



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 of the member) has a prospective entitlement under an arrangement under 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 relating to a member of a pension scheme, or
 - (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.

Status: Point in time view as at 19/07/2006. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Section 172A. (See end of Document for details)

- (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 of an entitlement to benefits after the member'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 or dependant,
 - (d) a surrender of (or agreement to surrender) benefits or rights in order to fund the making of an authorised surplus payment,
 - [a surrender made as part of a retirement-benefit activities compliance exercise,
 - ^{F2}(da)
 - (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 the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them),]
 - (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.
- (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 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 of another 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.
- (10) [^{F3}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.

Status: Point in time view as at 19/07/2006. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Section 172A. (See end of Document for details)

[For the purposes of this section a surrender relating to an arrangement under the F⁴(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.]

(11) Section 839 of ICTA (connected persons) applies for the purposes of this section.]

Textual Amendments

- F1** Ss. 172A-172D inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 38](#), 64(1)
- F2** S. 172A(5)(da)(db) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 6\(2\)](#), 24(3)
- F3** Words in s. 172A(10) substituted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 6\(3\)](#), 24(3)
- F4** S. 172A(10A) inserted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 6\(4\)](#), 24(3)

Status:

Point in time view as at 19/07/2006. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2004, Section 172A.