

## general

The pension and pension tax legislation does not, generally speaking, direct what pension benefits, if any, employers must provide, but there are significant exceptions, including the minimum quality requirements in the automatic enrolment provisions of the Pensions Act 2008, and benefits when employment was contracted out of the State pension scheme, mainly under the Pension Schemes Act 1993 and, although it cannot properly be called a pension, statutory sick pay.

The Finance Act 2004 (FA 2004) is concerned in part 4 with simply the taxation of pension benefits and relief given to pension schemes registered with HMRC under s153 and to employers and employees on contribution to pension schemes paid by them. Permissions and prohibitions in the FA 2004 must not be read literally but in the light of the treatment of payments by pension schemes as either authorised or unauthorised. These words describe the tax status of the payment: eg, if an unauthorised payment is made, the usual consequence is that a tax penalty is imposed, but the scheme is not prohibited from making it.

## income tax

pension schemes may provide ill health pensions FA 2004, s150(1) ... "pension scheme" means a scheme ... having or capable of having effect so as to provide benefits

- (a) on retirement,
- (b) death,
- (c) on having reached a particular age,
- (d) on the onset of serious ill-health or incapacity, or
- (e) in similar circumstances.

A pension scheme may provide all or any one or more of these benefits.

ill health early pensions FA 2004, s165(1) Pension rule 1 No payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the pension scheme.

The ill-health condition is met if

- (a) the scheme administrator has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, and
- (b) the member has in fact ceased to carry on the member's occupation.

This shows the difference between an ill-health pension and statutory (or for that matter occupational) sick pay, which is, that the former is permanent and the latter temporary.

serious ill health lump sum (SIHLS) FA 2004, s166(1) (Lump sum rule) No lump sum may be paid other than

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- (a) a pension commencement lump sum,
- (b) a serious ill-health lump sum,
- (ba) to (h) [*other lump sums*].

Schedule 29, part 1, para 4(1) of the FA 2004 provides that a lump sum is a serious ill-health lump sum if

- (a) before it is paid the scheme administrator has received evidence from a registered medical practitioner that the member is expected to live for less than one year,
- (b) it is paid when all or part of the member's lifetime allowance is available, and
- (ca) (simplified) it extinguishes the member's entitlement to benefits under scheme.

An SIHLS is liable to income tax under Income Tax (Earnings and Pensions) 2003, s579A and s636A(3A), but it is exempt from income tax if it is paid to a member who has not reached age 75 (ib s636A(1)).

By the Pensions Act 1995 s91(1) rights under a pension scheme "cannot be assigned, commuted or surrendered", but subsection (5)(c) provides that subsection (1) does not apply to "benefit on or after retirement or in exceptional circumstances of serious ill health"

### **pension protection fund (PPF)**

The PPF may review an ill-health pension awarded within the period of three years before the start of the assessment period (before a pension scheme may enter the PPF) or six months from the start of that period, and the amount of the compensation in respect of the ill-health pension may be a reduced amount or nil, if the PPF is

- (i) satisfied that the award was made in ignorance of or based upon a mistake as to a material fact,
- (ii) the member knew or could reasonably have been expected to know of that fact and its relevance, and
- (iii) if the trustees had known about or not been mistaken as to, that fact, they could not reasonably have made the award (Pensions Act s140 to s142).

If an application for an ill-health pension was made before the start of the assessment period and the trustees had failed to decide the application within six months of the start, s10 (penalties) of the Pensions Act 2004 applies to any trustee who has failed to take all reasonable steps to secure that the application was decided before the end of that period.

### **statutory sick pay (SSP)**

SSP is a benefit that employers are required to provide for up to 28 weeks to employees with earnings above the lower earing limit (normally pay National insurance contributions), who have three consecutive days of incapacity for work, or three non-consecutive in a period of eight weeks: Social Security Contributions and Benefits act 1992, s151. Any contract terms to exclude it or require an employee to contribute towards the cost of it is void: in s151(2). The amount is £99.23 a week, but by an occupational scheme or individual contract the amount and the period for which it is paid may be greater.

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