
STATUTORY INSTRUMENTS

2002 No. 836

**The Occupational and Personal Pension
Schemes (Bankruptcy) (No. 2) Regulations 2002**

PART II

ENGLAND AND WALES

Prescribed pension arrangements

2.—(1) The arrangements prescribed for the purposes of section 11(2)(h) of the 1999 Act (pension arrangements which are “approved pension arrangements”) are arrangements (including an annuity purchased for the purpose of giving effect to rights under any such arrangement)—

(a) to which—

- (i) the holder of an office or employment has contributed by way of payments out of foreign emoluments which have been allowed as a deduction in computing the amount of those emoluments by virtue of section 192(3) of the Taxes Act (relief from tax for foreign emoluments),
- (ii) Article 17A of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976⁽¹⁾ (pension scheme contributions) applies;

(b) made with a scheme which is a retirement benefits scheme—

- (i) approved by the Board of Inland Revenue pursuant to section 590 or 591 of the Taxes Act⁽²⁾ (conditions for approval of retirement benefit schemes and discretionary approval respectively) and which is not an exempt approved scheme under section 592 of that Act⁽³⁾, or
- (ii) to which section 608 of the Taxes Act (superannuation funds approved before 6th April 1980) applies;

(c) to which section 595(1) of the Taxes Act (charge to tax in respect of certain sums paid by the employer etc.) does not apply by virtue of section 596(2)(b) of that Act⁽⁴⁾;

⁽¹⁾ S.I.1976/2151. Article 17A was added by Article 1 of the Protocol set out in the Schedule to S.I. 1995/764.

⁽²⁾ Section 590 was amended by section 35 of, and paragraph 18 of Part I of Schedule 3 to, the Finance Act 1988 (c. 39), sections 75 and 187 of, and paragraphs 3(1) to (4) and 18(2) and (3) of Schedule 6 and Part IV of Schedule 17 to, the Finance Act 1989 (c. 26), sections 34(2) to (4), 36(2) and (3) and 123 of, and Part V of Schedule 19 to, the Finance Act 1991 (c. 31) and section 79 of, and paragraph 2 of Schedule 10 to, the Finance Act 1999 (c. 16). Section 591 was amended by section 146 of, and paragraph 6 of Part I of Schedule 13 to, the Finance Act 1988, sections 107(2) to (4) and 258 of, and Part V of Schedule 26 to, the Finance Act 1994 (c. 9), sections 59(2) and 60(1) of the Finance Act 1995 (c. 4) and section 79 of, and paragraphs 3 and 18(1) and (3) of Schedule 10 to, the Finance Act 1999.

⁽³⁾ Section 592 was amended by section 75 of, and paragraphs 5(2) to (4) and 18(4) of Schedule 6 to, the Finance Act 1989 and section 112(1) of the Finance Act 1993 (c. 34).

⁽⁴⁾ Paragraph 2 was amended by section 187 of, and Part IV of Schedule 17 to, the Finance Act 1995.

- (d) which are exempt or qualify for relief from, or are not liable to charge to, income tax by virtue of section 614, 615 or 616 of the Taxes Act⁽⁵⁾ (exemptions and reliefs in respect of income from investments etc. of certain pension schemes and other overseas pensions);
- (e) made with—
 - (i) a public service pension scheme, or
 - (ii) an occupational pension scheme established under the auspices of a government department or by any person acting on behalf of the Crown;
- (f) referred to in paragraph (b)(ii) of section 630(1) of the Taxes Act⁽⁶⁾ (definition of “approved” for the purposes of Chapter IV of Part XIV of that Act).

(2) Paragraph (1)(e) above does not apply to an arrangement entered into on, or after, 14th March 1989 for the purpose of providing an employee with relevant benefits calculated by reference to so much of his annual remuneration as is in excess of the permitted maximum; and for these purposes the “permitted maximum” means the permitted maximum for any year of assessment during which such a person is a member of a scheme referred to in paragraph (1)(e) above and shall be the figure specified—

- (a) in section 590C(3) of the Taxes Act⁽⁷⁾ for the years 1988-89 and 1989-90;
 - (b) by order in accordance with subsection (6) of that section for each year subsequent to 1989-90.
- (3) For the purposes of this regulation—
- (a) “foreign emoluments” has the meaning given in section 192(1) of the Taxes Act;
 - (b) “occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993⁽⁸⁾;
 - (c) “public service pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993;
 - (d) “year of assessment” has the meaning given in section 832(1) of the Taxes Act.

Unapproved pension arrangements

3.—(1) For the purposes of section 12 of the 1999 Act (effect of bankruptcy on pension rights: unapproved arrangements), a pension arrangement—

- (a) falling within section 11(4) of the 1999 Act (which deals with schemes which are not subsequently approved under Chapter I of Part XIV of the Taxes Act and, at the date of the bankruptcy order, were being considered for such approval);
- (b) falling within section 11(6) of the 1999 Act (which deals with a scheme which, after the date of the bankruptcy order, has its approval under Chapter I or, as the case may be, Chapter IV of Part XIV of the Taxes Act withdrawn from a date not later than the date of that order); or
- (c) under—
 - (i) a funded unapproved retirement benefits scheme, or
 - (ii) an unfunded unapproved retirement benefits scheme,

(5) Section 614 was amended by section 258 of, and Part V of Schedule 26 to, the Finance Act 1994 and sections 104 and 105 of, and paragraph 34 of Schedule 14 to, the Finance Act 1996 (c. 8). Section 615 was amended by section 2 of the Overseas Superannuation Act 1991 (c. 16) and section 79 of, and paragraph 11 of Schedule 10 to, the Finance Act 1999.

(6) Section 630 was amended by paragraph 2 of Schedule 11 to the Finance Act 1995 and the definition of “approved” was amended by section 61 of, and paragraph 5(2) of Schedule 13 to, the Finance Act 2000 (c. 17).

(7) Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989.

(8) 1993 c. 48.

shall be an “unapproved pension arrangement” if it satisfies the conditions specified in paragraph (2) below.

- (2) The conditions referred to in paragraph (1) above are that the pension arrangement—
 - (a) is established under—
 - (i) an irrevocable trust, or
 - (ii) a contract, agreement or arrangement made with the bankrupt;
 - (b) has as its primary purpose the provision of relevant benefits; and
 - (c) is the bankrupt’s sole pension arrangement or his main means of pension provision (other than a pension under Part II of the Social Security Contributions and Benefits Act 1992 (contributory benefits) or Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(9) (contributory benefits)).
- (3) For the purposes of section 12(2)(c) of the 1999 Act, the prescribed person shall be the responsible person.

Exclusion of rights under unapproved pension arrangements

4. For the purpose of excluding his rights under an unapproved pension arrangement from his estate for the purposes of Parts VIII to XI of the 1986 Act (which cover individual voluntary arrangements, bankruptcy and individual insolvency), a bankrupt may—

- (a) make an application to the court for an exclusion order in accordance with the provisions of regulation 5 below;
- (b) enter into a qualifying agreement with the trustee in bankruptcy in accordance with the provisions of regulation 6 below.

Exclusion orders

5.—(1) Subject to paragraph (2) below, an application for an exclusion order shall be made to the court within a period of—

- (a) thirteen weeks beginning with—
 - (i) the date on which the bankrupt’s estate vests in the trustee in bankruptcy in accordance with the provisions of section 306 of the 1986 Act (vesting of bankrupt’s estate in trustee), or
 - (ii) in the case of a scheme referred to in regulation 3(1)(a) or (b) above, the date, if later than that referred to in head (i) above, on which any rights of the bankrupt vest in the trustee in bankruptcy in accordance with section 11(5) or, as the case may be, (7) of the 1999 Act; or
- (b) thirty days beginning with the date on which a qualifying agreement is revoked in accordance with the provisions of regulation 6 below.

(2) The court may, either before or after it has expired and where good cause is shown, extend the period referred to in paragraph (1)(a) or, as the case may be, (1)(b) above.

(3) In deciding whether to make an exclusion order and, if so, whether to make it in respect of part or all (but not exceeding the total amount) of the excludable rights, the court shall have reference to—

- (a) the future likely needs of the bankrupt and his family;
- (b) whether any benefits by way of pension or otherwise (other than a pension under Part II of the Social Security Contributions and Benefits Act 1992 or Part II of the Social

(9) 1992 c. 7.

Security Contributions and Benefits (Northern Ireland) Act 1992 (contributory benefits) or an income-related benefit) are likely to be received by virtue of rights of the bankrupt which have already accrued under any other pension arrangements at the date on which the application for an exclusion order is made and the extent to which they appear likely to be adequate for meeting any such needs.

Qualifying agreements

6.—(1) A qualifying agreement shall be made within a period of nine weeks beginning with the later of the following—

- (a) the date on which the bankrupt's estate vests in the trustee in bankruptcy in accordance with the provisions of section 306 of the 1986 Act (vesting of bankrupt's estate in trustee); or
- (b) in the case of a scheme referred to in regulation 3(1)(a) or (b) above, the date, if later than that referred to in sub-paragraph (a) above, on which any rights of the bankrupt vest in the trustee in bankruptcy in accordance with section 11(5) or, as the case may be, (7) of the 1999 Act.

(2) A qualifying agreement made between the bankrupt and the trustee in bankruptcy shall be by deed and incorporate all the terms which they have expressly agreed.

(3) Where—

- (a) the bankrupt has failed to make full disclosure of all material facts in respect of any pension arrangement which is the subject of a qualifying agreement; and
- (b) has failed to do so for the purpose of enabling his rights under such an arrangement to be excluded from his estate for the purposes of Parts VIII to XI of the 1986 Act where they would not have otherwise been excluded,

the trustee in bankruptcy may revoke that agreement by giving the bankrupt notice of revocation.

(4) A notice of revocation shall—

- (a) be dated;
- (b) be in writing;
- (c) specify the reasons for revocation of the qualifying agreement;
- (d) specify the date on which the agreement shall be revoked, such date not being one falling within a period of thirty days beginning with the date of the notice; and
- (e) inform the bankrupt that he has the right to apply for an exclusion order within a period of thirty days beginning with the date referred to in sub-paragraph (d) above.

(5) Where a qualifying agreement has been made or revoked in accordance with the provisions of this regulation, the trustee in bankruptcy shall, within a period of thirty days beginning with the date on which that agreement was made or, in the case of a notice of revocation, the date required under paragraph (4)(a) above, notify the responsible person in writing of that fact.

Calculation and verification of rights under pension arrangements

7.—(1) For the purposes of section 342B(4)(b) of the 1986 Act⁽¹⁰⁾, the value of the individual's ("the bankrupt's") rights under an approved pension arrangement, or of his excluded rights under an unapproved pension arrangement, shall be the cash equivalent of those rights as calculated and verified in accordance with paragraph (2) below.

⁽¹⁰⁾ Section 342B was substituted by section 15 of the 1999 Act.

(2) In calculating and verifying the cash equivalent of the rights referred to in paragraph (1) above, regulation 3 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000⁽¹¹⁾ (information about pensions and divorce: valuation of pension benefits) shall have effect for the purposes of this regulation in like manner to that in which it has effect for the valuation of benefits in connection with the supply of information in connection with domestic and overseas divorce etc. in England, Wales and Northern Ireland for the purposes of those Regulations; and for these purposes “the date on which the request for the valuation was received” in that regulation shall be read as “the date on which the trustee in bankruptcy’s request for the valuation was received”.

Time for compliance with restoration order

8. The responsible person shall comply with the restoration order before the end of a period of seventeen weeks beginning with the date of service of that order.

Calculation and verification of rights under destination arrangements

9.—(1) Where section 342E of the 1986 Act⁽¹²⁾ applies, the value of a transferee’s rights under a destination arrangement, derived directly or indirectly from a pension-sharing transaction, shall be—

- (a) the cash equivalent of those rights at the date on which the trustee in bankruptcy’s request for that valuation is received by the responsible person; and
- (b) calculated and verified in accordance with paragraph (2) below.

(2) In calculating and verifying the cash equivalent of the transferee’s rights referred to in paragraph (1) above, regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽¹³⁾ shall have effect for the purposes of this regulation in like manner to that in which it has effect for the calculation and verification of pension credit for the purposes of those Regulations.

Time for compliance with request for information

10.—(1) Subject to paragraph (2) below, where a request for information has been made to the responsible person by—

- (a) the trustee in bankruptcy or the bankrupt in connection with the making of an application for an exclusion order;
- (b) the bankrupt for, or in connection with, the making of a qualifying agreement referred to in regulation 6 above; or
- (c) the trustee in bankruptcy—
 - (i) pursuant to section 342C(1) of the 1986 Act (which enables the trustee in bankruptcy to request the responsible person to provide information which he may reasonably need for the making of an application for a restoration order) and relating to the cash equivalent of a bankrupt’s rights or excluded rights,
 - (ii) pursuant to section 342F(1) to (3) of the 1986 Act (which enables the transferor’s trustee in bankruptcy to request the responsible person to provide information which he may reasonably need for the making of an application under sections 339 and 340 of the 1986 Act) and relating to the cash equivalent of a transferee’s rights under a destination arrangement,

he shall comply with that request within a period of nine weeks beginning with the day on which it is received.

⁽¹¹⁾ S.I. 2000/1048.

⁽¹²⁾ Section 342E was inserted by paragraph 71 of Schedule 12 to the 1999 Act.

⁽¹³⁾ S.I. 2000/1054.

(2) In the case of a request for information falling within sub-paragraph (a) of paragraph (1) above, the court may, either before or after it has expired and where good cause is shown, extend the period referred to in that paragraph.