



Welfare Reform and Pensions Act 1999

1999 CHAPTER 30

PART II

PENSIONS: GENERAL

Pensions and bankruptcy

11 Effect of bankruptcy on pension rights: approved arrangements.

- (1) Where a bankruptcy order is made against a person on a [^{F1}bankruptcy application made or] petition presented after the coming into force of this section, any rights of his under an approved pension arrangement are excluded from his estate.
- (2) In this section “approved pension arrangement” means—
 - [^{F2}(a) a pension scheme registered under section 153 of the Finance Act 2004;]
 - [^{F3}(b)
 - (c) [^{F4}an occupational pension scheme] set up by a government outside the United Kingdom for the benefit, or primarily for the benefit, of its employees;
 - [^{F5}(d)
 - [^{F5}(e)
 - [^{F5}(f)
 - [^{F6}(g) an annuity purchased for the purpose of giving effect to rights under a scheme falling within paragraph (a), including an annuity in payment before 6th April 2006, giving effect to rights under any scheme approved—
 - (i) before that date under Chapters 1, 3 or 4 of Part 14 of the Taxes Act; or
 - (ii) any relevant statutory scheme, as defined in section 611 of that Act;]
 - (h) any pension arrangements of any description which may be prescribed by regulations made by the Secretary of State.

[^{F7}(3)

[^{F8}(4) Subsection (5) applies if—

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- (a) at the time when a bankruptcy order is made against a person, an appeal against a decision not to register a pension scheme has been made under section 156 of the Finance Act 2004, and
 - (b) the decision of the [^{F9}tribunal] (see section 156(3) of that Act) is to uphold the decision of Her Majesty’s Revenue and Customs not to register the scheme.]
- (5) Any rights of that person under the scheme shall (without any conveyance, assignment or transfer) vest in his trustee in bankruptcy, as part of his estate, immediately on—
- (a) the [^{F10}[^{F11}tribunal’s] decision being made, or]
 - (b) (if later) the trustee’s appointment taking effect or, in the case of the official receiver, his becoming trustee.
- [^{F12}(6) Subsection (7) applies if, at any time after a bankruptcy order is made against a person Her Majesty’s Revenue and Customs—
- (a) give notice withdrawing registration of the pension scheme under section 157 of the Finance Act 2004, and
 - (b) the date specified as being that from which de-registration occurs under subsection (4) of that section (“the de-registration date”) is the date from which the scheme ceases to be a registered pension scheme.]
- (7) Any rights of that person under the scheme or arising by virtue of the arrangements, and any rights of his under any related annuity, shall (without any conveyance, assignment or transfer) vest in his trustee in bankruptcy, as part of his estate, immediately on—
- (a) the giving of the notice, or
 - (b) (if later) the trustee’s appointment taking effect or, in the case of the official receiver, his becoming trustee.
- (8) In subsection (7) “related annuity” means an annuity purchased on or after the [^{F13}de-registration date] for the purpose of giving effect to rights under the scheme or (as the case may be) to rights arising by virtue of the arrangements.
- (9) Where under subsection (5) or (7) any rights vest in a person’s trustee in bankruptcy, the trustee’s title to them has relation back to the commencement of the person’s bankruptcy; but where any transaction is entered into by the trustees or managers of the scheme in question—
- (a) in good faith, and
 - (b) without notice of the making of the decision mentioned in subsection (4)(b) or (as the case may be) the giving of the notice mentioned in subsection (6),
- the trustee in bankruptcy is not in respect of that transaction entitled by virtue of this subsection to any remedy against them or any person whose title to any property derives from them.
- (10) Without prejudice to section 83, regulations under subsection (2)(h) may, in the case of any description of arrangements prescribed by the regulations, make provision corresponding to any provision made by subsections (4) to (9).
- (11) In this section—
- [^{F14}(a) “occupational pension scheme” has the meaning given in section 150(5) of the Finance Act 2004;]
 - [^{F14}(b) “pension scheme” has the meaning given in section 150(1) of the Finance Act 2004 and “registered pension scheme” means a pension scheme registered under section 153 of the Finance Act 2004;]

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- (c) “estate”, in relation to a person against whom a bankruptcy order is made, means his estate for the purposes of Parts VIII to XI of the ^{M1}Insolvency Act 1986;
- (d) “the Taxes Act” means the ^{M2}Income and Corporation Taxes Act 1988.
- (12) For the purposes of this section a person shall be treated as having a right under an approved pension arrangement where—
- (a) he is entitled to a credit under section 29(1)(b) as against the person responsible for the arrangement (within the meaning of Chapter I of Part IV), and
- (b) the person so responsible has not discharged his liability in respect of the credit.

Annotations:

Amendments (Textual)

- F1** Words in s. 11(1) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 12**
- F2** S. 11(2)(a) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(i)**
- F3** S. 11(2)(b) omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(ii)**
- F4** Words in s. 11(2)(c) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(iii)**
- F5** S. 11(2)(d)-(f) omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(ii)**
- F6** S. 11(2)(g) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(iv)**
- F7** S. 11(3) omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(b)**
- F8** S. 11(4) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(c)**
- F9** Word in s. 11(4)(b) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 284(2)**
- F10** Words in s. 11(5)(a) inserted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(d)**
- F11** Word in s. 11(5)(a) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 284(3)**
- F12** S. 11(6) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(e)**
- F13** Words in s. 11(8) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(f)**
- F14** S. 11(11)(a)(b) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(g)**

Modifications etc. (not altering text)

- C1** Pts. I-IV modified (6.4.2006) by Pensions Act 2004 (c. 35), ss. **254(3)(c)**, 322(1) (with s. 313); S.I. 2006/560, art. 2(3), Sch. Pt. 3
- C2** Pts. I-IV: power to modify conferred (6.4.2006) by Pensions Act 2004 (c. 35), ss. **321(1)(d)**, 322(1); S.I. 2006/560, art. 2(3), Sch. Pt. 3

Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Cross Heading: Pensions and bankruptcy. (See end of Document for details)

- C3** Ss. 11-13 modified (30.12.2005) by [Occupational Pension Schemes \(Cross-border Activities\) Regulations 2005 \(S.I. 2005/3381\)](#), regs. 1, 16, **Sch. 2 para. 5**
- C4** S. 11 excluded by 1985 c. 66, s. 32A(5) (as inserted (30.6.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 4, 57(2)**; [S.S.I. 2014/172](#), art. 2, sch.; [S.S.I. 2014/261](#), art. 3 (with arts. 4-712) (as amended by [S.S.I. 2015/54](#), art. 2))

Commencement Information

- I1** S. 11 wholly in force at 6.4.2002; s. 11 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 11(1)-(3)(11) in force at 29.5.2000 insofar as not already in force by [S.I. 2000/1382](#), **art. 2(a)**; s. 11(12) in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1382](#), **art. 2(b)**; s. 11(4)-(10) in force at 6.4.2002 insofar as not already in force by [S.I. 2002/153](#), **art. 2(a)**

Marginal Citations

- M1** 1986 c. 45.
M2 1988 c. 1.

12 Effect of bankruptcy on pension rights: unapproved arrangements.

- (1) The Secretary of State may by regulations make provision for or in connection with enabling rights of a person under an unapproved pension arrangement to be excluded, in the event of a bankruptcy order being made against that person, from his estate for the purposes of Parts VIII to XI of the ^{M3}Insolvency Act 1986.
- (2) Regulations under this section may, in particular, make provision—
- (a) for rights under an unapproved pension arrangement to be excluded from a person's estate—
 - (i) by an order made on his application by a prescribed court, or
 - (ii) in accordance with a qualifying agreement made between him and his trustee in bankruptcy;
 - (b) for the court's decision whether to make such an order in relation to a person to be made by reference to—
 - (i) future likely needs of him and his family, and
 - (ii) whether any benefits (by way of a pension or otherwise) are likely to be received by virtue of rights of his under other pension arrangements and (if so) the extent to which they appear likely to be adequate for meeting any such needs;
 - (c) for the prescribed persons in the case of any pension arrangement to provide a person or his trustee in bankruptcy on request with information reasonably required by that person or trustee for or in connection with the making of such applications and agreements as are mentioned in paragraph (a).
- (3) In this section—
- “prescribed” means prescribed by regulations under this section;
- “qualifying agreement” means an agreement entered into in such circumstances, and satisfying such requirements, as may be prescribed;
- “unapproved pension arrangement” means a pension arrangement which—
- (a) is not an approved pension arrangement within the meaning of section 11, and
 - (b) is of a prescribed description.

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- (4) For the purposes of this section a person shall be treated as having a right under an unapproved pension arrangement where—
- (a) he is entitled to a credit under section 29(1)(b) as against the person responsible for the arrangement (within the meaning of Chapter I of Part IV), and
 - (b) the person so responsible has not discharged his liability in respect of the credit.

Annotations:

Modifications etc. (not altering text)

- C3** Ss. 11-13 modified (30.12.2005) by [Occupational Pension Schemes \(Cross-border Activities\) Regulations 2005 \(S.I. 2005/3381\)](#), regs. 1, 16, **Sch. 2 para. 5**
- C5** S. 12 excluded by 1985 c. 66, s. 32A(5) (as inserted (30.6.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 4, 57(2)**; [S.S.I. 2014/172](#), art. 2, sch.; [S.S.I. 2014/261](#), art. 3 (with arts. 4-712) (as amended by [S.S.I. 2015/54](#), art. 2))

Commencement Information

- I2** S. 12 wholly in force at 6.4.2002; s. 12 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 12 in force at 6.4.2002 insofar as not already in force by [S.I. 2002/153](#), **art. 2(b)**

Marginal Citations

- M3** [1986 c. 45](#).

13 Sections 11 and 12: application to Scotland.

- (1) This section shall have effect for the purposes of the application of sections 11 and 12 to Scotland.
- (2) A reference to—
- (a) the making of a bankruptcy order against a person is a reference to the award of sequestration on his estate or the making of the appointment on his estate of a judicial factor under section 41 of the ^{M4}Solicitors (Scotland) Act 1980;
 - (b) the estate of a person is a reference to his estate for the purposes of the ^{M5}Bankruptcy (Scotland) Act [^{F15}2016] or of the Solicitors (Scotland) Act 1980, as the case may be;
 - (c) assignment is a reference to assignation;
 - (d) a person's trustee in bankruptcy is a reference to his [^{F16}trustee or interim trustee in a sequestration under the Bankruptcy (Scotland) Act 2016] or judicial factor, as the case may be;
 - (e) the commencement of a person's bankruptcy is a reference to the date of sequestration (within the meaning of section [^{F17}22(7) of the Bankruptcy (Scotland) Act 2016]) or of the judicial factor's appointment taking effect, as the case may be.
- (3) For paragraph (b) of each of subsections (5) and (7) of section 11 there shall be substituted—

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“(b) if later, the date of sequestration (within the meaning of section [F1822(7) of the Bankruptcy (Scotland) Act 2016]) or of the judicial factor’s appointment taking effect, as the case may be.”

Annotations:

Amendments (Textual)

- F15** Word in s. 13(2)(b) substituted (30.11.2016) (S) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 19\(2\)\(a\)](#)
- F16** Words in s. 13(2)(d) substituted (30.11.2016) (S) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 19\(2\)\(b\)](#)
- F17** Words in s. 13(2)(e) substituted (30.11.2016) (S) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 19\(2\)\(c\)](#)
- F18** Words in s. 13(3) substituted (30.11.2016) (S) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 19\(3\)](#)

Modifications etc. (not altering text)

- C3** Ss. 11-13 modified (30.12.2005) by [Occupational Pension Schemes \(Cross-border Activities\) Regulations 2005 \(S.I. 2005/3381\)](#), regs. 1, 16, [Sch. 2 para. 5](#)

Commencement Information

- I3** S. 13 wholly in force at 6.4.2002; s. 13 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 13(1)(2) in force for certain further purposes at 29.5.2000 by [S.I. 2000/1382](#), [art. 2\(a\)](#); s. 13 in force at 6.4.2002 insofar as not already in force by [S.I. 2002/153](#), [art. 2\(c\)](#)

Marginal Citations

- M4** 1980 c. 46.
M5 1985 c. 66.

14 No forfeiture on bankruptcy of rights under pension schemes.

(1) In the ^{M6}Pension Schemes Act 1993, after section 159 there shall be inserted—

“159A No forfeiture on bankruptcy of rights under personal pension schemes.

- (1) A person’s rights under a personal pension scheme cannot be forfeited by reference to his bankruptcy.
- (2) For the purposes of this section—
- (a) a person shall be treated as having a right under a personal pension scheme where—
- (i) he is entitled to a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (sharing of rights on divorce etc.),
- (ii) he is so entitled as against the person responsible for the scheme (within the meaning of Chapter I of Part IV of that Act), and

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- (iii) the person so responsible has not discharged his liability in respect of the credit; and
- (b) forfeiture shall be taken to include any manner of deprivation or suspension.”
- (2) In section 159(6) of that Act (application of section 159 to Scotland), after “this section” there shall be inserted “ and section 159A ”.
- (3) In section 92(2) of the ^{M7}Pensions Act 1995 (exceptions to the rule preventing forfeiture of rights under occupational pension schemes), paragraph (b) (which allows forfeiture of such rights by reference to a scheme member’s bankruptcy) shall cease to have effect.

Annotations:

Commencement Information

- I4** S. 14 wholly in force at 6.4.2002; s. 14 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 14 in force at 6.4.2002 insofar as not already in force by [S.I. 2002/153](#), [art. 2\(d\)](#)

Marginal Citations

- M6** 1993 c. 48.
M7 1995 c. 26.

15 Excessive pension contributions made by persons who have become bankrupt.

For sections 342A to 342C of the ^{M8}Insolvency Act 1986 there shall be substituted—

“342A Recovery of excessive pension contributions.

- (1) Where an individual who is adjudged bankrupt—
- (a) has rights under an approved pension arrangement, or
- (b) has excluded rights under an unapproved pension arrangement,
- the trustee of the bankrupt’s estate may apply to the court for an order under this section.
- (2) If the court is satisfied—
- (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and
- (b) that the making of any of the relevant 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 had the excessive contributions not been made.
- (3) Subsection (4) applies where the court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999 (debits giving effect to pension-sharing), less than it would otherwise have been.
- (4) Where this subsection applies—

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- (a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of subsection (2), be taken to be contributions of which the rights under the arrangement are the fruits, and
 - (b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that paragraph.
- (5) In subsections (2) to (4) “relevant contributions” means contributions to the arrangement or any other pension arrangement—
- (a) which the individual has at any time made on his own behalf, or
 - (b) which have at any time been made on his behalf.
- (6) The court shall, in determining whether it is satisfied under subsection (2)(b), consider in particular—
- (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual’s creditors or any of them, and
 - (b) whether the total amount of any contributions—
 - (i) made by or on behalf of the individual to pension arrangements, and
 - (ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,
 is an amount which is excessive in view of the individual’s circumstances when those contributions were made.
- (7) For the purposes of this section and sections 342B and 342C (“the recovery provisions”), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under section 12 of the Welfare Reform and Pensions Act 1999.
- (8) In the recovery provisions—
- “approved pension arrangement” has the same meaning as in section 11 of the Welfare Reform and Pensions Act 1999;
 - “unapproved pension arrangement” has the same meaning as in section 12 of that Act.

342B Orders under section 342A.

- (1) Without prejudice to the generality of section 342A(2), an order under section 342A may include provision—
- (a) requiring the person responsible for the arrangement to pay an amount to the individual’s trustee in bankruptcy,
 - (b) adjusting the liabilities of the arrangement in respect of the individual,
 - (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,

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- (d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the bankrupt's case with any requirement under section 342C(1) or in giving effect to the order.
- (2) In subsection (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.
- (3) In subsection (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (pension sharing orders and agreements).
- (4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under section 342A is the lesser of—
 - (a) the amount of the excessive contributions, and
 - (b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).
- (5) An order under section 342A which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.
- (6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—
 - (a) the amount of the liabilities immediately before the reduction, and
 - (b) the amount of the liabilities immediately after the reduction,is equal to the restoration amount.
- (7) An order under section 342A in respect of an arrangement—
 - (a) shall be binding on the person responsible for the arrangement, and
 - (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

342C Orders under section 342A: supplementary.

- (1) The person responsible for—
 - (a) an approved pension arrangement under which a bankrupt has rights,
 - (b) an unapproved pension arrangement under which a bankrupt has excluded rights, or
 - (c) a pension arrangement under which a bankrupt has at any time had rights,shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under section 342A.
- (2) Nothing in—

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- (a) any provision of section 159 of the ^{M9}Pension Schemes Act 1993 or section 91 of the ^{M10}Pensions Act 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),
- (b) any provision of any enactment (whether passed or made before or after the passing of the Welfare Reform and Pensions Act 1999) corresponding to any of the provisions mentioned in paragraph (a), or
- (c) any provision of the arrangement in question corresponding to any of those provisions,

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

- (3) 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.
- (4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—
 - (a) any such value as is mentioned in section 342B(4)(b);
 - (b) any such amounts as are mentioned in section 342B(6)(a) and (b).
- (5) The power conferred by subsection (4) includes power to provide for calculation or verification—
 - (a) in such manner as may, in the particular case, be approved by a prescribed person; or
 - (b) in accordance with guidance—
 - (i) from time to time prepared by a prescribed person, and
 - (ii) approved by the Secretary of State.
- (6) References in the recovery provisions to the person responsible for a pension arrangement are to—
 - (a) the trustees, managers or provider of the arrangement, or
 - (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (7) In this section and sections 342A and 342B—
 - “prescribed” means prescribed by regulations;
 - “the recovery provisions” means this section and sections 342A and 342B;
 - “regulations” means regulations made by the Secretary of State.
- (8) Regulations under the recovery provisions may—
 - (a) make different provision for different cases;
 - (b) contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.
- (9) Regulations under the recovery provisions shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

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Annotations:

Commencement Information

- I5** S. 15 wholly in force at 6.4.2002; s. 15 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 15 in force at 6.4.2002 insofar as not already in force by [S.I. 2002/153](#), [art. 3\(e\)](#)

Marginal Citations

- M8** 1986 c. 45.
M9 1993 c. 48.
M10 1995 c. 26.

16 Excessive pension contributions made by persons who have become bankrupt: Scotland.

[^{F19}For sections 36A to 36C of the ^{M11}Bankruptcy (Scotland) Act 1985 there shall be substituted—

36A “ Recovery of excessive pension contributions.

- (1) Where a debtor’s estate has been sequestrated and he—
 - (a) has rights under an approved pension arrangement, or
 - (b) has excluded rights under an unapproved pension arrangement,the permanent trustee may apply to the court for an order under this section.
- (2) If the court is satisfied—
 - (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and
 - (b) that the making of any of the relevant 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 had the excessive contributions not been made.
- (3) Subsection (4) applies where the court is satisfied that the value of the rights under the arrangement is, as a result of rights of the debtor under the arrangement or any other pension arrangement having at any time become subject to a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999 (debits giving effect to pension-sharing), less than it would otherwise have been.
- (4) Where this subsection applies—
 - (a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of subsection (2), be taken to be contributions of which the rights under the arrangement are the fruits, and
 - (b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that paragraph.

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- (5) In subsections (2) to (4) “relevant contributions” means contributions to the arrangement or any other pension arrangement—
- (a) which the debtor has at any time made on his own behalf, or
 - (b) which have at any time been made on his behalf.
- (6) The court shall, in determining whether it is satisfied under subsection (2)(b), consider in particular—
- (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the debtor’s creditors or any of them, and
 - (b) whether the total amount of any contributions—
 - (i) made by or on behalf of the debtor to pension arrangements, and
 - (ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pensions arrangements,
 is an amount which is excessive in view of the debtor’s circumstances when those contributions were made.
- (7) For the purposes of this section and sections 36B and 36C (“the recovery provisions”), rights of a debtor under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under section 12 of the Welfare Reform and Pensions Act 1999.
- (8) In the recovery provisions—
- “approved pension arrangement” has the same meaning as in section 11 of the Welfare Reform and Pensions Act 1999;
- “unapproved pension arrangement” has the same meaning as in section 12 of that Act.

36B Orders under section 36A.

- (1) Without prejudice to the generality of section 36A(2) an order under section 36A may include provision—
- (a) requiring the person responsible for the arrangement to pay an amount to the permanent trustee,
 - (b) adjusting the liabilities of the arrangement in respect of the debtor,
 - (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the debtor under the arrangement,
 - (d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the debtor’s case with any requirement under section 36C(1) or in giving effect to the order.
- (2) In subsection (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.
- (3) In subsection (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to

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an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (pension sharing orders and agreements).

- (4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under section 36A is the lesser of—
 - (a) the amount of the excessive contributions, and
 - (b) the value of the debtor's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).
- (5) An order under section 36A which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the permanent trustee must provide for the liabilities of the arrangement to be correspondingly reduced.
- (6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—
 - (a) the amount of the liabilities immediately before the reduction, and
 - (b) the amount of the liabilities immediately after the reduction,is equal to the restoration amount.
- (7) An order under section 36A in respect of an arrangement—
 - (a) shall be binding on the person responsible for the arrangement; and
 - (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

36C Orders under section 36A: supplementary.

- (1) The person responsible for—
 - (a) an approved pension arrangement under which a debtor has rights,
 - (b) an unapproved pension arrangement under which a debtor has excluded rights, or
 - (c) a pension arrangement under which a debtor has at any time had rights,shall, on the permanent trustee making a written request, provide the permanent trustee with such information about the arrangement and rights as the permanent trustee may reasonably require for, or in connection with, the making of applications under section 36A.
- (2) Nothing in—
 - (a) any provision of section 159 of the ^{M12}Pensions Schemes Act 1993 or section 91 of the ^{M13}Pensions Act 1995 (which prevent assignation and the making of orders that restrain a person from receiving anything which he is prevented from assigning),
 - (b) any provision of any enactment (whether passed or made before or after the passing of the Welfare Reform and Pensions Act 1999) corresponding to any of the provisions mentioned in paragraph (a), or
 - (c) any provision of the arrangement in question corresponding to any of those provisions,applies to a court exercising its powers under section 36A.

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- (3) Where any sum is required by an order under section 36A to be paid to the permanent trustee, that sum shall be comprised in the debtor’s estate.
- (4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—
- (a) any such value as is mentioned in section 36B(4)(b);
 - (b) any such amounts as are mentioned in section 36B(6)(a) and (b).
- (5) The power conferred by subsection (4) includes power to provide for calculation or verification—
- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
 - (b) in accordance with guidance—
 - (i) from time to time prepared by a prescribed person, and
 - (ii) approved by the Secretary of State.
- (6) References in the recovery provisions to the person responsible for a pension arrangement are to—
- (a) the trustees, managers or provider of the arrangement, or
 - (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (7) In this section and sections 36A and 36B—
- “the recovery provisions” means this section and sections 36A and 36B;
- “regulations” means regulations made by the Secretary of State.
- (8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.”]

Annotations:

Amendments (Textual)

F19 S. 16 repealed (S) (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 2 Pt. 1**

Commencement Information

I6 S. 16 wholly in force at 6.4.2002: s. 16 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 15 in force at 6.4.2002 insofar as not already in force by [S.I. 2002/153](#), **art. 2(f)**

Marginal Citations

M11 1985 c. 66.

M12 1993 c. 48.

M13 1995 c. 26.

Changes to legislation:

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