



Finance Act 2004

2004 CHAPTER 12

PART 4

PENSION SCHEMES ETC

CHAPTER 3

PAYMENTS BY REGISTERED PENSION SCHEMES

Unauthorised member payments

[^{F1}172A Surrender

- (1) Subsection (2) applies if a member of a registered pension scheme surrenders or agrees to surrender—
 - (a) any benefit, other than an excluded pension, to which the member (or any dependant^{F2}, nominee or successor] of the member) has a prospective entitlement under an arrangement under the pension scheme,
 - ^{F3}(aa) [any rights to payments under a lifetime annuity or dependants' annuity^{F4}, or nominees' annuity or successors' annuity,] purchased by the application of sums or assets held for the purposes of the pension scheme,] or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement under the pension scheme.
- (2) The pension scheme is to be treated as making an unauthorised payment to the member.
- (3) Subsection (4) applies if a person surrenders or agrees to surrender—
 - (a) any benefit, other than an excluded pension, to which the person has a prospective entitlement under an arrangement under the pension scheme [^{F5}in respect of] a member of a pension scheme, or

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- (b) any right in respect of any sums or assets held for the purposes of any arrangement relating to a member of the pension scheme under the pension scheme.
- (4) The pension scheme is to be treated as making an unauthorised payment to the person in respect of the member.
- (5) Subsections (2) and (4) do not apply to—
- (a) a surrender pursuant to a pension sharing order or provision,
 - (b) a surrender (or agreement to surrender) by the member in return for the conferring on a dependant^{F6}, or nominee,] of an entitlement to benefits after the member's death,
 - ^{F7}(ba) [a surrender (or agreement to surrender) by a dependant, nominee or successor of the member (“the beneficiary”) in return for the conferring, on a successor of the member, of an entitlement to benefits after the beneficiary's death,]
 - (c) a transfer of (or agreement to transfer) benefits or rights so as to become benefits or rights under another arrangement under the pension scheme relating to the member^{F8}, dependant, nominee or successor],
 - ^{F9}(ca) [a surrender of (or agreement to surrender) rights to payments under an annuity in any case covered by regulations under paragraph 3(2B) or 17(3) of Schedule 28;]
 - ^{F10}(d)
 - ^{F11}(da) [a surrender made as part of a retirement-benefit activities compliance exercise,
 - (db) a surrender of a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) made in order to comply with ^{F12}Part 5 of the Equality Act 2010, so far as relating to age, or the] Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing ^{F13}those Regulations)]
 - (e) a surrender (or agreement to surrender) which constitutes an assignment (or agreement to assign) within section 172, or
 - (f) any surrender (or agreement to surrender) of a description prescribed by regulations made by the Board of Inland Revenue.

^{F14}(5A) [Subsection (5)(b) applies only if the entitlement is held (or is to be held) by the dependant^{F15}, or nominee,] under an arrangement under the pension scheme relating to the member or dependant ^{F16}[or nominee].]

^{F17}(5B) [Subsection (5)(ba) applies only if the entitlement is held (or is to be held) by the successor under an arrangement under the pension scheme relating to the beneficiary or successor.]

- (6) Regulations under subsection (5)(f) may include provision having effect in relation to times before they are made.
- (7) Subsections (2) and (4) do not apply to the surrender of a benefit to which the member (or a dependant ^{F18}or nominee or successor] of the member) has a prospective entitlement, or to which the person has a prospective entitlement in respect of a member, under an arrangement that is a defined benefits arrangement or cash balance arrangement unless—
- (a) in consequence of the surrender, the actual or prospective entitlement of another member (or dependant^{F19}, or nominee or successor,] of another

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- member) of the pension scheme, or of another person in respect of another member, to benefits under the scheme is increased, and
- (b) the two members are or have been connected persons.
- (8) The amount of the unauthorised payment is the consideration that might be expected to be received if what is surrendered were assigned by a transaction between parties at arm's length and any power to reduce the entitlement to the benefit or right did not exist.
- (9) In this section “surrender”, in relation to any benefit or right of a member (or dependant of a member) of a pension scheme or other person, includes any schemes, arrangements or understandings of any kind (whether or not legally enforceable) the main purpose, or one of the main purposes, of which is to reduce the member's (or dependant's), or person's, entitlement to the benefit or right.
- [References in this section to a benefit to which the member or a person has an
- ^{F20}(9A) entitlement under the pension scheme includes rights to payments under—
- (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or
- (b) a lifetime annuity or dependants' annuity^{F21}, or nominees' annuity or successors' annuity,] purchased by the application of sums or assets held for the purposes of the pension scheme.]
- (10) [^{F22}For the purposes of this section an] excluded pension is so much of any pension which under pension rule 2 may continue to be paid after the member's death as may be so paid.
- [For the purposes of this section a surrender relating to an arrangement under the
- ^{F23}(10A) pension scheme (“the old arrangement”) is made as part of a retirement-benefit activities compliance exercise if—
- (a) it is made in connection with the making of an arrangement under another pension scheme relating to the member (“the new arrangement”),
- (b) the old arrangement and the new arrangement relate to the same employment,
- (c) both the rights surrendered and the rights conferred under the new arrangement consist of or include a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both),
- (d) the surrender and the making of the new arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
- (e) the rights surrendered and the rights conferred under the new arrangement are not significantly different.]
- [^{F24}(11) For the purposes of this section whether a person is connected with another person is determined in accordance with section 993 of ITA 2007.]]

Textual Amendments

F1 Ss. 172A-172D inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 38, 64(1)

F2 Words in s. 172A(1)(a) inserted (17.12.2014) by Taxation of Pensions Act 2014 (c. 30), Sch. 2 para. 6

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- F3** S. 172A(1)(aa) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 3(2)**
- F4** Words in s. 172A(1)(aa) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), **Sch. 4 para. 9(2)**
- F5** Words in s. 172A(3)(a) substituted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 3(3)**
- F6** Words in s. 172A(5)(b) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 7(a)**
- F7** S. 172A(5)(ba) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 7(b)**
- F8** Words in s. 172A(5)(c) substituted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 7(c)**
- F9** S. 172A(5)(ca) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 3(4)**
- F10** S. 172A(5)(d) omitted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), **Sch. 7 para. 10(2)**
- F11** S. 172A(5)(da)(db) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), **Sch. 20 paras. 6(2), 24(3)**
- F12** Words in s. 172A(5)(db) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 58(a) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), **Sch. 1 para. 5** (see S.I. 2010/2317, art. 2))
- F13** Words in s. 172A(5)(db) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 58(b) (as inserted (E.W.S.) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), **Sch. 1 para. 5** (see S.I. 2010/2317, art. 2))
- F14** S. 172A(5A) inserted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **Sch. 7 para. 10(3)**
- F15** Words in s. 172A(5A) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 8(a)**
- F16** Words in s. 172A(5A) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 8(b)**
- F17** S. 172A(5B) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 9**
- F18** Words in s. 172A(7) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 10(a)**
- F19** Words in s. 172A(7)(a) inserted (17.12.2014) by [Taxation of Pensions Act 2014 \(c. 30\)](#), **Sch. 2 para. 10(b)**
- F20** S. 172A(9A) inserted (21.7.2008) (with effect in accordance with Sch. 28 para. 15(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 28 para. 3(5)**
- F21** Words in s. 172A(9A)(b) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), **Sch. 4 para. 9(3)**
- F22** Words in s. 172A(10) substituted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), **Sch. 20 paras. 6(3), 24(3)**
- F23** S. 172A(10A) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), **Sch. 20 paras. 6(4), 24(3)**
- F24** S. 172A(11) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 469** (with Sch. 2)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 236ZA inserted by [S.I. 2024/357 art. 2\(2\)](#)