



HM Revenue  
& Customs

---

**Combating Pension Liberation**  
**Changes to Finance Act 2004**

---

Guidance Note  
19 March 2014

---

## **Contents**

## **Page**

Introduction		<b>3</b>
Chapter 1	Overview of changes	<b>4</b>
Chapter 2	Registration and de-registration	<b>7</b>
Chapter 3	Changes other than in respect of registration/de-registration	<b>11</b>
Chapter 4	Draft fit and proper person guidance	<b>12</b>

---

## Introduction

As announced at Budget 2014, legislation will be introduced in Finance Bill 2014 to amend Finance Act 2004. This will give HM Revenue & Customs (HMRC) new powers to help prevent pension liberation schemes being registered and make it easier for HMRC to de-register such schemes. These changes include a provision that HMRC may refuse to register a scheme, or de-register an existing scheme if, in HMRC's opinion, the scheme administrator is not a fit and proper person. Chapter 4 of this note includes draft guidance on how HMRC may consider whether a scheme administrator is a fit and proper person. If you have any comments on the draft guidance in Chapter 4 please send them to the contact below by 27 June 2014.

The changes also provide that surrendering pension rights in favour of an employer to fund an authorised surplus payment is subject to tax as an unauthorised payment.

Legislation will also be introduced in the Finance Bill to ensure that regulatory redress in the form of transfers of sums and assets to registered pension schemes under certain orders by the Pensions Regulator or the courts are taxed and relieved, and that independent trustees appointed at the instigation of the Pensions Regulator will not be liable for tax that arose before they were appointed.

These changes will have effect from 20 March 2014, except for the changes relating to the fit and proper person and the regulatory interventions, which will have effect from 1 September 2014.

This document provides information about the changes, when they have effect, and what this means for scheme administrators and trustees. Changes will be made to the HMRC pensions online guidance and Registered Pension Schemes Manual (RPSM) as soon as possible to reflect the changes that take effect from 20 March 2014.

If you have any questions in connection with these changes or comments on the draft guidance in chapter 4, please contact – Paul Cottis Telephone 03000 564209 or e-mail [pensions.policy@hmrc.gsi.gov.uk](mailto:pensions.policy@hmrc.gsi.gov.uk)

## Chapter 1 - Overview

---

### **Pension Liberation**

Pensions tax relief is provided on contributions to a registered pension scheme for and on behalf of a member. Once funds are in a registered pension scheme any investment growth 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 age at which pension benefits can normally be taken from a registered pension scheme, currently 55. Where pension benefits are taken before this age except in certain prescribed circumstances, for example on the payment of an ill health pension, the payment of benefits will be an unauthorised payment and tax charges apply which are intended to recover all the tax reliefs previously given.

A number of promoters have set up schemes intended to allow individuals to access some or all of their pension benefits before age 55. To do this, they normally try to register a new pension scheme or use an existing registered pension scheme which the member is encouraged to transfer their pension fund to before it is passed to the member. In some cases, payments are made to the member after age 55, but because they are in the form of a loan, will be unauthorised payments. This is commonly known as 'pension liberation' and has significant tax consequences for the member and the scheme administrator. In many cases the member is not told of the tax charges that will apply where these payments are made and therefore they are often left with little or no money after any fees have been deducted in addition to the tax charges due.

HMRC is committed to combating pension liberation activity and has been working closely with other government departments/agencies and the pension industry to take action to prevent pension liberation and preserve pension savings.

### **Why are you making these changes?**

The changes are intended to:

- provide greater powers to HMRC to help us detect and prevent liberation schemes being registered, and to detect and de-register liberation schemes that have already been registered;
- prevent authorised surpluses being artificially created as a potential means of liberation; and
- ensure that where the Pensions Regulator becomes involved with a pension scheme suspected of involvement in pension liberation, the tax charges that may apply are applied fairly.

### **What are the changes?**

From 20 March 2014 the following changes have effect:

- HMRC will have new powers to send information notices to the scheme administrator and other persons, in order to help us decide whether or not to register a pension scheme.
- Where the information notice is sent to a scheme administrator, if they don't respond within the specified period, we may not register the scheme. The scheme administrator may appeal against that decision.
- Where the information notice is sent to another person, then there will be an appeals route and penalties may apply, which will be similar to those in Schedule 36 Finance Act 2008.
- HMRC will also have new powers to enter business premises to inspect documents, in order to help us decide whether or not to register a pension scheme.
- Where we have not made a decision within 6 months of receiving an application to register a pension scheme, the scheme administrator may appeal to a tribunal as if HMRC had decided to refuse to register the scheme.
- There will be a new requirement that the main purpose of a pension scheme must be to provide authorised benefits. We may refuse to register or we may de-register a pension scheme where it appears to HMRC that the main purpose of the scheme is not to provide authorised benefits.
- There will be new penalties for providing false information or a false declaration in connection with a registration application.
- A surrender of pension rights to fund an authorised surplus payment will be an unauthorised payment.
- A surrender of rights in favour of dependants will be treated as an unauthorised payment except where the dependants' newly-acquired rights are provided under the same pension scheme.

From 1 September 2014 the following changes will have effect:

- The scheme administrator of a registered pension scheme must be a fit and proper person to be the scheme administrator.
- HMRC will have new powers to send information notices to the scheme administrator and other persons, in order to help us decide whether the scheme administrator is a fit and proper person.
- HMRC will also have new powers to enter business premises to inspect documents, in order to help us decide whether the scheme administrator is a fit and proper person.
- There will be an appeals route and penalties for these information notices, similar to those set out in Schedule 36 Finance Act 2008.
- HMRC may refuse to register or may de-register a pension scheme where it appears that the scheme administrator is not a fit and proper person.
- Scheme administrators, appointed during an intervention by the Pensions Regulator, will not become liable for certain tax liabilities incurred before they were appointed. The previous scheme administrator will instead retain liability for these tax charges.
- Where the Pensions Regulator or a court orders the repayment of pension funds into a registered pension scheme, the member and the scheme administrator will be able to claim relief from tax on an earlier unauthorised member payment. However the member

will not be entitled to tax relief on the payment to the registered pension scheme, even where the contribution is paid on the member's behalf.

**How will this affect scheme administrators?**

These changes should have little or no impact on scheme administrators of pension schemes who comply with the legislation and operate the pension scheme in the manner intended by the pensions tax legislation.

## Chapter 2 – Registration and de-registration

---

### **Changes to the registration process from 20 March 2014**

There are no changes to the actual process for an application to register a pension scheme from 20 March 2014. Scheme administrators should continue to complete the existing online application form. Further information on this process can be found at <http://www.hmrc.gov.uk/pensionschemes/register.htm>.

On receipt of the application, we will continue to risk assess the application as we do currently. As part of our risk assessment, we will from 20 March 2014 take into consideration whether or not it appears to HMRC that the scheme has been established for the main purpose of providing authorised benefits. As part of this process we may need to ask for further information.

Where we need to ask the scheme administrator or another person to provide us with further information to help us make a decision on whether or not to register the pension scheme, we will from 20 March 2014 issue a section 153A Finance Act 2004 ('FA04') notice. This replaces the previous process where informal notices were issued. The legislation for these notices follows closely the information powers that HMRC has in Schedule 36 of Finance Act 2008 ('FA08') which apply where HMRC makes enquiries in respect of a taxpayer's tax position, including the provisions in relation to appeals and penalties.

In some cases we may want to visit business premises to inspect documents. In this case we will use the new powers in section 153B FA04. We will normally give you at least 7 days notice of our visit and what we want to inspect.

### **What is a section 153A FA04 notice?**

A new information power is being inserted into FA04 which will have effect from 20 March 2014. This allows HMRC to issue a notice to the scheme administrator or other person requiring them to provide to HMRC any information or document that is in that person's possession or power to provide, that HMRC may reasonably require to decide whether or not the pension scheme should be registered.

### **Can I appeal against the notice?**

If you are the scheme administrator, then you can not appeal against the notice. However if you do not fully comply with the notice within the time set out in the notice, HMRC may decide not to register the pension scheme. You will then be able to appeal against that decision.

If you are not the scheme administrator then you can appeal against the notice or any requirement in the notice following a similar process to that under Schedule 36 FA08.

See <http://www.hmrc.gov.uk/complaints-appeals/how-to-appeal/direct-tax.htm> for further general information about appeals against notices under Schedule 36 FA08.

### **What are the penalties in connection with a scheme registration?**

If you are the scheme administrator, there are no penalties if you fail to comply with a section 153A FA04 notice. However, HMRC may decide not to register the pension scheme if you do not comply with the notice.

If you are not the scheme administrator, then there is a penalty of £300 for failure to comply with the notice, with potential daily penalties of up to £60 per day if the failure continues, under new section 153C of FA04.

If you provide materially inaccurate information on the application to register a pension scheme, then there is a penalty of up to £3,000 for each inaccuracy, under new section 153D of FA04.

If you provide materially inaccurate information under the notice, there is a penalty of up to £3,000 for each inaccuracy under new section 153E of FA04.

If you provide a false declaration accompanying an application to register a pension scheme, there is a penalty of up to £3,000 for each falsehood, under new section 153F of FA04.

The penalty of up to £3,000 will only apply where the inaccuracy or falsehood was either:

- Careless or deliberate; or
- You know of the inaccuracy when the application/information was sent to us and you did not tell us at the time; or
- You discover the inaccuracy some time later and don't take reasonable steps to inform us.

Penalties apply in a similar manner to penalties in respect of notices under Schedule 36 FA08.

See <http://www.hmrc.gov.uk/manuals/chmanual/ch26100.htm> for general information about penalties in respect of notices under Schedule 36 FA08.

### **What is an inspection under section 153B FA04?**

A new information power is being inserted into FA04 which will have effect from 20 March 2014. This allows HMRC to enter the business premises of the scheme administrator or any other person to inspect documents that are on the premises, where HMRC reasonably requires to inspect the documents in connection with the application. We will normally give at least 7 days notice of our visit and what we want to inspect and agree in advance a suitable time.

### **Is there a time limit on how long HMRC can take to make a decision on whether to register a pension scheme?**

No. However if HMRC have not reached a decision within 6 months of receiving the application to register the pension scheme the scheme administrator may appeal to the tribunal as if HMRC had decided not to register the pension scheme.

Where the tribunal decides that HMRC should have registered the pension scheme, the scheme will be treated as registered from such date as the tribunal determines.

### **What do you mean by the main purpose of a pension scheme?**

Tax relief is provided on the basis that pension funds are used to provide authorised benefits for the member and/or their dependants. We would therefore expect to see that a pension scheme is established and run with the main purpose being to provide the benefits specified in section 164(1)(a) and (b) FA04. That is, pensions permitted by the pension rules or pension death benefit rules in sections 165 and 167 of FA04, or lump sums permitted by the lump sum rule or the lump sum death benefit rule in sections 166 and 168 of FA04.

We will assume that all existing registered pension schemes meet this requirement unless we find evidence to the contrary.

For new registrations of pension schemes, as part of our risk assessment process, we may ask for further information to help prove that this is the main purpose of the scheme. For this we will not just take into account the scheme documentation, although we would expect this to be clear on this point, but will also look at other factors, for example marketing and information provided to potential members. Where necessary it will be up to the scheme administrator to prove that the main purpose of the scheme is to provide authorised benefits. Factors that we may consider are where it appears that the scheme has been established:

- for tax avoidance;
- to invest in a particular asset that may be considered by a regulator to be unsuitable for the membership of the particular scheme;
- to provide members with benefits other than authorised benefits, including the liberation of funds; or
- where it is not clear how the benefits will ultimately be funded from the sale of the assets.

### **What are the changes in connection with de-registration?**

The circumstances in which HMRC can de-register a pension scheme from 20 March 2014 are being changed to bring them in line with the new circumstances in which HMRC can decide not to register a pension scheme. These include being able to de-register a pension scheme where it appears to HMRC that the main purpose of the scheme is not to provide authorised benefits.

As is currently the case, the scheme administrator may appeal against any decision by HMRC to de-register a pension scheme.

### **Which new applications will the 20 March 2014 changes affect?**

These changes in connection with new registrations have effect in respect of applications to register a pension scheme made on or after 20 March 2014. The other changes will apply to all existing and new registered pension schemes from that date.

### **What are the changes to registration/de-registration from 1 September 2014?**

There will be a new requirement for the scheme administrator to be a fit and proper person.

If it appears to HMRC that the scheme administrator is not a fit and proper person, we may refuse to register a new pension scheme, or in the case of a registered pension scheme, de-register that scheme. See Chapter 4 of this note which has draft guidance on the fit and proper person.

HMRC will have new information powers including powers to inspect documents under sections 159A to 159D of FA04 to enable HMRC to consider whether the scheme administrator is a fit and proper person. The appeals and penalties will be similar to those in connection with the changes that have effect from 20 March.

These changes have effect in respect of applications to register a pension scheme made on or after 1 September 2014 and to existing and new registered pension schemes from that date.

## Chapter 3 – Changes other than in respect of registration/de-registration

---

### Other changes from 20 March 2014

Section 172A of FA04 will be amended to remove the rule that prevents a surrender of rights under a registered pension scheme to fund an authorised surplus payment from being treated as an unauthorised payment. However, where this occurs, there will be no charge under section 207 of FA04 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 under section 172A(5)(b) FA04 will in future be treated as an unauthorised payment unless the dependants' newly-acquired rights are provided under the same pension scheme.

These changes have effect in relation to surrenders made on or after 20 March 2014.

### Other changes from 1 September 2014

Legislation will be introduced to prevent liability for existing tax charges attaching to a scheme administrator or trustee in specified circumstances during an intervention by the Pensions Regulator.

This will provide that Independent Trustees appointed at the instigation of the Pensions Regulator, and scheme administrators appointed while Independent Trustees are in place, will not become liable for pre-existing tax liabilities. The previous scheme administrator will retain liability for those tax charges. If the previous scheme administrator has become insolvent, cannot be traced, has died or ceased to exist, the liability will pass to the trustees, sponsoring employer, scheme manager or the members under the existing rules in sections 272 and 273 of FA04. However Independent Trustees will not be included in the definition of a trustee or person controlling the management of the scheme for the purposes of section 272 of FA04.

In addition where a court orders the repayment of pension funds into a pension scheme where scheme assets have been liberated, misused or misappropriated, amendments will be made to sections 266A and 266B of FA04 entitling the member and the scheme administrator to claim relief from tax on an earlier unauthorised member payment on those funds. See [RPSM04104540](#) for further information on which unauthorised payments this applies to.

To the extent relief from the unauthorised payments charges is given in respect of the repayment to the pension scheme, that member will not be entitled to tax relief under section 188 FA04 in respect of the repayment.

These changes have effect where a person is appointed as an Independent Trustee of a registered pension scheme on or after 1 September 2014.

## **Chapter 4 – Fit and proper person**

---

Legislation is being introduced from 1 September 2014 to enable HMRC to refuse to register a new pension scheme or de-register an existing registered pension scheme where we believe that the scheme administrator is not a fit and proper person to be the scheme administrator. This chapter provides further information about the circumstances when we may consider a scheme administrator not to be a fit and proper person. If you have any comments on this draft guidance, please contact Paul Cottis, see the Introduction on page 3 for contact details.

### **Detailed guidance on when HMRC 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 are you introducing the fit and proper person legislation?](#)
- \* [Who will HMRC expect to be a fit and proper person?](#)
- \* [What circumstances would HMRC take into consideration when considering whether a scheme administrator is a fit and proper person?](#)
- \* [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 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 appoint 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 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

The Finance Bill 2014 will amend FA04 to provide that HMRC may refuse to register a pension scheme (new section 153(5)(g) FA04) or may de-register a pension scheme (new 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.

### **These changes will take effect from 1 September 2014.**

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 us 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 meet the fit and proper person condition. If HMRC consider it necessary to make further enquiries, HMRC has the power to obtain 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 are you introducing 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. See the Pensions Regulator's [pension liberation fraud website](#).

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 fraud.

### **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, we 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 new 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 will ensure that registered pension schemes are not administered by persons who 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 a working knowledge of the pensions and pensions tax legislation sufficient 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, we will want to explore whether they are a fit and proper person.

Therefore 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.

### **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 have reformed and should now 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, the new 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 not required to complete a declaration that they are a fit and proper person when they register a pension scheme. However HMRC may refuse to register a pension scheme where we believe that the scheme administrator is not a fit and proper person. We will ask for more information where necessary.

While reviewing the registration application, HMRC may use the new 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 we 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 an appeal may be made 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. We will notify you that this is the reason we have refused the application. 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 will be able to 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 high risk of non-compliance, including where we receive information of potential pension liberation. If HMRC has reason to believe that the scheme administrator may not be a fit and proper person, we can use the new 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, we 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.

However, 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 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 your scheme and you are aware that you or any other scheme administrator are likely to not meet the criteria to be regarded as a fit and proper person, we advise you to inform HMRC of that fact.

HMRC will decide on the individual circumstances how 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.

The existing scheme administrator should [notify any scheme administrator changes using the Pension Schemes Online service](#).

### **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 FA 04 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**.