments; and
- genuine errors.

There are also certain payments permitted under specific regulations, such as pension advice allowance payments, small lump sum payments, PPF transfers, etc.

In addition, occupational schemes can also make short service refunds and certain authorised employer payments.

When might an unauthorised payment arise?

There are many situations when an unauthorised payment could arise, including circumstances when no actual 'payment' has taken place.

The most obvious example of an unauthorised payment would be a member withdrawing money from their pension before age 55 (and where they neither met the ill health criteria nor had a protected early retirement age). Similarly, a transfer-out that wasn't a recognised transfer, typically to a registered pension scheme, would cause an unauthorised payment as each is a way for members to liberate their pension.

Other circumstances where an unauthorised payment may arise include:

- value shifting involving pension scheme assets;

    Example

    The pension purchases a commercial property at above market value from the member, or the member's company. This shifts value from the pension to the member (or sponsoring employer).

- investment in taxable property;

    Example

    The pension invests in a residential property.

- benefits or rights under a registered pension scheme are assigned, surrendered or reallocated;

    Example

    Benefit payments paid to someone other than a member.

- benefit in kind for a member or connected person arising from a pension asset;

    Example

    The member's company uses a property owned by the pension without paying rent at a commercial rate.

- a payment or loan is made to a connected party of the member;

Example

The pension scheme loans money to the member's spouse.

- unallocated employer contributions are allocated to a member beyond a certain level (occupational schemes only);

Example

The allocation to a member connected with the employer is above that which would be made for a non-connected member.

- recycling of a pension commencement lump sum (PCLS); or

Example

A member who has £45,000 UK relevant earnings takes a £25,000 PCLS and immediately uses it to make a one-off additional net contribution of £25,000 (£31,250 gross).

- a loan is made to a sponsoring employer (occupational schemes only) which don't meet the tax rules.

Example

A SSAS makes a loan to the sponsoring employer but no security is put in place.

What are the implications of making an unauthorised payment?

When an unauthorised payment occurs, up to three separate tax charges can arise:

- unauthorised payment charge of 40%;
- unauthorised payment surcharge of 15%;
- scheme sanction charge of between 15% and 40%.

These are explained in more detail below.

It is important to note that all three of these charges may be payable in relation to a single unauthorised payment.

The unauthorised payment charge

The unauthorised payment charge is a flat rate of 40%. This will usually be payable by the member, but in occupational schemes, the sponsoring employer will be liable if they are the recipient of the unauthorised payment or the benefit leading to the charge arising.

The unauthorised payment charge is a freestanding charge, which means it cannot be offset against any other losses the taxpayer has.

The unauthorised payment surcharge

The unauthorised payment surcharge arises when the total unauthorised payments in the reference period relating to a member exceed 25% of the member's rights in that pension scheme. When applicable, the rate of the charge is 15%.

The charge is payable by the same party as the unauthorised payment charge – so usually the member, but in certain circumstances in occupational schemes, this will be the sponsoring employer.

When the first unauthorised payment arises, the first reference date is set. The reference period will end on the earlier of 12 months following that reference date or the day on which the surcharge threshold is reached. Subsequent reference dates occur on the first unauthorised payment after the end of the previous reference period.

Example

Reference period starts →

Date	Unauthorised payment amount	Net asset value of pension fund	UP as % of fund	Cumulative UPs %	Surcharge applies?
01/03/2020	£10,000	£200,000	5%	5%	No
01/06/2020	£20,000	£200,000	10%	15%	No
01/07/2020	£10,000	£180,000	5.56%	20.56%	No

The reference period starts on the date of the first unauthorised payment, 1 March 2020. The surcharge is not triggered on the first payment, or on the following two payments in the same reference period, as the cumulative unauthorised payment is still less than 25% of the net asset value of the pension rights held by the member.

Reference period starts →

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01/06/2020	£20,000	£200,000	10%	15%	Yes
01/07/2020	£10,000	£180,000	5.56%	20.56%	Yes
01/08/2020	£10,000	£180,000	5.56%	26.12%	Yes

On 1 August 2020, a further unauthorised payment is made, bringing the total unauthorised payments in the reference period to £50,000. The cumulative percentage of unauthorised payments is now 26.12%. This triggers the surcharge, which then applies to all the unauthorised payments made in the reference period – not just the one that caused the breach of the limit.

The unauthorised payment surcharge will therefore be 15% of £50,000 = £7,500. This is payable in addition to the 40% unauthorised payment charge of £20,000.

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01/07/2020	£10,000	£180,000	5.56%	20.56%	Yes
01/08/2020	£10,000	£180,000	5.56%	26.12%	Yes
01/09/2020	£10,000	£180,000	5.56%	5.56%	No

Next reference period starts → 01/09/2020

Once the surcharge threshold has been breached, the next unauthorised payment will start the next reference period.

The scheme sanction charge

The scheme administrator is liable for the scheme sanction charge. The standard rate of the charge is 40% of the unauthorised payment, but a credit can be given against this once the unauthorised payment charge has been paid.

The 40% charge will be reduced by the lower of the amount of unauthorised payment charge paid or 25% of the scheme chargeable payments that have had the charges related to them paid. Effectively, this means the 40% charge can be reduced to 15% of the value of the unauthorised payment.

Example

An unauthorised payment of £10,000 arises. The member has already paid the £4,000 unauthorised payment charge relating to it. This means the scheme sanction charge will be reduced by the lower of the amount of unauthorised payment charge paid (£4,000) and 25% of the scheme chargeable payment (25% of £10,000 = £2,500).

The scheme sanction charge would be £4,000 (40% of £10,000) had the unauthorised payment not been paid. This is reduced by £2,500 to £1,500 – effectively 15% of the unauthorised payment.

Under many schemes, the scheme rules will give the scheme administrator the power to deduct the scheme sanction charge from the member's fund.

Scheme deregistration

In addition to the above, HMRC has the power to deregister a scheme if the total of all scheme chargeable payments in any 12-month period exceeds the deregistration threshold. Unauthorised payments will usually be scheme chargeable payments, along with events such as unauthorised borrowing by the scheme or receiving income from taxable property.

The deregistration threshold is crossed if the total of the percentages of the fund used by each scheme chargeable payment in any 12-month period is 25% or more.

For example, two scheme chargeable payments of £14,000 and £10,000 respectively are made three months apart. Immediately before the first payment was made, the fund value was £100,000, so the payment represented 14% of the fund.

When the second payment was made, the fund was valued at £88,000. The payment of £10,000 represented 11% of the fund. Combined with the 14% used previously the 25% deregistration threshold is reached.

In this example, HMRC would have the power to deregister the scheme. However, this is not automatic and HMRC will consider the facts and circumstances of each case.

In practice, because the scheme deregistration limit applies at scheme level, this is unlikely to be an issue for SIPPs which are part of a master trust with many thousands of members. It is of more relevance to small schemes such as SSASs.

If the scheme is deregistered, the tax charge is 40% of all the assets held in the scheme.

Paying the charge

The scheme administrator should inform the scheme member when an unauthorised payment has arisen, and that they are going to report this to HMRC. The scheme administrator is obliged to report all unauthorised payments, and failure to do so is another reason that HMRC can deregister a pension scheme (although, again, this is not automatic and will depend on the circumstances of each case).

As an example, if the pension holds a property where a company connected to the member is the tenant, and rent is unpaid, this will not automatically lead to an unauthorised payment. The rent will need to be chased on a commercial basis, and it may be possible to put in a repayment plan. Each case will be different, but an unauthorised payment is only likely to arise if any repayment plan was not met, or nothing was done to remedy the rent situation. The scheme administrator should be having ongoing discussions with the member relating to this, and if the point comes when they must report the non-payment as an unauthorised payment to HMRC, this shouldn't come as a shock to the member.

Once the member has the information that an unauthorised payment charge has arisen, they will need to include it in their self-assessment. HMRC's HS345 contains more information on how to complete the information on the unauthorised payment charge. If the member doesn't usually complete a self-assessment, they can contact HMRC directly to report their liability to the charge.

If an unauthorised payment charge is reported in a self-assessment that is not subject to the surcharge, but later becomes subject to it (due to subsequent unauthorised payments in the reference period), then HMRC must be contacted.

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