



Welfare Reform and Pensions Act 1999

1999 CHAPTER 30

PART II

PENSIONS: GENERAL

Pensions and bankruptcy

15 Excessive pension contributions made by persons who have become bankrupt

For sections 342A to 342C of the 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—
- (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,
 - (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—
- (a) any provision of section 159 of the Pension Schemes Act 1993 or section 91 of the 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.”