

SCHEDULES

SCHEDULE 5

Section 95

PAUSE ORDERS: NORTHERN IRELAND

Consequences of a pause order

- 1 (1) If a pause order is made in relation to a collective money purchase scheme, any action taken in contravention of the order is void, except to the extent that the action is validated by an order under paragraph 3.
- (2) If a pause order contains a direction under section 95(5)(b) that no further payments (or no further payments of a specified description) are to be made towards a scheme during the period for which the order has effect—
 - (a) any payments that are the subject of the direction and would otherwise be due to be made towards the scheme during that period are to be treated as if they do not fall due, and
 - (b) any obligation to make those payments (including any obligation under Article 49(8) of the [Pensions \(Northern Ireland\) Order 1995 \(S.I. 1995/3213 \(N.I. 22\)\)](#) to pay amounts deducted corresponding to such payments) is to be treated as if it does not arise.
- (3) If a pause order contains a direction under section 95(5)(d) (no payment of benefits or benefits of a specified description under the scheme rules) and an amount of benefit under the scheme rules was not paid as a result of the direction—
 - (a) the direction does not affect any entitlement to that benefit, and
 - (b) any benefit to which a member, or a person in respect of a member, remains entitled at the end of the period for which the pause order had effect is an amount that falls due to the member or (as the case may be) the person at the end of that period.
- (4) If a pause order contains a direction under section 95(5)(e) (no transfers etc of members' rights) it does not prevent—
 - (a) a pension sharing order or provision having effect, or
 - (b) a pension earmarking order having effect in a case where—
 - (i) the order requires a payment to be made if a payment in respect of any benefits under the scheme becomes due to a person, and
 - (ii) a direction under section 95(5)(d) does not prevent the payment becoming due.
- (5) In sub-paragraph (4)—

“pension sharing order or provision” means an order or provision falling within Article 25(1) of the [Welfare Reform and Pensions \(Northern Ireland\) Order 1999 \(S.I. 1999/3147 \(N.I. 11\)\)](#) (activation of pension sharing);

“pension earmarking order” means—

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- (a) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)) so far as it includes provision made by virtue of Article 27B or 27C of that Order (powers to include provision about pensions),
 - (b) an order under Part 1 of Schedule 15 to the Civil Partnership Act 2004 (financial provision in connection with dissolution, nullity or separation: Northern Ireland) so far as it includes provision made by virtue of paragraphs 20 and 21 of Part 5 of that Schedule (powers to include provision about pensions),
 - (c) an order under section 23 of the Matrimonial Causes Act 1973 (financial provision orders in connection with divorce etc) so far as it includes provision made by virtue of section 25B or 25C of that Act (powers to include provision about pensions),
 - (d) an order under Part 1 of Schedule 5 to the Civil Partnership Act 2004 (financial provision in connection with dissolution, nullity or separation) so far as it includes provision made by virtue of paragraphs 25 and 26 of Part 6 of that Schedule (powers to include provision about pensions), or
 - (e) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (powers in relation to pension lump sums when making a capital sum order).
- (6) The Department may make regulations modifying any provision of—
- (a) Chapter 1 of Part 4ZA of the Pension Schemes (Northern Ireland) Act 1993 (transfer rights: general), or
 - (b) Chapter 2 of that Part (early leavers: cash transfer sums and contribution refunds),
- in their application to a collective money purchase scheme in relation to which a pause order has effect containing a direction under section 95(5)(e) (no transfers etc of members' rights).
- (7) Regulations under sub-paragraph (6) override any provision of the collective money purchase scheme, to the extent that there is a conflict.
- (8) Disregarding sub-paragraph (1), if a pause order made in relation to a collective money purchase scheme is not complied with, Article 10 of the [Pensions \(Northern Ireland\) Order 1995 \(S.I. 1995/3213 \(N.I. 22\)\)](#) (civil penalties) applies to any trustee of the scheme who has failed to take all reasonable steps to secure compliance.
- (9) Sub-paragraph (8) does not apply in the case of non-compliance with a direction under section 95(5)(c) (direction that certain deducted payments are to be repaid by employer).
- (10) In such a case, Article 10 of the [Pensions \(Northern Ireland\) Order 1995](#) (civil penalties) applies to an employer who, without reasonable excuse, fails to repay an amount as required by the direction.
- (11) Regulations under sub-paragraph (6) are subject to negative resolution.

Period of effect etc of pause order

- 2 (1) A pause order must specify the period for which it has effect, which must not exceed three months.

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- (2) The Pensions Regulator may on one or more occasions by order extend the period for which the pause order has effect for a further three months.
- (3) A pause order that is in effect at the end of the triggering event period ceases to have effect at the end of that period.

Validation of action in contravention of pause order

- 3 (1) If a pause order is made in relation to a collective money purchase scheme, the Pensions Regulator may by order validate action taken in contravention of the order.
- (2) Any of the following persons may apply to the Regulator for an order under this paragraph validating particular action—
 - (a) the trustees of the scheme;
 - (b) any person directly affected by the action.

Notification of trustees, employers and members

- 4 (1) This paragraph applies where—
 - (a) a pause order is made in relation to a collective money purchase scheme,
 - (b) an order is made under paragraph 2(2) extending the period for which a pause order made in relation to a collective money purchase scheme has effect, or
 - (c) an order is made under paragraph 3 validating action taken in contravention of a pause order made in relation to a collective money purchase scheme.
- (2) The Pensions Regulator must, as soon as reasonably practicable after the order has been made, notify the trustees of the scheme of the fact that the order has been made and of its effect.
- (3) The Pensions Regulator may by order direct the trustees of the scheme to notify the following persons of the fact that the order has been made and of its effect—
 - (a) all of the members of the scheme or such members as are of a description specified in the order;
 - (b) all employers by which the scheme is used, or such employers as are of a description specified in the order;
 - (c) all relevant former employers who, but for the pause order, would be liable to make payments towards the scheme, or such of them as are of a description specified in the order.
- (4) The trustees must give the notification within the period and in the manner specified in the order under sub-paragraph (3).
- (5) If the trustees of a scheme fail to comply with a direction to them contained in an order under sub-paragraph (3), Article 10 of the [Pensions \(Northern Ireland\) Order 1995 \(S.I. 1995/3213 \(N.I. 22\)\)](#) (civil penalties) applies to a trustee who has failed to take all reasonable steps to secure compliance.

Supplementary

- 5 (1) A pause order, or an order made under any of paragraphs 2, 3 and 4, may be made in relation to a collective money purchase scheme—
 - (a) in spite of any statutory provision or rule of law, or any rule of the scheme, that would otherwise operate to prevent the order being made, and

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- (b) without regard to any statutory provision, rule of law or rule of the scheme that would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to making the order.
- (2) Sub-paragraph (1) does not have effect to authorise the Pensions Regulator to make an order as mentioned in that sub-paragraph if its doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).