

RPSM04102020 - Technical pages: Taxation: Authorised employer payments: Authorised surplus payments

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RPSM04102021 - Technical pages: Taxation: Authorised employer payments: What is an authorised surplus payment?

What is an authorised surplus payment?

S177 The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 [SI 2006/ 574]

An authorised surplus payment is a payment

- made to a **sponsoring employer** of a registered pension scheme that is an **occupational pension scheme**, and
- in accordance with regulation 2 or regulation 3 of the Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 [SI 2006/ 574].

The only registered pension schemes that are likely to have surplus funds are occupational pension schemes. For example, it is possible that such a scheme could have limits on the amount of pension benefits that will be paid to or in respect of the members of that scheme and, whilst funding for those targeted benefits, it is possible that the value of the scheme's funds could exceed the amount of the scheme's liabilities. Where such a scheme does have surplus funds, it is possible that rules of the scheme will allow that surplus to be returned to an employer in relation to the scheme.

Because of the possibility of a registered pension scheme, that is an occupational pension scheme, having surplus funds that might be returned to an employer, payments called authorised surplus payments are included in the list of **authorised employer payments** that can be made under the tax rules for registered pension schemes.

However, a surplus payment to a sponsoring employer relating solely to the death of a member must meet additional requirements for it to be an authorised surplus payment (see [RPSM04102025](#)). For example, such a payment will not be an authorised surplus payment where the deceased member was connected with the sponsoring employer at the date of his or her death.

RPSM04102022 - Technical pages: Taxation: Authorised employer payments: What are the conditions for an authorised surplus payment?

What are the conditions for an authorised surplus payment?

S177 The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 [SI 2006/ 574]

The conditions for an authorised surplus payment are determined by

- whether the **registered pension scheme**, that is an **occupational pension scheme**, is a continuing scheme or winding-up, and
- whether or not the scheme is subject to requirements on payments to the employer under the Pensions Act 1995.

However, there is a qualification where the surplus payment is solely in respect of the death of a member – see [RPSM04102025](#).

Where a scheme is subject to Northern Ireland legislation, the reference to requirements under the Pensions Act 1995 should be construed as a reference to the corresponding enactment in Northern Ireland.

RPSM04102023 - Technical pages: Taxation: Authorised employer payments: Authorised surplus payments: Schemes subject to Pensions Act 1995 requirements on payments to employers

Schemes subject to Pensions Act 1995 requirements on payments to employers

s177 The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 [SI 2006/ 574]

Where a **registered pension scheme** is

- an **occupational pension scheme**, and
- not winding up, and
- also a scheme to which sections 37 of the Pensions Act 1995 applies

a surplus payment made to a **sponsoring employer** in accordance with the requirements of that section 37 will be an authorised surplus payment.

This is subject to a qualification regarding surplus payments solely in respect of the death of a member – see [RPSM04102025](#).

Where a registered pension scheme is

- an occupational pension scheme, and
- winding-up, and
- also a scheme to which section 76 of the Pensions Act 1995 applies

a surplus payment made to a sponsoring employer in accordance with the requirements of that section 76 will be an authorised surplus payment.

This is subject to a qualification regarding surplus payments solely in respect of the death of a member – see [RPSM04102025](#).

Sections 37 and 76 of the Pensions Act 1995 allow for surplus assets to be returned to an employer from schemes that are continuing or winding up, respectively. Certain conditions have to be met, such as conditions set out in the Occupational Pension Schemes (Payments to Employer) Regulations 2006 (SI 2006/ No 802).

Where a scheme is subject to Northern Ireland legislation, sections 37 and 76 of the Pensions Act 1995 should be construed as a reference to the corresponding enactment in Northern Ireland.

RPSM04102024 - Technical pages: Taxation: Authorised employer payments: Authorised surplus payments: Schemes not subject to Pensions Act 1995 requirements on payments to employers: Scheme not winding up

Schemes not subject to Pensions Act 1995 requirements on payments to employers – scheme not winding up

s177 The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 [SI 2006/ 574]

Where a **registered pension scheme** is

- an **occupational pension scheme**, and
- a scheme which is not winding up, but
- not a scheme to which section 37 of the Pensions Act 1995 would apply

a surplus payment made to a **sponsoring employer** will be an authorised surplus payment only if

- the rules of the scheme allow for a surplus payment to be made, and
- the scheme rules limit the maximum amount of benefits that can be paid to or in respect of the members (a limit in these circumstances does not include a limit on benefits solely by reference to the size of the member's fund in the scheme, such as in the case of a **money purchase arrangement**), and
- the payment is made in accordance with the requirements of section 37 of the Pensions Act 1995, as if the requirements set out in that section had ordinarily applied to the scheme.

This is subject to a qualification regarding surplus payments solely in respect of the death of a member – see [RPSM04102025](#).

Where a scheme would have been subject to Northern Ireland legislation, section 37 of the Pensions Act 1995 should be construed as a reference to the corresponding enactment in Northern Ireland.

RPSM04102025 - Technical pages: Taxation: Authorised employer payments: Authorised surplus payments: Schemes not subject to Pensions Act 1995 requirements on payments to employers: Scheme winding up

Schemes not subject to Pensions Act 1995 requirements on payments to employers – scheme winding up

s177 The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 [SI 2006/ 574]

Where a **registered pension scheme** is

- an **occupational pension scheme**, and
- a scheme which is winding up, but
- not a scheme to which sections 76 of the Pensions Act 1995 would apply

a surplus payment made to a **sponsoring employer** will be an authorised surplus payment only if

- the rules of the scheme allow for a surplus payment to be made, and
- the scheme rules limit the maximum amount of benefits that can be paid to or respect of the members (a limit in these circumstances does not include a limit on benefits solely by reference to the size of the member's fund in the scheme, such as in the case of a **money purchase arrangement**), and
- the liabilities of the scheme have been fully discharged (including any tax liability), and
- there is a surplus of scheme assets over the scheme's liabilities.

This is subject to a qualification regarding surplus payments solely in respect of the death of a member – see [RPSM04102025](#).

Where a scheme would have been subject to Northern Ireland legislation, section 76 of the Pensions Act 1995 should be construed as a reference to the corresponding enactment in Northern Ireland.

RPSM04102026 - Technical pages: Taxation: Authorised employer payments: Authorised surplus payments: Surplus solely in respect of the death of a member

Surplus solely in respect of the death of a member

s177 The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 [SI 2006/ 574]

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

As well as the payment (solely in respect of the death of a member) having to meet the 'general conditions' for an authorised surplus payment, the payment will be an authorised surplus payment only if certain other conditions are also met.

Where the deceased member's fund in the scheme was not an **alternatively secured pension fund**, the other condition is that the member must not have been connected with the sponsoring employer at the date of his or her death.

Where the deceased member's fund in the scheme was an **alternatively secured pension fund**, the other conditions are that

- the member must not have been connected with the sponsoring employer at the date of his or her death (see [RPSM04102026](#)), and
- the scheme administrator has been unable to identify any **dependants** of the deceased member.

The 'general conditions' that must also be met for a payment made solely in respect of the death of a member to be an authorised surplus payment are those set out in

[RPSM04102022](#) - schemes subject to Pensions Act 1995 requirements on payments to employers

[RPSM04102023](#) - schemes not subject to Pensions Act 1995 requirements on payments to employers – scheme not winding up, or

[RPSM04102024](#) - schemes not subject to Pensions Act 1995 requirements on payments to employers – scheme winding up.

RPSM04102027 - Technical pages: Taxation: Authorised employer payments: Authorised surplus payments: Surplus solely on death of a member: Deceased members who were connected with the sponsoring employer

Deceased members who were connected with the sponsoring employer

s177 The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 [SI 2006/ 574]

There is a qualification where a **registered pension scheme**, that is an **occupational pension scheme**, makes a surplus payment to a **sponsoring employer** solely in respect of the death of a member (see [RPSM04102025](#)).

The qualification takes the form of additional conditions that must be met for the payment to be an authorised surplus payment.

One of those additional conditions is that the deceased member must not have been 'connected' with the sponsoring employer at the date of his or her death.

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

- if the sponsoring employer is a partnership
 - the member is 'connected' with a partner in the partnership, or
 - 'connected' with a person who was a partner in the partnership at any time during the year preceding the member's death

or

- if the sponsoring employer is a company
 - the member is, at the date of death, a 'controlling director' of the company, or
 - was a 'controlling director' of the company at any time in the year preceding the member's death, or
 - the member is 'connected' with a person who is a 'controlling director' of the company at the date of the member's death, or
 - was a 'controlling director' of the company at any time during the year preceding the member's death.

Whether a person is 'connected' with another person is determined in accordance with section 839(2) of the Income and Corporation Taxes Act 1988.

A 'controlling director' is a director to whom section 417(5)(b) of the Income and Corporation Taxes Act 1988 applies (as read with sections (3), (4) and (6) of that same section 417).

RPSM04102028 - Technical pages: Taxation: Authorised employer payments: Authorised surplus payments: Bona Vacantia

Bona Vacantia

A **registered pension scheme**, that is an **occupational pension scheme**, might have surplus funds but, because of a company dissolution, no sponsoring employer in relation to the scheme to which the surplus can be returned. Where this occurs, the surplus funds could be taken by either the Crown, Duchy of Lancaster or Duke of Cornwall as 'bona vacantia'.

Surplus funds taken as 'bona vacantia' are not **unauthorised employer payments** and nor does the authorised surplus payments charge apply in respect of such funds.