
Changes to legislation: Pensions Act 2008, Cross Heading: Contribution notices and financial support directions: bulk transfers is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 9

CONTRIBUTION NOTICES AND FINANCIAL SUPPORT DIRECTIONS UNDER PENSIONS ACT 2004

Contribution notices and financial support directions: bulk transfers

9 After section 39 (the sum specified in a section 38 contribution notice) insert—

“39A Section 38 contribution notice: transfer of members of the scheme

- (1) This section applies where—
 - (a) the Regulator is of the opinion that in relation to a scheme (“the initial scheme”) in relation to which section 38 applies—
 - (i) an act or failure to act falling within subsection (5) of that section has occurred (or first occurred) at any time, and
 - (ii) the other conditions in that section for issuing a contribution notice are met in relation to the initial scheme (or, but for any transfer falling within paragraph (b), would be met), and
 - (b) the accrued rights of at least two persons who were members of the initial scheme are transferred at that or any subsequent time to one or more work-based pension schemes (whether by virtue of the act or otherwise).
- (2) The Regulator may issue a contribution notice under section 38 in relation to any transferee scheme (and, accordingly, any reference in section 40 or 41 to the scheme is to the transferee scheme).
- (3) In the case of any contribution notice issued by virtue of subsection (2) to any transferee scheme which is not within subsection (5)(a) or (b), section 39 has effect as if any reference in that section to the scheme were a reference to whichever of—
 - (a) the initial scheme, and
 - (b) the transferee scheme,the Regulator determines to be more appropriate in the circumstances.
- (4) In any case where section 39 has effect in relation to the transferee scheme by virtue of subsection (3), any reference in that section to a debt under section 75 of the 1995 Act is a reference to so much of that debt as, in the Regulator's opinion, is attributable to those members of the transferee scheme who were members of the initial scheme.
- (5) In the case of any contribution notice issued by virtue of subsection (2) to any transferee scheme which is—
 - (a) a scheme to which section 75 of the 1995 Act does not apply, or
 - (b) a scheme to which that section does apply in a case where the liabilities of the scheme that would be taken into account for the

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purposes of that section do not relate to the members of the initial scheme,

the sum specified by the Regulator in the notice is determined in accordance with regulations (and not in accordance with section 39).

- (6) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the sum payable under the notice is applied for the benefit of the members of the transferee scheme who were members of the initial scheme.
- (7) If the trustees or managers fail to comply with a direction issued to them under subsection (6), section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

39B Section 39A: supplemental

- (1) In section 39A a “transferee scheme”, in relation to any time, means any work-based pension scheme—
 - (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
 - (b) of which any of those persons are members at that time.
- (2) For the purposes of section 39A(1) and subsection (1) above it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.
- (3) For the purposes of section 39A and this section references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.
- (4) In section 39A and this section—
 - (a) “the 1995 Act” means the Pensions Act 1995;
 - (b) “work-based pension scheme” has the meaning given by section 5(3);
 - (c) any reference to rights which have accrued is to be read in accordance with section 67A(6) and (7) of the 1995 Act (reading any reference in those subsections to a subsisting right as a reference to a right which has accrued).
- (5) Section 39A applies even if the initial scheme—
 - (a) is wound up as a result of any transfer falling within subsection (1) (b) of that section, or
 - (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.
- (6) Accordingly, in any such case, in subsection (1) of that section—
 - (a) the reference to a scheme to which section 38 applies is a reference to a scheme which was such a scheme before the transfer;

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- (b) the reference to any conditions in section 38 being met is a reference to any conditions in that section that, but for the transfer, would have been met in relation to the scheme.
- (7) Nothing in section 39A or this section is to be read as preventing the Regulator from issuing a contribution notice in relation to the initial scheme.
- (8) Regulations may make provision applying, with or without modifications, any provision made by or under section 39A or this section in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—
- (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
 - (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
 - (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
 - (d) the incurring at any time of any obligation to do any act falling within paragraph (a) to (c).
- (9) Any reference in subsection (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.
- (10) Regulations under subsection (8) may—
- (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Secretary of State publishes a statement of the intention to make the regulations; and
 - (b) without prejudice to section 315(5), make consequential provision applying with modifications any provision of this Act which relates to contribution notices under section 38.”
- 10 After section 43 (financial support directions) insert—

“43A Financial support directions: transfer of members of the scheme

- (1) This section applies where—
- (a) the Regulator is of the opinion by reference to any time that the conditions in section 43 for issuing a financial support direction are met in relation to a scheme (“the initial scheme”) in relation to which that section applies (or, but for any transfer falling within paragraph (b), would be met), and
 - (b) the accrued rights of at least two persons who were members of the initial scheme are transferred at any subsequent time to one or more work-based pension schemes.
- (2) The Regulator may issue a financial support direction under that section in relation to any transferee scheme (and, accordingly, any reference in section 45 or any of sections 47 to 50 to the scheme is to the transferee scheme).

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- (3) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the financial support is put in place for the benefit of the members of the transferee scheme who were members of the initial scheme.
- (4) If the trustees or managers fail to comply with a direction issued to them under subsection (3), section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

43B Section 43A: supplemental

- (1) In section 43A a “transferee scheme”, in relation to any time, means any work-based pension scheme—
 - (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
 - (b) of which any of those persons are members at that time.
- (2) For the purposes of section 43A(1) and subsection (1) above it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.
- (3) For the purposes of section 43A and this section references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.
- (4) In section 43A and this section—
 - (a) “the 1995 Act” means the Pensions Act 1995;
 - (b) “work-based pension scheme” has the meaning given by section 5(3);
 - (c) any reference to rights which have accrued is to be read in accordance with section 67A(6) and (7) of the 1995 Act (reading any reference in those subsections to a subsisting right as a reference to a right which has accrued).
- (5) Section 43A applies even if the initial scheme—
 - (a) is wound up as a result of any transfer falling within subsection (1) (b) of that section, or
 - (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.
- (6) Accordingly, in any such case, in subsection (1) of that section—
 - (a) the reference to a scheme to which section 43 applies is a reference to a scheme which was such a scheme before the transfer;
 - (b) the reference to any conditions in section 43 being met is a reference to any conditions in that section that, but for the transfer, would have been met in relation to the scheme.

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- (7) Nothing in section 43A or this section is to be read as preventing the Regulator from issuing a financial support direction in relation to the initial scheme.
- (8) Regulations may make provision applying, with or without modifications, any provision made by section 43A or this section in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—
- (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
 - (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
 - (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
 - (d) the incurring at any time of any obligation to do any act falling within paragraph (a) to (c).
- (9) Any reference in subsection (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.
- (10) Regulations under subsection (8) may—
- (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Secretary of State publishes a statement of the intention to make the regulations; and
 - (b) without prejudice to section 315(5), make consequential provision applying with modifications any provision of this Act which relates to financial support directions under section 43.”
- 11 In section 306(2) (overriding requirements)—
- (a) after paragraph (d) insert—
 - “(da) any direction issued by the Regulator under section 39A(6);”;
 - (b) after paragraph (e) insert—
 - “(ea) any direction issued by the Regulator under section 43A(3);”.
- 12 In section 316(2) (subordinate legislation that is subject to affirmative resolution procedure), after paragraph (za) (as inserted by paragraph 5 of this Schedule) insert—
- “(zb) regulations under section 39A(5), 39B(8) or 43B(8) (contribution notices and financial support directions: bulk transfers);”.
- 13 In Part 4 of Schedule 2 (the reserved regulatory functions of Pensions Regulator: functions under 2004 Act)—
- (a) after paragraph 30 insert—
 - “30A The power to issue a direction under section 39A(6) to any person.”;
 - (b) after paragraph 33 insert—

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“33A The power to issue a direction under section 43A(3) to any person.”

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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. 3(1A) inserted by [2023 c. 44 s. 1\(2\)](#)
- s. 5(1C) inserted by [2023 c. 44 s. 1\(3\)](#)
- s. 13(3)(ec) inserted by [2023 c. 20 Sch. para. 56](#)
- s. 13A inserted by [2023 c. 44 s. 1\(4\)](#)
- s. 24(1)(c) inserted by [2015 c. 8 Sch. 2 para. 43\(2\)\(d\)](#)
- s. 143(6)(7) inserted by [2023 c. 44 s. 1\(5\)\(b\)](#)