



Pension liberation

Who is likely to be affected?

Pension scheme administrators and trustees of existing registered pension schemes and pension schemes. Individuals who seek to surrender their pension rights in favour of an employer will also be affected.

General description of the measure

The purpose of the measure is to further tackle the growing threat of pension liberation fraud where individuals are encouraged to access their pension savings before they reach retirement.

Policy objective

The measure supports the Government's objective of fairness in the tax system by maintaining the integrity of pensions tax relief. The changes will give HM Revenue & Customs (HMRC) the powers that it needs to identify and tackle pension schemes which are being or are intended to be used as liberation vehicles.

The measure will also close a loophole used in a widely-marketed avoidance scheme, and remove tax obstacles to effective regulatory interventions instigated by the Pensions Regulator.

Background to the measure

The measure was announced at Budget 2014.

Detailed proposal

Operative date

The measures will have effect from 20 March 2014, with the exception of the following changes which have effect from 1 September 2014:

- changes in connection with the introduction of a fit and proper person test; and
- changes in connection with the tax rules after certain regulatory interventions have taken place.

Current law

The pensions tax rules for registered pension schemes are set out in Part 4 of the Finance Act (FA) 2004.

Registrations and de-registrations

In order for a pension scheme to be registered with HMRC, it must provide any information which HMRC reasonably requires. HMRC must register the scheme unless the application contains incorrect information or a false declaration (Section 153 of FA 2004).

HMRC may only withdraw registration from a pension scheme in limited circumstances, which are set out in statute (Section 158 of FA 2004).

Schedule 36 of Finance Act 2008 provides information powers for HMRC to ask for information in order to establish a taxpayer's tax position. It also provides for appeals and penalties in connection with these information notices.

Independent Trustees

The person(s) responsible for discharging the tax functions of a registered pension scheme are known as the scheme administrators. The High Court or the Pensions Regulator may appoint Independent Trustees to safeguard the interests of members. These trustees or persons they appoint to act as a scheme administrator may become liable for tax on payments and other events occurring before the Independent Trustee was appointed (sections 270-272 of FA 2004).

If the scheme administrator has become insolvent, cannot be traced or has died or ceased to exist, the liability passes to the sponsoring employer, scheme manager or the members.

The Pensions Regulator or the court has the power to make orders of restitution in the form of payments to a registered pension scheme. Such payment may entitle the member and the scheme administrator to claim relief from tax on an earlier unauthorised payment made to or in respect of the member (sections 266A – 266B of FA 2004).

Pension contributions paid in respect of and on behalf of an individual are tax relieviable, except in specified circumstances (section 188 of FA 2004).

Surrenders

Where an individual surrenders rights under a registered pension scheme, the value of what is surrendered is treated as an unauthorised payment. This is intended to prevent individuals avoiding tax or liberating funds. There are two key exceptions: rights can be given up in favour of higher pensions for dependents; or rights can be given up to fund the making of an authorised surplus payment to the scheme's sponsoring employer (section 172A of FA 2004). Authorised surplus payments are liable to tax at 35 per cent (section 207 of FA 2004).

Proposed revisions

Registrations and de-registrations

Legislation will be introduced in Finance Bill 2014 amending FA 2004 to widen the circumstances in which HMRC may refuse to register a pension scheme to include where HMRC believes a) that the scheme administrator is not a fit and proper person to fulfil that role and b) that the scheme has been established for purposes other than of providing pension benefits.

FA 2004 will also be amended to increase HMRC's information powers in connection with new applications to register pension scheme in relation to scheme administrators and third parties. The new powers will also enable HMRC to enquire into whether a scheme administrator is a fit and proper person. Similar appeals processes and penalties to those in Schedule 36 of FA 2008 will apply to these new information notices.

New penalties for false information of up to £3,000 and similar to those in Schedule 36 of FA 2008 will also be introduced in connection with the registration application.

Similar changes to the circumstances when HMRC can refuse to register a pension scheme will be made to the circumstances when HMRC can de-register a pension scheme.

Independent Trustees appointed by the court or by the Pensions Regulator

Legislation will be introduced in Finance Bill 2014 to provide that Independent Trustees and scheme administrators appointed after Independent Trustees have been appointed at the instigation of the Pensions Regulator, will not become liable for tax liabilities arising on events occurring before the trustee was appointed. The previous scheme administrator will instead retain liability for these tax charges. If the previous scheme administrator has become insolvent, cannot be traced or has died or ceased to exist, the liability will pass to the sponsoring employer, scheme manager or the members in line with existing rules.

Where a court orders the repayment of pension funds into a pension scheme where scheme assets have been misused or misappropriated, amendments will be made to FA 2004 entitling the member and the scheme administrator to claim relief from tax on an earlier unauthorised member payment. However to the extent relief is given under this provision in respect of the repayment to the pension scheme, that member will not also be entitled to tax relief on the repayment as a contribution paid on the member's behalf.

Surrenders

FA 2004 will be amended to remove the rule that prevents a surrender of rights under a registered pension scheme in order to fund the making of an authorised surplus payment from being treated as an unauthorised payment. There will be no charge on an authorised surplus payment to a sponsoring employer funded by a surrender to the extent the surrender was treated as an unauthorised payment.

A surrender of rights in favour of dependants will be prevented from being treated as an unauthorised payment only when the dependants' newly-acquired rights are provided under the same pension scheme.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
		negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer.				
Economic impact	The measure is not expected to have any significant economic impacts. The proposed changes will ensure that pension funds remain invested in registered pension schemes for the period initially intended, until the member reaches the age at which they can take their benefits. This in turn will increase the retirement income for these individuals.				
Impact on individuals and households	The changes will save individuals the loss of most of their pension savings through tax charges and fees to promoters, as we hope to protect the innocent from engaging in pension liberation activity.				
Equalities impacts	The changes will help vulnerable people to save money for their retirement, and protect our customers from pension liberation. The only possible equalities impact might be that changes impact more males than females, as men tend to have higher pension savings than women.				

<p>Impact on business including civil society organisations</p>	<p>Estimates of the costs to the pension industry as a result of the changes are:</p> <p>One-off costs to pension schemes (reading guidance and ensuring scheme administrator is a fit and proper person) of around £3 million.</p> <p>An increase in administrative burdens arising at the point of scheme registration, where the process is anticipated to take slightly longer to complete than prior to this change. In addition, some pension schemes will be asked to provide additional information to HMRC to prove they meet the standards required. The recurring costs on the industry will be around £200,000 per year.</p> <p>Estimates of compliance costs are shown in the table below, including an estimate of total costs for a five year period at present value.</p> <table border="1" data-bbox="427 663 1404 1370"> <thead> <tr> <th></th> <th>Cost</th> <th>Time Period (yrs)</th> </tr> </thead> <tbody> <tr> <td colspan="3">Compliance Costs</td> </tr> <tr> <td>One-off Costs</td> <td>£3.0m</td> <td>N/A</td> </tr> <tr> <td>Average Annual Costs</td> <td>£0.2m</td> <td>5</td> </tr> <tr> <td>Total Costs (PV)</td> <td>£3.8m</td> <td>N/A</td> </tr> <tr> <td colspan="3">Compliance Benefits</td> </tr> <tr> <td>One-off Benefit</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td>Average Annual Benefit</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td>Total Benefit (PV)</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td>Net Benefit (NPV)</td> <td>-£3.8m</td> <td>N/A</td> </tr> <tr> <td colspan="3">Impact on Administrative Burden (included in Net Benefit)</td> </tr> <tr> <td>Increase</td> <td>Decrease</td> <td>Net Impact</td> </tr> <tr> <td>£0.2m</td> <td>£0</td> <td>£0.2m</td> </tr> </tbody> </table>		Cost	Time Period (yrs)	Compliance Costs			One-off Costs	£3.0m	N/A	Average Annual Costs	£0.2m	5	Total Costs (PV)	£3.8m	N/A	Compliance Benefits			One-off Benefit	N/A	N/A	Average Annual Benefit	N/A	N/A	Total Benefit (PV)	N/A	N/A	Net Benefit (NPV)	-£3.8m	N/A	Impact on Administrative Burden (included in Net Benefit)			Increase	Decrease	Net Impact	£0.2m	£0	£0.2m
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<p>Operational impact (£m) (HMRC or other)</p>	<p>There will be additional costs for HMRC to amend its IT system and carry out the additional compliance into suspected liberation schemes, as well as to deal with enquiries from customers. These are estimated to be £2 million for IT changes and £1 million for staff resources over a five year period.</p>																																							
<p>Other impacts</p>	<p><u>Small and micro business assessment:</u> the impact on small and micro businesses has been considered. As the changes are intended to protect individuals from pension liberation it would not be appropriate for the measure to apply differently according to the size of the firm applying to register or acting as scheme administrator of the pension scheme.</p> <p>Other impacts have been considered and none have been identified.</p>																																							

Monitoring and evaluation

The measure will be kept under review through monitoring pension scheme registrations and de-registrations.

Further advice

If you have any questions about this change, please contact Paul Cottis on 03000 564209 (email: pensions.policy@hmrc.gsi.gov.uk).

SCHEDULE 1

PENSION SCHEMES

Introduction

- 1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.

Registration of pension schemes

- 2 (1) Section 153 (applications for registration) is amended as follows.
- (2) In subsection (4) for “On” substitute “Following”.
- (3) In subsection (5) for paragraphs (a) and (b) substitute –
- “(a) any information falling within subsection (5A) is inaccurate in a material respect,
 - (b) any document falling within subsection (5B) contains a material inaccuracy,
 - (c) any declaration accompanying the application is false,
 - (d) the scheme administrator has failed to comply with an information notice under section 153A given in connection with the application (including any declaration accompanying it),
 - (e) the scheme administrator has deliberately obstructed an officer of Revenue and Customs in the course of an inspection under section 153B carried out in connection with the application (including any declaration accompanying it) where the inspection has been approved by the tribunal,
 - (f) the pension scheme has not been established, or is not being maintained, wholly or mainly for the purpose of making payments falling within section 164(1)(a) or (b) (authorised payments of pensions and lump sums), or
 - (g) the person who is, or any of the persons who are, the scheme administrator is not a fit and proper person to be, as the case may be –
 - (i) the scheme administrator, or
 - (ii) one of the persons who are the scheme administrator.”
- (4) After subsection (5) insert –
- “(5A) The information falling within this subsection is any information –
- (a) contained in the application, or
 - (b) otherwise provided to an officer of Revenue and Customs by the scheme administrator (whether under section 153A or otherwise) in connection with the application (including any declaration accompanying it).

- (5B) The documents falling within this subsection are any documents produced to an officer of Revenue and Customs by the scheme administrator (whether under section 153A or otherwise) in connection with the application (including any declaration accompanying it).
- (5C) The reference in subsection (5)(d) to the scheme administrator having failed to comply with an information notice under section 153A includes a case where the scheme administrator has concealed, destroyed or otherwise disposed of, or has arranged for the concealment, destruction or disposal of, a document in breach of paragraph 42 or 43 of Schedule 36 to the Finance Act 2008 as applied by section 153A(3).”

3 After section 153 insert –

“153A Power to require information or documents in relation to applications for registration

- (1) This section applies where an application for a pension scheme to be registered is made.
- (2) An officer of Revenue and Customs may by notice (an “information notice”) require the scheme administrator or any other person –
- (a) to provide the officer with any information, or
 - (b) to produce a document to the officer,
- if the officer reasonably requires the information or document in connection with the application (including any declaration accompanying it).
- (3) Paragraphs 6(2), 7, 8, 15, 16, 18 to 20, 23 to 27, 42 and 43 of Schedule 36 to the Finance Act 2008 (information notices etc) apply in relation to information notices under this section as they apply in relation to information notices under that Schedule.
- (4) Where an information notice under this section is given to a person other than the scheme administrator, an officer of Revenue and Customs must give a copy of the notice to the scheme administrator.
- (5) A person, other than the scheme administrator, who is given an information notice under this section may appeal against the notice or any requirement in the notice.
- (6) Paragraph 32 of Schedule 36 to the Finance Act 2008 (procedures for appeals against information notices) applies for the purposes of an appeal under subsection (5) as it applies for the purposes of an appeal under Part 5 of that Schedule.

153B Power to inspect documents in relation to applications for registration

- (1) This section applies where an application for a pension scheme to be registered is made.
- (2) An officer of Revenue and Customs may –
- (a) enter any business premises of the scheme administrator or any other person, and
 - (b) inspect documents that are on the premises,

if the officer reasonably requires to inspect the documents in connection with the application (including any declaration accompanying it).

- (3) In subsection (2)(a) “business premises” has the meaning given by paragraph 10(3) of Schedule 36 to the Finance Act 2008 (power to inspect business premises etc).
- (4) Paragraphs 10(2), 12, 15 and 16 of Schedule 36 to the Finance Act 2008 apply in relation to the power of inspection conferred by this section as they apply in relation to the power of inspection conferred by paragraph 10 of that Schedule.
- (5) An officer of Revenue and Customs may not inspect a document under this section if or to the extent that, by virtue of a provision of Part 4 of Schedule 36 to the Finance Act 2008 (restrictions on powers) applied by section 153A(3), an information notice under section 153A given at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.
- (6) An officer of Revenue and Customs may ask the tribunal to approve an inspection under this section.
- (7) Paragraph 13(1A), (2) and (3) of Schedule 36 to the Finance Act 2008 (approval of tribunal for inspections) applies in relation to an application under subsection (6) as it applies in relation to an application under paragraph 13 of that Schedule in relation to an inspection under paragraph 10 of that Schedule.

153C Penalties for failure to comply with information notices etc

- (1) This section applies where a person other than the scheme administrator –
 - (a) fails to comply with an information notice under section 153A, or
 - (b) deliberately obstructs an officer of Revenue and Customs in the course of an inspection under section 153B that has been approved by the tribunal.
- (2) The reference in subsection (1)(a) to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, a document in breach of paragraph 42 or 43 of Schedule 36 to the Finance Act 2008 as applied by section 153A(3).
- (3) Paragraphs 39(2), 40 and 44 to 49 of Schedule 36 to the Finance Act 2008 (penalties for failure to comply with information notice etc) apply in relation to the failure or obstruction as they apply in relation to a failure or obstruction mentioned in paragraph 39(1) of that Schedule.

153D Penalties for inaccurate information in applications

- (1) This section applies where –
 - (a) an application under section 153 contains information which is inaccurate,
 - (b) the inaccuracy is material, and

-
- (c) condition A, B or C is met.
 - (2) Condition A is that the inaccuracy is careless or deliberate.
 - (3) An inaccuracy is careless if it is due to a failure by the scheme administrator to take reasonable care.
 - (4) Condition B is that the scheme administrator knows of the inaccuracy at the time the application is made but does not inform an officer of Revenue and Customs at that time.
 - (5) Condition C is that the scheme administrator –
 - (a) discovers the inaccuracy some time later, and
 - (b) fails to take reasonable steps to inform an officer of Revenue and Customs.
 - (6) The scheme administrator is liable to a penalty not exceeding the maximum penalty for which the scheme administrator could have been liable under paragraph 40A of Schedule 36 to the Finance Act 2008 (penalties for inaccurate information and documents) had that paragraph applied in relation to the inaccuracy.
 - (7) Where the information contains more than one material inaccuracy, a penalty is payable for each inaccuracy.
 - (8) Paragraphs 46 to 49 of Schedule 36 to the Finance Act 2008 (assessment of penalties etc) apply in relation to a penalty under this section as they apply in relation to a penalty under paragraph 40A of that Schedule.

153E Penalties for inaccurate information or documents provided under information notice

- (1) This section applies where –
 - (a) in complying with an information notice under section 153A, a person provides inaccurate information or produces a document that contains an inaccuracy, and
 - (b) the inaccuracy is material.
- (2) Paragraphs 40A and 46 to 49 of Schedule 36 to the Finance Act 2008 (penalties for inaccurate information and documents) apply in relation to the inaccuracy as they apply in relation to an inaccuracy connected with an information notice under that Schedule.

153F Penalties for false declarations

- (1) This section applies where –
 - (a) a declaration accompanying an application under section 153 is false, and
 - (b) at least one of conditions A to C in section 153D is met (reading references to an inaccuracy as references to a falsehood and references to the scheme administrator as references to the person who made the declaration).
- (2) The person who made the declaration is liable to a penalty not exceeding the maximum penalty for which the person could have been liable under paragraph 40A of Schedule 36 to the Finance Act

2008 (penalties for inaccurate information and documents) had that paragraph applied in relation to the falsehood.

- (3) Where the declaration contains more than one falsehood, a penalty is payable in relation to each falsehood.
- (4) Paragraphs 46 to 49 of Schedule 36 to the Finance Act 2008 (assessment of penalties etc) apply in relation to a penalty under this section as they apply in relation to a penalty under paragraph 40A of that Schedule.”

4 After section 156 insert—

“156A Cases where application for registration not decided within 6 months

- (1) This section applies where—
 - (a) an application for a pension scheme to be registered is made, but
 - (b) the scheme administrator is not notified under section 153(6) within the period of 6 months after the day on which the application is made.
 - (2) The scheme administrator may appeal to the tribunal as if, at the end of that period of 6 months, the scheme administrator had been notified under section 153(6) of a decision not to register the scheme; and section 156(5) to (8) applies accordingly.”
- 5 (1) The amendments made by paragraphs 2 to 4 are treated as having come into force on 20 March 2014 and have effect in relation to applications made on or after that date.
- (2) In relation to an application made before 1 September 2014, section 153(5) of FA 2004 (as amended by paragraph 2(3)) has effect with the omission of paragraph (g).

De-registration of pension schemes

- 6 (1) Section 158 (grounds for de-registration) is amended as follows.
- (2) In subsection (1)—
- (a) before paragraph (a) insert—
 - “(za) that the pension scheme has not been established, or is not being maintained, wholly or mainly for the purpose of making payments falling within section 164(1)(a) or (b) (authorised payments of pensions and lump sums),”
 - (b) in paragraph (d) for “incorrect” substitute “inaccurate”,
 - (c) after paragraph (d) insert—
 - “(da) that the scheme administrator fails to produce any document required to be produced to an officer of Revenue and Customs by virtue of this Part or Part 1 of Schedule 36 to the Finance Act 2008,
 - (db) that any document produced to an officer of Revenue and Customs by the scheme administrator contains a material inaccuracy in relation to which at least one of conditions A to C in subsections (7) to (10) is met,”and

- (d) for paragraph (e) substitute –
- “(e) that any declaration accompanying the application to register the pension scheme, or otherwise made to an officer of Revenue and Customs in connection with the pension scheme, is false in a material particular,
- (ea) the scheme administrator has deliberately obstructed an officer of Revenue and Customs in the course of an inspection under Part 2 of Schedule 36 to the Finance Act 2008 that has been approved by the tribunal, or”.
- (3) In subsection (1) (as amended by sub-paragraph (2) above) –
- (a) after paragraph (za) insert –
- “(zb) that the person who is, or any of the persons who are, the scheme administrator is not a fit and proper person to be, as the case may be –
- (i) the scheme administrator, or
- (ii) one of the persons who are the scheme administrator,” and
- (b) in paragraph (ea) after “under” insert “section 159B or”.
- (4) After subsection (5) insert –
- “(6) Subsections (7) to (10) apply for the purposes of subsection (1)(db).
- (7) Condition A is that the inaccuracy is careless or deliberate.
- (8) An inaccuracy is careless if it is due to a failure by the scheme administrator to take reasonable care.
- (9) Condition B is that the scheme administrator knows of the inaccuracy at the time the document is produced to an officer of Revenue and Customs but does not inform such an officer at that time.
- (10) Condition C is that the scheme administrator –
- (a) discovers the inaccuracy some time later, and
- (b) fails to take reasonable steps to inform an officer of Revenue and Customs.”

7 In Chapter 2, after section 159 insert –

“159A Power to require information or documents for purpose of considering if scheme administrator is fit and proper

- (1) An officer of Revenue and Customs may by notice (an “information notice”) require the scheme administrator of a registered pension scheme or any other person –
- (a) to provide the officer with any information, or
- (b) to produce a document to the officer,
- if the officer reasonably requires the information or document for the purpose of considering whether the person who is, or any of the persons who are, the scheme administrator is a fit and proper person to be the scheme administrator or one of those persons (as the case may be).
- (2) Paragraphs 6(2), 7, 8, 15, 16, 18 to 20, 23 to 27, 42 and 43 of Schedule 36 to the Finance Act 2008 (information notices etc) apply in relation

to information notices under this section as they apply in relation to information notices under that Schedule.

- (3) Where an information notice under this section is given to a person other than the scheme administrator, an officer of Revenue and Customs must give a copy of the notice to the scheme administrator.
- (4) A person who is given an information notice under this section may appeal against the notice or any requirement in the notice.
- (5) Paragraph 32 of Schedule 36 to the Finance Act 2008 (procedures for appeals against information notices) applies for the purposes of an appeal under subsection (4) as it applies for the purposes of an appeal under Part 5 of that Schedule.

159B Power to inspect documents for purpose of considering if scheme administrator is fit and proper

- (1) An officer of Revenue and Customs may –
 - (a) enter any business premises of the scheme administrator of a registered pension scheme or of any other person, and
 - (b) inspect documents that are on the premises,if the officer reasonably requires to inspect the documents for the purpose of considering whether the person who is, or any of the persons who are, the scheme administrator is a fit and proper person to be the scheme administrator or one of those persons (as the case may be).
- (2) In subsection (1)(a) “business premises” has the meaning given by paragraph 10(3) of Schedule 36 to the Finance Act 2008 (power to inspect business premises etc).
- (3) Paragraphs 10(2), 12, 15 and 16 of Schedule 36 to the Finance Act 2008 apply in relation to the power of inspection conferred by this section as they apply in relation to the power of inspection conferred by paragraph 10 of that Schedule.
- (4) An officer of Revenue and Customs may not inspect a document under this section if or to the extent that, by virtue of a provision of Part 4 of Schedule 36 to the Finance Act 2008 (restrictions on powers) applied by section 159A(2), an information notice under section 159A given at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.
- (5) An officer of Revenue and Customs may ask the tribunal to approve an inspection under this section.
- (6) Paragraph 13(1A), (2) and (3) of Schedule 36 to the Finance Act 2008 (approval of tribunal for inspections) applies in relation to an application under subsection (5) as it applies in relation to an application under paragraph 13 of that Schedule in relation to an inspection under paragraph 10 of that Schedule.

159C Penalties for failure to comply with information notices etc

- (1) This section applies where a person –
 - (a) fails to comply with an information notice under section 159A, or

- (b) deliberately obstructs an officer of Revenue and Customs in the course of an inspection under section 159B that has been approved by the tribunal.
- (2) The reference in subsection (1)(a) to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, a document in breach of paragraph 42 or 43 of Schedule 36 to the Finance Act 2008 as applied by section 159A(2).
- (3) Paragraphs 39(2), 40 and 44 to 49 of Schedule 36 to the Finance Act 2008 (penalties for failure to comply with information notice etc) apply in relation to the failure or obstruction as they apply in relation to a failure or obstruction mentioned in paragraph 39(1) of that Schedule.

159D Penalties for inaccurate information or documents provided under information notice

- (1) This section applies where—
 - (a) in complying with an information notice under section 159A, a person provides inaccurate information or produces a document that contains an inaccuracy, and
 - (b) the inaccuracy is material.
 - (2) Paragraphs 40A and 46 to 49 of Schedule 36 to the Finance Act 2008 (penalties for inaccurate information and documents) apply in relation to the inaccuracy as they apply in relation to an inaccuracy connected with an information notice under that Schedule.”
- 8 (1) The amendments made by paragraphs 6 and 7 have effect in relation to pension schemes whenever registered (including schemes registered by virtue of paragraph 1 of Schedule 36 to FA 2004 (deemed registration of existing schemes)).
- (2) The amendments made by paragraph 6(2) and (4) are treated as having come into force on 20 March 2014.
- (3) The amendments made by paragraphs 6(3) and 7 come into force on 1 September 2014 or, if later, the day after the day on which this Act is passed.

Declarations required from person who is to be a scheme administrator

- 9 (1) In section 270 (meaning of “scheme administrator”) in subsection (2)—
- (a) after paragraph (a) omit “and”, and
 - (b) after paragraph (b) insert “, and
 - (c) has made to an officer of Revenue and Customs any other declarations which are reasonably required by Her Majesty’s Revenue and Customs”.
- (2) The amendments made by this paragraph have effect in relation to appointments on or after 1 September 2014.

Payments by registered pension schemes: surrender

- 10 (1) Section 172A (payments by registered pension schemes: surrender) is amended as follows.
- (2) In subsection (5) omit paragraph (d).
- (3) After subsection (5) insert—
- “(5A) Subsection (5)(b) applies only if the entitlement is held (or is to be held) by the dependant under an arrangement under the pension scheme relating to the member or dependant.”
- 11 In section 207 (authorised surplus payments charge) after subsection (6) insert—
- “(6A) Subsection (1) does not apply to an authorised surplus payment to the extent that the payment is funded (directly or indirectly) by a surrender of (or an agreement to surrender) benefits or rights which results in the registered pension scheme being treated as making an unauthorised payment under section 172A.
- (6B) Terms used in subsection (6A) which are defined in section 172A have the same meaning as they have in that section.”
- 12 The amendments made by paragraphs 10 and 11 have effect in relation to surrenders (or agreements to surrender) made on or after 20 March 2014.

Orders for money etc to be restored to pension schemes

- 13 (1) Section 188 (relief for members' contributions) is amended as follows.
- (2) In subsection (2) after “(3)” insert “or (3A)”.
- (3) After subsection (3) insert—
- “(3A) This subsection applies to a contribution if the contribution results from the transfer of property or money, or the payment of a sum, towards the pension scheme pursuant to a relevant order in a case where—
- (a) section 266A (members' liability in respect of unauthorised member payments) applies, and
- (b) relief is claimed under that section in respect of the liability mentioned in subsection (1)(a) of that section.
- (3B) In the case of a contribution which is greater than UMP (see section 266A(5)), subsection (3A) does not apply to the contribution so far as it is greater than UMP.
- (3C) In subsection (3A) “relevant order” means an order under any of the following—
- (a) section 16(1), 19(4) or 21(2)(a) of the Pensions Act 2004 (orders for money etc to be restored to pension schemes), or
- (b) Article 12(1), 15(4) or 17(2)(a) of the Pensions (Northern Ireland) Order 2005 (corresponding provision for Northern Ireland).”
- 14 (1) Section 266A (member's liability) is amended as follows.

- (2) In subsection (1)(b) for the words from “an order” to “Regulator)” substitute “a relevant order”.
- (3) In subsection (5), in the definition of “ASO” –
- (a) before the first “order” insert “relevant”, and
 - (b) for the words from the second “order” to “2005” substitute “relevant order”.
- (4) After subsection (6) insert –
- “(6A) In this section “relevant order” means an order under any of the following –
- (a) section 16(1), 19(4) or 21(2)(a) of the Pensions Act 2004 (orders for money etc to be restored to pension schemes), or
 - (b) Article 12(1), 15(4) or 17(2)(a) of the Pensions (Northern Ireland) Order 2005 (corresponding provision for Northern Ireland).”
- 15 (1) Section 266B (scheme’s liability) is amended as follows.
- (2) In subsection (1)(b) for the words from “an order” to “Regulator)” substitute “a relevant order”.
- (3) In subsection (3), in the definition of “ASO” –
- (a) before the first “order” insert “relevant”, and
 - (b) for the words from the second “order” to “2005” substitute “relevant order”.
- (4) After subsection (4) insert –
- “(5) In this section “relevant order” means an order under any of the following –
- (a) section 16(1), 19(4) or 21(2)(a) of the Pensions Act 2004 (orders for money etc to be restored to pension schemes), or
 - (b) Article 12(1), 15(4) or 17(2)(a) of the Pensions (Northern Ireland) Order 2005 (corresponding provision for Northern Ireland).”
- 16 The amendments made by paragraphs 13 to 15 have effect in relation to orders made on or after 1 September 2014.

Liabilities of trustees appointed by Pensions Regulator etc

- 17 In section 255 (assessments under Part) in subsection (1) after paragraph (e) insert –
- “(ea) liability under section 272C (former scheme administrator to retain liability in cases involving independent trustees etc),”.
- 18 In section 272 (trustees etc liable as scheme administrator) in subsection (4) after “applying in relation to the pension scheme” insert “or by reason of section 272C(7) applying in relation to a liability”.
- 19 After section 272 insert –
- “272A Liabilities of independent trustee**
- (1) This section applies in relation to a person (“P”) who is an independent trustee of a registered pension scheme.

- (2) For the purposes of this section and section 272B an “independent trustee” is a trustee of a pension scheme –
- (a) who is appointed by, or otherwise pursuant to, an order made –
 - (i) by the Pensions Regulator under section 7 of the Pensions Act 1995 or Article 7 of the Pensions (Northern Ireland) Order 1995 (appointment of trustees by the Pensions Regulator), or
 - (ii) by a court on an application made by the Pensions Regulator, and
 - (b) who is not a trustee of the pension scheme at any time before the relevant day.
- (3) In this section “the relevant day” means –
- (a) the day on which P’s appointment as trustee of the pension scheme as mentioned in subsection (2)(a) takes effect, or
 - (b) if P is appointed as trustee of the pension scheme as mentioned in subsection (2)(a) on more than one occasion, the day on which P’s first appointment takes effect.
- (4) If P is, or is one of the persons who are, the scheme administrator, P does not assume any liability falling within subsection (7) which P would otherwise assume (including by reason of section 272C(3) or (4)).
- (5) Subsection (4) does not apply if P is, or is one of the persons who are, the scheme administrator at any time before the relevant day.
- (6) In relation to any liability falling within subsection (7), in section 272(4) references to trustees or to persons who control the management of the pension scheme do not include P.
- (7) The liabilities falling within this subsection are –
- (a) liabilities for the following in respect of payments made (or treated as having been made) by the pension scheme on or before the relevant day –
 - (i) the short service refund lump sum charge;
 - (ii) the serious ill-health lump sum charge;
 - (iii) the special lump sum death benefits charge;
 - (iv) the authorised surplus payments charge;
 - (v) the scheme sanction charge in respect of scheme chargeable payments falling within section 241(1)(a) or (b);
 - (b) liabilities for the lifetime allowance charge in respect of benefit crystallisation events occurring on or before the relevant day;
 - (c) liabilities for the scheme sanction charge in respect of scheme chargeable payments treated under section 185A or 185F as having been made by the pension scheme in tax years earlier than the one in which the relevant day falls;
 - (d) any liability for the scheme sanction charge in respect of the relevant fraction of any scheme chargeable payment treated under section 185A as having been made by the pension scheme in the tax year in which the relevant day falls;

- (e) where the pension scheme is treated under section 185F as having made a scheme chargeable payment in the tax year in which the relevant day falls and there is a relevant net gain, any liability for the scheme sanction charge in respect of the relevant amount;
- (f) any liability to pay interest in respect of a liability mentioned in paragraphs (a) to (e) arising at any time.
- (8) For the purposes of subsection (7)(d) “the relevant fraction” is –
- $$\frac{A}{B}$$
- where –
- A is the number of days in the tax year up to (and including) the relevant day, and
- B is the number of days in the tax year.
- (9) For the purposes of subsection (7)(e) –
- (a) there is a “relevant net gain” if –
- (i) the total amount of any gains treated under section 185F as accruing in the tax year on or before the relevant day, exceeds
- (ii) the total amount of any losses treated under section 185F as so accruing, and
- (b) “the relevant amount” is –
- (i) the scheme chargeable payment, or
- (ii) if that payment is greater than the excess of gains over losses mentioned in paragraph (a), the amount of that excess.
- (10) Subsection (11) applies if –
- (a) apart from that subsection, losses in relation to which section 185G(10) applies would be included in the total amount mentioned in subsection (9)(a)(ii), and
- (b) the losses exceed the gains –
- (i) which are included in the total amount mentioned in subsection (9)(a)(i), and
- (ii) from which the losses can be deducted in accordance with section 185G(10).
- (11) The losses are not to be included in the total amount mentioned in subsection (9)(a)(ii) so far as they exceed the gains.

272B Liabilities of scheme administrator appointed by independent trustee etc

- (1) This section applies in relation to a person (“Q”) who is, or is one of the persons who are, the scheme administrator of a registered pension scheme where Q’s appointment as such takes effect at a time when the pension scheme has one or more independent trustees.
- (2) Q does not assume any liability falling within section 272A(7) which Q would otherwise assume.

- (3) In relation to any liability falling within section 272A(7), in section 272(4) references to persons who control the management of the pension scheme do not include Q.
- (4) Subsections (2) and (3) do not apply if Q is, or is one of the persons who are, the scheme administrator at any time before the relevant day.
- (5) In this section, and in section 272A as it applies for the purposes of this section, “the relevant day” means the first day on which the pension scheme has an independent trustee (whether or not there are days between that day and the day on which Q’s appointment takes effect on which the pension scheme has no independent trustees).

272C Former scheme administrator etc to retain liability

- (1) This section applies in relation to a liability which, by reason of section 272A(4), is not assumed by P (in which case “the relevant day” is to be read in accordance with section 272A(3)).
- (2) This section also applies in relation to a liability which, by reason of section 272B(2), is not assumed by Q (in which case “the relevant day” is to be read in accordance with section 272B(5)).
- (3) The liability is to be the liability of the person who is, or the persons who are, the scheme administrator immediately before the relevant day (unless dead or having ceased to exist).
- (4) If there is no scheme administrator immediately before the relevant day, the liability is to be the liability of the person or persons to whom section 271(4) applies immediately before the relevant day.
- (5) Nothing in section 271 prevents a person from having (and continuing to have) the liability by reason of subsection (3) or (4).
- (6) Subsection (7) applies if—
 - (a) no-one has the liability by reason of subsection (3) or (4),
 - (b) no-one who has the liability by reason of subsection (3) or (4) can be traced, or
 - (c) the person who has, or all the persons who have, the liability by reason of subsection (3) or (4) are in serious default (as determined in accordance with section 272(6)).
- (7) The liability is to be assumed by the person or persons determined in accordance with section 272(4).
- (8) Section 272(5) applies in relation to a person who assumes the liability by reason of subsection (7) as it applies in relation to a person who assumes a liability by reason of section 272.
- (9) Nothing in this section prevents any person from being subject to the liability apart from this section (in addition to any person who is subject to the liability by reason of this section).”

20 In section 273 (members liable as scheme administrator) after subsection (1) insert—

- “(1A) This section also applies in relation to a registered pension scheme if—

- (a) a person has, or persons have, by reason of section 272C(7) assumed a liability to pay tax (or interest on tax) by virtue of section 239 (scheme sanction charge) in respect of the whole or a part of a scheme chargeable payment falling within section 241(1)(b) or (c) made (or treated as having been made) by the pension scheme,
 - (b) that person, or each of those persons, has failed (in whole or in part) to satisfy the liability, and
 - (c) that person, or each of those persons, has either died or ceased to exist or is a person in whose case an officer of Revenue and Customs considers the person's failure to satisfy the liability to be of a serious nature."
- 21 (1) Section 274 (supplementary) is amended as follows.
- (2) In subsection (1) –
 - (a) after "(trustees etc)" insert ", section 272C(7)", and
 - (b) in paragraph (b) after "administrator" insert ", section 272C(3) or (4)".
 - (3) After subsection (2) insert –

"(2A) In subsection (2) the reference to a liability imposed on the scheme administrator includes a liability which would have been imposed on the scheme administrator apart from section 272A(4) or 272B(2)."
 - (4) In subsection (3)(b) after "272" insert ", 272C".
- 22 Sections 272A to 272C of FA 2004 (as inserted by paragraph 19) have effect for cases where the relevant day falls on or after 1 September 2014.

Other provision

- 23 In the following provisions (which relate to the giving of information etc) for "incorrect" (in all places) substitute "inaccurate" –
- (a) section 169(5)(a)(ii);
 - (b) section 257(4)(a) and (b);
 - (c) section 261(1)(a);
 - (d) section 264(2)(a).

DRAFT EXPLANATORY NOTE

PENSION LIBERATION

SUMMARY

1. Clause X and Schedule Y amend Finance Act 2004 (FA2004) to tackle the growing threat of pension liberation and preserve pension savings. Pension liberation describes schemes encouraging individuals to access their pension savings earlier than permitted by Parliament. The changes are intended to make it harder for liberation schemes to register for tax relief and ensure that tax charges and penalties applying where liberation occurs are fair.

DETAILS OF THE SCHEDULE

2. Paragraph 1 introduces the amendments made by the Schedule.
3. Paragraph 2 amends section 153 of FA2004, relating to new applications for registration of pension schemes.
4. Subparagraph 2(2) provides that HMRC has time to consider new registration applications and does not have to make a decision immediately on receipt of the application.
5. Subparagraph 2(3) amends section 153(5) to prescribe more circumstances in which HMRC may refuse to register a pension scheme. These amendments allow HMRC to refuse to register a pension scheme where it appears to HMRC that the main purpose of the scheme is not to provide pension benefits or the scheme administrator is not a fit and proper person to be the scheme administrator. The amendments also extend the existing provisions relating to the failure to provide information or the provision of inaccurate information to include documents provided in connection with the application as well as where the scheme administrator has deliberately obstructed an HMRC official in connection with an inspection of documents on the business premises of the scheme administrator, where the inspection was approved by the tribunal.
6. Subparagraph 2(4) inserts new subsections (5A), (5B) and (5C) into section 153. New subsections (5A) and (5B) define the scope of the information and documents covered by section 153(5) as amended by subparagraph 2(3). New subsection (5C) expands on the reference to a failure to comply with an information notice in section 153(5).
7. Paragraph 3 inserts new sections 153A to 153F into FA 2004. These provide new powers for HMRC to request additional information and documents and a new inspection power, including a power to enter business premises for the inspection, in connection with an application to register a pension scheme. It also includes a mechanism for appeals and penalties for failure to comply with a notice or the production of inaccurate information or documents.

8. New section 153A provides that HMRC may send an information notice to the scheme administrator of a pension scheme, or a third party, where an application to register a scheme is made. The information notice can request any information or document that is reasonably required by HMRC to make a decision on whether to register the scheme or not. Subsection 153A(3) applies specified paragraphs of Schedule 36 to Finance Act 2008 (FA2008) to information notices under new section 153A. Schedule 36 to FA 2008 prescribes HMRC's general powers to obtain and inspect information and documents. Subsection 153A(4) requires that where the notice is sent to a person other than the scheme administrator, it must be copied to the scheme administrator. Subsections 153A(5) and (6) deal with appeals where the notice is sent to a person other than the scheme administrator and apply paragraph 32 of Schedule 36 FA2008 (appeals against information notices) to any appeal under section 153A. Where the notice is sent to the scheme administrator, there are no penalties as failure to comply with that notice may lead to HMRC refusing to register the pension scheme under section 153. The scheme administrator may appeal under section 156 of FA2004 against a decision not to register a pension scheme.

9. New sections 153B(1) to (4) provide that HMRC may enter the business premises of the scheme administrator or another person to inspect documents, in connection with the application to register a pension scheme. Subsection 153B(3) defines business premises for the purposes of this section. Subsection 153B(4) applies paragraphs 10(2), 12, 15 and 16 of Schedule 36 FA2008 (power of inspection) for the purposes of this section.

10. Subsection 153B(5) provides that HMRC can not inspect a document that could not be requested under an information notice under Schedule 36 FA2008. Subsections (6) and (7) allow HMRC to ask the tribunal to approve the inspection and specify that where this occurs, paragraphs 13(1A), (2) and (3) of Schedule 36 FA2008 apply.

11. New section 153C imposes penalties if a person other than the scheme administrator, fails to comply with an information notice under new section 153A, or deliberately obstructs an officer of HMRC carrying out an inspection under new section 153B that has been approved by the tribunal. Subsection 153C(3) applies the penalty provisions in paragraphs 39(2), 40 and 44 to 49 of Schedule 36 FA2008 (penalties for failure to comply or obstruction). Where penalties apply, a person is liable to a penalty of £300, and daily penalties of up to £60 per day, if the failure to comply continues after the initial penalty is imposed.

12. New section 153D imposes penalties if an application to register a pension scheme contains a material inaccuracy and the scheme administrator either did not take reasonable care, or where the scheme administrator is aware of the inaccuracy but does not inform HMRC. In these circumstances the scheme administrator is liable to a penalty of up to £3,000 for each inaccuracy. Subsection 153D(8) applies the assessment, appeal and enforcement provisions in paragraphs 46 to 49 of Schedule 36 FA2008 .

13. New section 153E imposes penalties if the information or documents provided under an information notice under new section 153A contain a material inaccuracy the person either did not take reasonable care, or where the person is aware of the inaccuracy but does not inform HMRC. Subsection 153E(2) imposes a penalty of up to £3,000 for each inaccuracy and applies the assessment, appeal and enforcement provisions in paragraphs 46 to 49 of Schedule 36 FA2008.

14. New section 153F imposes penalties if a declaration accompanying an application to register a pension scheme is false and the person completing the declaration either did not take reasonable care, or where they were aware of the inaccuracy but did not inform HMRC. The penalty is up to £3,000 for each falsehood. Subsection 153F(4) applies the assessment, appeal and enforcement provisions in paragraphs 46 to 49 of Schedule 36 FA2008.

15. Paragraph 4 inserts new section 156A into FA2004. This provides that if HMRC have not made a decision on whether or not to register a pension scheme within a period of 6 months of the application being received by HMRC, the scheme administrator may appeal to the tribunal as if a decision had been taken by HMRC not to register the scheme at the end of that period. Where the tribunal decides the pension scheme should have been registered, it will also provide the date from which it will be treated as being registered.

16. Paragraph 5 provides that the amendments made by paragraphs 2 to 4, have effect in relation to all applications to register a pension scheme received by HMRC on or after 20 March 2014 (the day after Budget Day). However where the application is made before 1 September 2014, HMRC can not refuse to register the pension scheme under section 153(5)(g), as inserted by subparagraph 2(3), that is, on the basis that it appears to HMRC that the scheme administrator is not a fit and proper person.

17. Paragraph 6 amends section 158 of FA2004 to add new grounds upon which a pension scheme can be de-registered. These allow HMRC to de-register a scheme where it appears that the main purpose of the scheme is not to provide pension benefits or the scheme administrator is not a fit and proper person. HMRC may also de-register a scheme where the scheme administrator has obstructed HMRC in the course of an inspection approved by the tribunal. It also extends the existing provisions relating to the failure to provide information or the provision of inaccurate information to apply to all documents in connection with the pension scheme.

18. Paragraph 7 inserts new sections 159A to 159D into FA2004. These provide new information and inspection powers for HMRC to establish whether the scheme administrator is a fit and proper person, as well as a mechanism for appeals and penalties for failure to comply with an information notice or the production of inaccurate information or documents under new sections 159A or 159B. These sections mirror the provisions of new sections 153A to 153C and 153E relating to information notices in connection with an application to register a pension scheme.

19. Paragraph 8 provides that the amendments made by paragraphs 6 and 7, have effect in relation to all registered pension schemes on or after 20 March 2014 (the day after Budget Day), but before 1 September 2014 the provisions relating to the requirement that the scheme administrator is a fit and proper person do not apply.

20. Paragraph 9 amends section 270 of FA2004. Section 270 defines “scheme administrator” and prescribes what declarations HMRC may require a person, who wishes to be a scheme administrator, may be required to make.

21. Paragraph 10 amends section 172A of FA2004 relating to surrenders of pension rights. Subparagraph 10(2) repeals subparagraph 172A(5)(d) to ensure that where a surrender

of rights is made to fund an authorised surplus payment to a sponsoring employer, the surrender is treated as an unauthorised payment of the value of the rights surrendered. Subparagraph 10(3) inserts new subsection (5A) into section 172A so that a surrender of rights in favour of dependant will be treated as an unauthorised payment unless the new rights are provided under the same scheme under which the surrendered rights were held.

22. Paragraph 11 amends section 207 of FA2004 relating to the authorised surplus payments charge. It provides that the authorised payment surplus charge does not apply where the surplus is derived either directly or indirectly from a surrender of rights to the extent that surrender was treated as an unauthorised payment by virtue of section 172A, as amended by paragraph 10.

23. Paragraph 12 provides when paragraphs 10 and 11 have effect.

24. Paragraph 13 amends section 188 of FA2004 relating to relief for contributions paid by or on behalf of the individual. New subsection (3A) of section 188 provides that contributions made on the member's behalf under a court order under sections 16(1), 19(4) or 21(2)(a) of Pensions Act 2004 or their Northern Ireland equivalent do not receive tax relief to the extent the contribution has enabled the member to claim relief from unauthorised payments tax charges under section 266A FA2004. The court orders specified in section 188 (as amended by paragraph 13) and in section 266A (as amended by paragraph 14) are made or instigated by the Pensions Regulator with a view to providing restitution for the member. Where relief has been claimed under section 266A by virtue of the contribution, it is not appropriate for the member also to get tax relief on the contribution. Taken together with the original tax reliefs on contributions to the scheme and the refund of unauthorised payment charges this would amount to double relief in respect of the same amount. The amendments made by paragraph 13 are closely connected with the amendments made by paragraph 14.

25. Paragraph 14 amends section 266A of FA2004. It provides that a member may claim relief from an unauthorised payments tax charge or unauthorised payments surcharge where contributions are paid on the member's behalf to a registered pension scheme pursuant to an order under section 16(1) of Pensions Act 2004 or its Northern Ireland equivalent as a result of an unauthorised payment. The Pensions Regulator can use section 16 of the Pensions Act 2004 to apply to a court to issue an order of restitution to a member when pension scheme assets have been misused or misappropriated.

26. Paragraph 15 amends section 266B of FA2004. It provides that a scheme administrator may claim relief from the scheme sanction charge where the sums and assets paid to or on behalf of the member as an unauthorised payment are subsequently paid to a registered pension scheme pursuant to an order under section 16(1) of Pensions Act 2004 or its Northern Ireland equivalent.

27. Paragraph 16 provides when paragraphs 13 to 15 have effect.

28. Paragraph 17 provides a power for HMRC to make regulations for assessments in respect of any liability under new section 272C.

29. Paragraph 18 provides a consequential change in connection with new section 272C, which is inserted into FA 2004 by paragraph 19.

30. Paragraph 19 inserts new sections 272A to 272C into FA2004.
31. New section 272A ensures that an independent trustee who is appointed as a result of action by the Pensions Regulator does not become liable for specified tax charges that predate their appointment.
32. New section 272A(1) and (2) provide when the section applies and in relation to whom.
33. New section 272A(3) defines the date of the “relevant day” in respect of a person P who is an Independent Trustee.
34. New section 272A(4) to (6) provide that where the independent trustee (P) becomes a scheme administrator they do not become liable to the tax charges specified in subsection (7) that they would otherwise assume liability for in their capacity as scheme administrator. However, subsection (4) does not apply if P was the scheme administrator before the relevant day, as defined in subsection (3).
35. New section 272A(7) to (11) prescribe which tax charges that P does not assume liability for paying, which P otherwise would assume liability for by virtue of being either the scheme administrator, a trustee or a person who controlled the management of the pension scheme.
36. New Section 272B ensures that where a scheme administrator (Q) is appointed when a pension scheme has one or more independent trustees, Q will not become liable to specified tax charges.
37. New section 272B(1) provides when the section applies and in relation to whom..
38. New section 272B(2) and (3) provide that Q does not assume any liability for those tax charges specified in section 272A(7) that they would otherwise assume by virtue of being either the scheme administrator or a person who controls the management of the pension scheme. Subsection (5) defines the relevant day for the purposes of section 272B, as well as section 272A when it applies for the purposes of new section 272B.
39. New section 272B(4) provides that subsections (2) and (3) do not apply where Q was a scheme administrator before the relevant day.
40. New section 272B(5) defines the date of the “relevant day” in respect of a person Q, in relation to new section 272B as well as the tax charges prescribed in new section 272A(7) to (11).
41. New section 272C specifies who is liable for those tax charges for which neither P nor Q assume liability by virtue of new sections 272A and 272B.
42. New section 272C(1) and (2) prescribe the tax liabilities that the section applies to. New section 272C(3) provides that the liability falls to the person or persons who were the

scheme administrator immediately before the relevant day in relation to P or Q as appropriate.

43. New section 272C(4) provides that if there was no scheme administrator immediately before the relevant day, the liability falls to the last scheme administrator before the relevant day.

44. New section 272C(5) provides that if there is any conflict between section 271 FA2004 and subsections (3) and (4), then the liability will be as set out in subsections (3) and (4).

45. New section 272C(6) and (7) provide that subsection (7) applies if no one assumes the liabilities under subsections (3) or (4) or the persons who do assume the liabilities either cannot be traced or are already in serious default. In such cases, subsection (7) provides that the liability for the tax charges will fall as set out in section 272(4) of FA2004.

46. New section 272C(8) provides that where subsection (7) applies HMRC must notify the person of their liability as soon as is reasonably practicable; but failure to do so does not affect the person's liability.

47. New section 272C(9) provides that if a person is liable to a tax charge, and this section imposes liability on another person, the first person does not cease to be liable to that tax charge.

48. Paragraph 20 inserts new subsection (1A) into section 273 of FA2004, which sets out the circumstances in which members of a pension scheme may assume the liability of a scheme administrator. New subsection (1A) extends section 273 to include cases where a person other than the member had assumed liability for a tax charge under sections 239 and 241(1)(b) or (c) of FA2004 by virtue of section 272C, but has failed to pay the tax due and has either died or ceased to exist or HMRC considers the failure to pay the tax is of a serious nature.

49. Paragraph 21 makes consequential changes to section 274 of FA2004.

50. Paragraph 22 provides that new sections 272A to 272C, which act in relation to liabilities arising before Independent Trustees are appointed, do not apply

- in relation to a person P, who is an Independent Trustee, unless P is first appointed on or after 1 September 2014 and
- in relation to a person Q, who is a scheme administrator, unless the scheme in question first had an independent trustee on or after 1 September 2014

51. Paragraph 23 amends sections 169(5), 257(4), 261(1) and 264(2) of FA2004 to replace 'incorrect' with 'inaccurate', to ensure consistency in Part 4 of FA 2004.

BACKGROUND NOTE

52. Pensions tax relief is provided on contributions to a registered pension scheme for and on behalf of a member, and once in the registered pension scheme any investment growth on the funds is normally tax free. This tax relief is provided so that the funds can be used in

later life by the member and/or their dependants. The pensions tax rules therefore set a minimum pension age at which benefits can normally be taken, this is currently age 55. Where benefits are taken before this age, except in prescribed circumstances, for example on the payment of an ill health pension, the payment of benefits will be an unauthorised payment and significant tax charges apply to recover the tax reliefs previously given.

53. A number of pension scheme promoters have set up schemes intended to enable individuals to access some or all of their pension benefits before the minimum pension age. To do this, they often use a registered pension scheme to which the member is encouraged to transfer their pension to before the pension is 'liberated' to the member. In many cases the member is not told of the significant tax charges that will apply and therefore are often left with little or no money after the promoter's fees have deducted.

54. These changes have been introduced to

- provide additional powers to HMRC to help it detect and prevent the registration of liberation schemes and to detect and de-register any liberation schemes that have already been registered
- prevent authorised surpluses being artificially created as a potential means of liberation
- ensure that where the Pensions Regulator becomes involved with a pension scheme any tax charges are applied fairly

If you have any questions about these changes, or comments on the legislation, please contact Paul Cottis 03000 564209: (pensions.policy@hmrc.gsi.gov.uk).