



Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

Assignment, forfeiture, bankruptcy etc.

95 Pension rights of individuals adjudged bankrupt etc

- (1) After section 342 of the Insolvency Act 1986 (adjustment of certain transactions entered into by individuals subsequently adjudged bankrupt), there is inserted—

“342A Recovery of excessive pension contributions

- (1) Where an individual is adjudged bankrupt and—
- (a) he has during the relevant period made contributions as a member of an occupational pension scheme, or
 - (b) contributions have during the relevant period been made to such a scheme on his behalf,

the trustee of the bankrupt’s estate may apply to the court for an order under this section.

- (2) If, on an application for an order under this section, the court is satisfied that the making of any of the contributions (“the excessive contributions”) has unfairly prejudiced the individual’s creditors, the court may make such order as it thinks fit for restoring the position to what it would have been if the excessive contributions had not been made.

- (3) The court shall, in determining whether it is satisfied under subsection (2), consider in particular—

- (a) whether any of the contributions were made by or on behalf of the individual for the purpose of putting assets beyond the reach of his creditors or any of them,

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- (b) whether the total amount of contributions made by or on behalf of the individual (including contributions made to any other occupational pension scheme) during the relevant period was excessive in view of the individual's circumstances at the time when they were made, and
- (c) whether the level of benefits under the scheme, together with benefits under any other occupational pension scheme, to which the individual is entitled, or is likely to become entitled, is excessive in all the circumstances of the case.

342B Orders under section 342A

- (1) Without prejudice to the generality of section 342A(2), an order under that section may include provision—
 - (a) requiring the trustees or managers of the scheme to pay an amount to the individual's trustee in bankruptcy,
 - (b) reducing the amount of any benefit to which the individual (or his spouse, widow, widower or dependant) is entitled, or to which he has an accrued right, under the scheme,
 - (c) reducing the amount of any benefit to which, by virtue of any assignment, commutation or surrender of the individual's entitlement (or that of his spouse, widow, widower or dependant) or accrued right under the scheme, another person is entitled or has an accrued right,
 - (d) otherwise adjusting the liabilities of the scheme in respect of any such person as is mentioned in paragraph (b) or (c).
- (2) The maximum amount by which an order under section 342A may require the assets of an occupational pension scheme to be reduced is the lesser of—
 - (a) the amount of the excessive contributions, and
 - (b) the value (determined in the prescribed manner) of the assets of the scheme which represent contributions made by or on behalf of the individual.
- (3) Subject to subsections (4) and (5), an order under section 342A must reduce the amount of the liabilities of the scheme by an amount equal to the amount of the reduction made in the value of the assets of the scheme.
- (4) Subsection (3) does not apply where the individual's entitlement or accrued right to benefits under the scheme which he acquired by virtue of the excessive contributions (his "excessive entitlement") has been forfeited.
- (5) Where part of the individual's excessive entitlement has been forfeited, the amount of the reduction in the liabilities of the scheme required by subsection (3) is the value of the remaining part of his excessive entitlement.
- (6) An order under section 342A in respect of an occupational pension scheme shall be binding on the trustees or managers of the scheme.

342C Orders under section 342A: supplementary

- (1) Nothing in—
 - (a) any provision of section 159 of the Pension Schemes Act 1993 or section 91 of the Pensions Act 1995 (which prevent assignment, or orders being made restraining a person from receiving anything which

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he is prevented from assigning, and make provision in relation to a person's pension on bankruptcy),

- (b) any provision of any enactment (whether passed or made before or after the passing of the Pensions Act 1995) corresponding to any of the provisions mentioned in paragraph (a), or
- (c) any provision of the scheme in question corresponding to any of those provisions,

applies to a court exercising its powers under section 342A.

(2) Where any sum is required by an order under section 342A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(3) Where contributions have been made during the relevant period to any occupational pension scheme and the entitlement or accrued right to benefits acquired thereby has been transferred to a second or subsequent occupational pension scheme ("the transferee scheme"), sections 342A and 342B and this section shall apply as though the contributions had been made to the transferee scheme.

(4) For the purposes of this section and sections 342A and 342B—

- (a) contributions are made during the relevant period if—
 - (i) they are made by or on behalf of the individual at any time during the period of 5 years ending with the day of presentation of the bankruptcy petition on which the individual is adjudged bankrupt, or
 - (ii) they are made on behalf of the individual at any time during the period between the presentation of the petition and the commencement of the bankruptcy,

and

- (b) the accrued rights of an individual under an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme.

(5) In this section and sections 342A and 342B—

"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993, and

"trustees or managers", in relation to an occupational pension scheme, means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme."

(2) After section 36 of the Bankruptcy (Scotland) Act 1985 there is inserted—

"36A Recovery of excessive pension contributions

(1) Where a debtor's estate has been sequestrated and—

- (a) he has during the relevant period made contributions as a member of an occupational pension scheme; or
- (b) contributions have during the relevant period been made to such a scheme on his behalf;

the permanent trustee may apply to the court for an order under this section.

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- (2) If, on an application for an order under this section, the court is satisfied that the making of any of the contributions (“the excessive contributions”) has unfairly prejudiced the debtor’s creditors, the court may make such order as it thinks fit for restoring the position to what it would have been if the excessive contributions had not been made.
- (3) The court shall, in determining whether it is satisfied under subsection (2) above, consider in particular—
 - (a) whether any of the contributions were made by or on behalf of the debtor for the purpose of putting assets beyond the reach of his creditors or any of them;
 - (b) whether the total amount of contributions made by or on behalf of the debtor (including contributions made to any other occupational pension scheme) during the relevant period was excessive in view of the debtor’s circumstances at the time when they were made; and
 - (c) whether the level of benefits under the scheme, together with benefits under any other occupational pension scheme, to which the debtor is entitled, or is likely to become entitled, is excessive in all the circumstances of the case.

36B Orders under section 36A

- (1) Without prejudice to the generality of subsection (2) of section 36A of this Act, an order under that section may include provision—
 - (a) requiring the trustees or managers of the scheme to pay an amount to the permanent trustee;
 - (b) reducing the amount of any benefit to which the debtor (or his spouse, widow, widower or dependant) is entitled, or to which he has an accrued right, under the scheme;
 - (c) reducing the amount of any benefit to which, by virtue of any assignation, commutation or surrender of the debtor’s entitlement (or that of his spouse, widow, widower or dependant) or accrued right under the scheme, another person is entitled or has an accrued right;
 - (d) otherwise adjusting the liabilities of the scheme in respect of any such person as is mentioned in paragraph (b) or (c) above.
- (2) The maximum amount by which an order under section 36A of this Act may require the assets of an occupational pension scheme to be reduced is the lesser of—
 - (a) the amount of the excessive contributions; and
 - (b) the value (determined in the prescribed manner) of the assets of the scheme which represent contributions made by or on behalf of the debtor.
- (3) Subject to subsections (4) and (5) below, an order under section 36A of this Act must reduce the amount of the liabilities of the scheme by an amount equal to the amount of the reduction made in the value of the assets of the scheme.
- (4) Subsection (3) above does not apply where the debtor’s entitlement or accrued right to benefits under the scheme which he acquired by virtue of the excessive contributions (his “excessive entitlement”) has been forfeited.

- (5) Where part of the debtor’s excessive entitlement has been forfeited, the amount of the reduction in the liabilities of the scheme required by subsection (3) above is the value of the remaining part of his excessive entitlement.
- (6) An order under section 36A of this Act in respect of an occupational pension scheme shall be binding on the trustees or managers of the scheme.
- (7) The court may, on the application of any person having an interest, review, rescind or vary an order under section 36A of this Act.

36C Orders under section 36A: supplementary

- (1) Nothing in—
 - (a) any provision of section 159 of the Pension Schemes Act 1993 or 91 of the Pensions Act 1995 (which prevent assignation, or orders being made restraining a person from receiving anything which he is prevented from assigning, and make provision in relation to a person’s pension on sequestration);
 - (b) any provision of any enactment (whether passed or made before or after the passing of the Pensions Act 1995) corresponding to any of the provisions mentioned in paragraph (a) above; or
 - (c) any provision of the scheme in question corresponding to any of those provisions,applies to a court exercising its powers under section 36A of this Act.
- (2) Where any sum is required by an order under section 36A of this Act to be paid to the permanent trustee, that sum shall be comprised in the debtor’s estate.
- (3) Where contributions have been made during the relevant period to any occupational pension scheme and the entitlement or accrued right to benefits acquired thereby has been transferred to a second or subsequent occupational pension scheme (“the transferee scheme”), sections 36A and 36B of this Act and this section shall apply as though the contributions had been made to the transferee scheme.
- (4) For the purposes of this section and sections 36A and 36B of this Act—
 - (a) contributions are made during the relevant period if they are made at any time during the period of 5 years ending with the date of sequestration; and
 - (b) the accrued rights of a debtor under an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme.
- (5) In this section and sections 36A and 36B of this Act—

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993; and

“trustees or managers”, in relation to an occupational pension scheme, means—

 - (a) in the case of a scheme established under a trust, the trustees of the scheme; and
 - (b) in any other case, the managers of the scheme.”