

## **Guidance on the fit and proper person criteria for pension scheme administrators**

---

Legislation introduced from 1 September 2014 enables HMRC to refuse to register a new pension scheme or de-register an existing registered pension scheme where HMRC believes that the scheme administrator is not a fit and proper person to be the scheme administrator. This guidance provides further information about the circumstances when we may consider a scheme administrator not to be a fit and proper person.

### **Who should read this guidance?**

This guidance is for scheme administrators and trustees of registered pension schemes and pension schemes wanting to register for tax relief.

Pension scheme providers, promoters, employers and prospective/current pension scheme members may also have a direct interest in the new requirements as they will affect who may be allowed to be an administrator of their scheme.

- \* [Introduction](#)
- \* [Why have HMRC introduced the fit and proper person legislation?](#)
- \* [Who will HMRC expect to be a fit and proper person?](#)
- \* [What factors will HMRC take into consideration when considering whether a scheme administrator is a fit and proper person?](#)
- \* [What does 'employing an advisor with pensions knowledge' mean?](#)
- \* [Why include tax avoidance?](#)
- \* [Information and inspection powers - scheme registration](#)
- \* [Information and inspection powers - schemes already registered](#)
- \* [What should I do if I am an existing scheme administrator and I believe I may not satisfy the fit and proper person requirement?](#)
- \* [What if a scheme member, trustee or pension provider is aware that the existing scheme administrator may not be a fit and proper person?](#)
- \* [Can I ask HMRC to confirm that I am a fit and proper person to administer a scheme?](#)
- \* [What if I don't agree with HMRC?](#)
- \* [What will HMRC tell the Pensions Regulator or Financial Conduct Authority?](#)
- \* [What if I have concerns that a registered pension scheme is involved in fraud or misuse of funds?](#)

## Introduction

### The role of the scheme administrator

To be registered by HMRC, a pension scheme must have a scheme administrator. Since 6 April 2006, to become a scheme administrator of a registered pension scheme, you need to make certain declarations to HMRC.

### Duties of the scheme administrator

Under tax law, the scheme administrator is the person or persons responsible for fulfilling certain functions specified in that legislation in connection with a registered pension scheme.

The scheme administrator's duties include:

- registering the pension scheme with HMRC
- operating tax relief on contributions under the relief at source system
- reporting events relating to the scheme and the scheme administrator to HMRC
- making returns of information to HMRC
- providing information to scheme members, and others, regarding the annual allowance, the lifetime allowance, benefits and transfers.

A scheme administrator can authorise a practitioner to act on their behalf in relation to some of these duties.

[Read more details about the role of the scheme administrator](#)

### Liability to tax

The scheme administrator is liable for payment of certain tax charges under Part 4 of the Finance Act 2004 (FA04) in connection with the scheme. If more than one person is appointed as scheme administrator, each is jointly and severally liable for any tax charges or penalties.

### Appeals

The scheme administrator can appeal against a decision of HMRC not to register a scheme, to de-register a scheme or to assess tax charges or penalties on the scheme administrator.

### Fit and proper person

FA04 provides that from 1 September 2014 HMRC may refuse to register a pension scheme (section 153(5)(g) FA04) or may de-register a pension scheme (section 158(1)(zb) FA04) where it appears to HMRC that the person who is, or any of the persons who are, the scheme administrator is not a fit and proper person to be the scheme administrator.

There is no definition in the legislation of a 'fit and proper person'. This guidance explains the approach that HMRC will take when considering whether a scheme administrator is a fit and proper person to act in that role.

**HMRC assumes that all persons appointed as scheme administrators are fit and proper persons unless HMRC holds information, or obtains information, which causes it to question that assumption.**

Provided those responsible for appointing a pension scheme administrator have given proper consideration to that person's suitability to act as scheme administrator, then they may normally assume that those appointed are a fit and proper person to be the scheme administrator. If HMRC consider it necessary to make further enquiries, HMRC has the power to request further information.

Where HMRC believes that the scheme administrator is not a fit and proper person, HMRC may refuse to register the scheme. If the pension scheme is already registered, HMRC may de-register the scheme.

During an enquiry into whether or not the scheme administrator is a fit and proper person, HMRC will put on hold the registration process, or if the scheme is already registered, will not provide confirmation that the scheme is registered in connection with any proposed transfers to the scheme.

## **Why have HMRC introduced the fit and proper person legislation?**

The Government provides tax relief to encourage people to save in registered pension schemes for their retirement.

It is therefore reasonable to expect that an appropriate person or body will act as scheme administrator of a registered pension scheme, to ensure that the tax relieved funds in these schemes are used for their intended purpose of providing pension benefits.

The fit and proper person legislation is intended to make it harder for sham arrangements and pension schemes to be set up, and for tax avoiders and fraudsters to set up and run registered pension schemes with a view to misusing the tax relieved funds and abusing pension tax reliefs.

Where pension funds are used to make payments other than those permitted by Parliament, these payments are known as unauthorised payments. Where an unauthorised payment is made to or on behalf of a member, there are significant tax charges payable by the member and/or scheme administrator. Members are often not aware of the potential for these tax charges and may unwittingly lose most of their pension savings to high transfer fees and the subsequent tax charges.

There has been a lot of publicity surrounding such pension liberation and pension scams. See the Pensions Regulator's 'dangers of [pension scams information](#).

The fit and proper person legislation is a further step by the Government to ensure pension schemes are only registered and run by appropriate people, to protect people's pension savings and counteract opportunities for pension liberation, including scams.

## Who has to be a fit and proper person?

The fit and proper person test applies to the scheme administrator of a registered pension scheme.

To be registered by HMRC, a pension scheme must have a scheme administrator. This is the person or persons appointed to carry out the scheme administrator's functions under tax law. HMRC generally communicates with the scheme administrator on pension scheme matters. The scheme administrator is responsible for providing information/returns to HMRC (and others) and is liable to pay certain tax charges.

[Read more details about the role of the scheme administrator](#)

The scheme administrator could be:

- an individual
- several individuals, acting jointly and severally as administrators
- a corporate body (such as a limited company)
- a public sector body.

The term 'person' applies to all of these types of scheme administrator. Where several administrators act jointly, the fit and proper person criteria apply to all the scheme administrators. Where the scheme administrator is or includes a corporate body, HMRC will consider whether the directors or those controlling the management of the body are fit and proper persons.

**HMRC takes the view that people involved in setting up a pension scheme will have given proper consideration to the suitability of their scheme administrator to act in that capacity, and that consequently those scheme administrators are normally fit and proper persons.**

However, where HMRC becomes aware of information that suggests a person may not meet the fit and proper person criteria, HMRC will normally raise our concerns with the scheme administrator initially or, if appropriate, with others associated with the scheme. HMRC may become aware of such information either from information that we already hold or that is passed to us.

Where HMRC has reason to believe that the scheme administrator of a registered pension scheme may not be a fit and proper person, we can use information powers under section 159A FA04 to request information from the scheme administrator or another person to help us decide whether that is the case.

## What factors will HMRC take into consideration when considering whether a scheme administrator is a fit and proper person?

The fit and proper person test aims to ensure that scheme administrators of registered pension schemes do not present a risk to members' tax relieved funds or the scheme's tax position. The scheme administrator is likely to be considered a fit and proper person if they are familiar with, and capable of competently performing, the scheme administrator's responsibilities and there is nothing in their past behaviour to suggest that they should not be responsible for the financial management of the pension scheme.

Factors that **may** lead to HMRC deciding that the scheme administrator is **not** a fit and proper person include, but are not limited to, where it appears to HMRC that the scheme administrator:

- does not have sufficient working knowledge of the pensions and pensions tax legislation to be fully aware and capable of assuming the significant duties and liabilities of the scheme administrator, or does not employ an advisor with this knowledge;
- has previously been involved in pension liberation;
- has previously been the scheme administrator of, or otherwise involved with, a pension scheme which has been de-registered by HMRC;
- has been involved in tax fraud, abuse of tax repayment systems or other fraudulent behaviour including misrepresentation and/or identity theft;
- has a criminal conviction relating to finance, corporate bodies or dishonesty;
- has been the subject of adverse civil proceedings relating to finance, corporate bodies or dishonesty/misconduct;
- has participated in or been connected with designing and/or marketing tax avoidance schemes;
- employs as an advisor a person who has been involved in pension liberation or tax avoidance;
- has been removed from acting as a trustee of a pension scheme by the Pensions Regulator or a Court, or has otherwise seriously contravened the pensions regulatory system, or the regulatory system of any other professional/governmental regulatory body; and/or
- has been disqualified from acting as a company director or are bankrupt.

For example, HMRC may be aware that an individual has been involved in fraudulently claiming tax credits. If that individual is appointed as scheme administrator, HMRC will want to explore whether they are a fit and proper person.

If the Pensions Regulator does not consider that a person is suitable to be a trustee of a pension scheme, that person may not be able to satisfy HMRC that they are a fit and proper person. However, it does not necessarily follow that if the Pensions Regulator considers a person to be suitable to act as trustee of scheme, that the person will necessarily be considered to be a fit and proper person to be a scheme administrator. This is because the Pensions Regulator and HMRC have different responsibilities and priorities and therefore carry out different checks. Also, HMRC is able to access information that is not available to the Pensions Regulator.

## **What does 'employing an advisor with pensions knowledge' mean?**

If you are, for example, an employer setting up a pension scheme and acting as its scheme administrator, HMRC realises that you may not have a detailed knowledge of pensions and pensions tax legislation. However, HMRC needs to be satisfied that the reporting and operational duties of the scheme administrator will be carried out properly. In this situation HMRC would expect that you would employ an advisor such as a pension practitioner/provider who does have such a working knowledge and will advise you or act on your behalf.

Whilst the fit and proper person test only applies to the scheme administrator, and not to any advisor, employing an advisor who has been involved in pension liberation or tax avoidance may lead to HMRC deciding the scheme administrator is not a fit and proper person.

The greater the level of involvement by the knowledgeable adviser with the scheme and its administration, the greater the weight given to your relationship with that adviser in considering whether the fit and proper person criteria are satisfied. Each situation will be different but you must be satisfied that you will be able to properly fulfil the role of scheme administrator for that particular scheme, and be able to demonstrate that if necessary.

## **Why include tax avoidance?**

The intention of the fit and proper person legislation is to prevent the misuse of tax relieved funds and abuse of pensions tax relief, and prevent pension liberation. HMRC is also committed to robustly challenging tax avoidance schemes and individuals involved in tax avoidance.

It is reasonable that the Government department responsible for ensuring that individuals meet their tax obligations should consider whether individuals with a history of avoiding tax (or encouraging avoidance) are fit and proper persons to have control of the finances of pension schemes holding tax relieved funds.

Naturally, there will be exceptions to this. For example, an individual who once used a tax avoidance scheme many years ago and immediately conceded to HMRC once challenged may be able to present a compelling case that they should still be considered a fit and proper person. This is why this guidance says that the indicators listed above 'may' be taken into account by HMRC, not that they automatically prevent someone from being a fit and proper person.

## **Information and inspection powers - scheme registration**

For applications received from 1 September 2014, section 153(5)(g) of FA04 means that HMRC may decide not to register a pension scheme if it appears that the scheme administrator (or any of the scheme administrators if there are more than one), is 'not a fit and proper person to be the scheme administrator'.

A scheme administrator is now required to complete a declaration that they are a fit and proper person when they apply to register a pension scheme. HMRC may refuse to register a pension scheme where we believe that the scheme administrator is not a fit and proper person. HMRC will ask for more information where necessary.

While reviewing the registration application, HMRC may use the powers under sections 153A and 153B of FA04 to ask the scheme administrator for more information or documents, for the purpose of considering whether they are a fit and proper person. This may involve issuing an information notice or inspection visit notice.

Occasionally, we may ask others for information or documents for the purpose of considering whether the scheme administrator is a fit and proper person.

Depending on the potential risks presented, the checks that HMRC carries out may need to be extensive. As a result such checks may take some time to complete, though HMRC will normally make a decision on whether or not to register a scheme within 6 months. If HMRC have not made a decision within this period you may appeal to a tribunal as if HMRC had decided not to register the scheme.

If HMRC considers that the scheme administrator does not meet the criteria to be a fit and proper person, we may refuse to register the pension scheme. HMRC will notify you that this is the reason the application has been refused. There is a right of appeal against this decision.

As members should not have contributed any funds and no funds should have been transferred into a scheme before it was registered, there should be no immediate tax implications as a result of the scheme not being registered.

## **Information and inspection powers - schemes already registered**

From 1 September 2014, HMRC may de-register a pension scheme under section 158 FA04 where it appears that the scheme administrator (or any of the administrators if there are more than one) is 'not a fit and proper person to be the scheme administrator'.

### **HMRC assumes that all those appointed as scheme administrators are fit and proper persons unless HMRC holds information to question that assumption.**

HMRC applies a risk-based approach to its activities and carries out more detailed checks where there appears to be a significant risk of non-compliance, including where we receive information of potential pension liberation. If HMRC has reason to believe that the scheme administrator of a registered pension scheme may not be a fit and proper person, we can use the powers under sections 159A and 159B of FA04 to ask for more information or documents for the purpose of considering whether or not the scheme administrator are a fit and proper person. This may include an information notice or inspection visit notice. Representations can be made to support the view that the scheme administrator is a fit and proper person where the usual indicators previously mentioned might otherwise suggest that they do not.

Occasionally, HMRC may ask others connected with the scheme for information or documents, by way of information notice or inspection visit, for the purpose of considering whether or not the scheme administrator is a fit and proper person to be a scheme administrator.

If HMRC considers that the scheme administrator is not a fit and proper person to be a scheme administrator, we **may de-register** the pension scheme. There is right of appeal against any decision to de-register a pension scheme.

Whether or not the scheme administrator is a fit and proper person is only one of the factors we take into account in deciding whether a scheme should be de-registered. HMRC will fully consider each scheme's situation on its own merits

Where a pension scheme is de-registered there is a 40% tax charge (the de-registration charge) on the aggregate value of the sums and assets within the pension scheme immediately before the scheme is de-registered. The scheme administrator at the time is liable for the de-registration charge.

## **What should I do if I am an existing scheme administrator and I believe I may not satisfy the fit and proper person requirements?**

You are not currently required to inform HMRC that you believe you do not meet the criteria to be a fit and proper person. You should however consider the potential

implications of continuing to act as scheme administrator, because HMRC may de-register the pension scheme (and you would become liable to the de-registration charge).

If HMRC opens an enquiry (or has an open enquiry) into the pension scheme and you are aware that you or any other person who is the scheme administrator are likely to not meet the criteria to be regarded as a fit and proper person, you are advised to inform HMRC of that fact.

The individual circumstances will influence how HMRC decide to take the issue forward.

### **What if a scheme member, trustee or provider is aware that the existing scheme administrator may not be a fit and proper person?**

They will need to consider the possible implications of continuing with the current scheme administrator. They may decide to continue with the scheme administrator or consider whether they are able to remove them and appoint a person they believe is a fit and proper person, according to the individual circumstances of the scheme.

### **Can I ask HMRC to confirm that I am a fit and proper person to administer a scheme?**

HMRC does not offer a clearance service to confirm that you or another scheme administrator is a fit and proper person. HMRC will assume that the people involved in setting up and running a pension scheme have given proper consideration to the suitability of their scheme administrator to act in such capacity, and that consequently the scheme administrator is a fit and proper person to be a scheme administrator. If HMRC holds information, or obtains information, to question that assumption we have the power to obtain further information from you, or other people.

### **What if I don't agree with HMRC?**

#### **Appeals and penalties - registration**

If HMRC decides not to register a scheme for any reason, including because we do not believe you are a fit and proper person to be the scheme administrator, you can appeal within 30 days of being notified of the decision. [Section 156 FA04]

[Find out more about how to appeal against a tax decision](#)

There is no separate right of appeal against an information notice issued to the scheme administrator under section 153A of FA04 or an inspection notice under section 153B of FA04 approved by tribunal issued to the scheme administrator. If you do not comply with the information notice, HMRC may refuse to register your scheme. You will then be able to appeal against the decision not to register the scheme. See the link above for information about appeals.

Any person who is not the scheme administrator who has been given an information notice regarding registration can appeal within 30 days of receiving the notice [Section 153A(5) FA04]. Penalties apply where there is a failure to comply with such an information notice or an inspection notice approved by tribunal. [Section 153C FA04]



Information or documents you provide in connection with the application or an information notice must be accurate or a penalty of up to £3,000 may apply. [Sections 153D to 153F FA04]

## **Appeals and penalties – de-registration**

If HMRC decides to de-register an existing scheme for any reason including because we do not believe you are a fit and proper person to be the scheme administrator, you can appeal within 30 days of being notified of the decision. [Section 159 FA04]

If you are not a scheme administrator and you receive an information notice under section 159A FA04 in connection with whether the scheme administrator is a fit and proper person, you may appeal within 30 days of receiving the notice. [Section 159A(4) FA04]

You may be liable to a penalty if you fail to comply with such an information notice or obstruct a tribunal approved inspection. For more information about penalties see [factsheet CC/FS2](#) and [factsheet CC/FS3](#). [Section 159C FA04]

Any information or documents you provide must be accurate, or a penalty of up to £3,000 for each inaccuracy may apply. [Section 159D FA04]

## **Complaints**

If you wish to complain about the service provided by HMRC in dealing with your status as a fit and proper person to be the scheme administrator, you should in the first instance make your complaint to the person you have been dealing with.

[Find out about the HMRC Complaints procedure.](#)

If you have been through HMRC's complaints process and consider that HMRC have not handled your complaint appropriately, you can contact the Adjudicator's Office.

[For more information on the Adjudicator's Office website \(Opens new window\).](#)

## **What will HMRC tell the Pensions Regulator or Financial Conduct Authority?**

HMRC works closely with the Pensions Regulator and the Financial Conduct Authority. Where HMRC identifies a scheme administrator who is not considered to be a fit and proper person HMRC may advise the relevant body of the concerns, where permitted by law to disclose the information.

## **What if I have concerns that a registered pension scheme is involved in fraud or misuse of funds?**

If you are an IFA, pension provider or administrator, you can use the Pensions Regulator's [whistle blowing service to report concerns](#).

If you are a pension scheme member and you're concerned that you may have been targeted by pension liberation fraud, contact [Action Fraud](#) on **0300 123 2040**.