



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 7

SAFEGUARDING INTERESTS OF CREDITORS

Excessive contributions

104 Excessive contributions in pension-sharing cases: general

- (1) For the purposes of section 98, a pension-sharing transaction is taken—
 - (a) to be a transaction, entered into by the transferor (in this section referred to as “TR”) with the transferee (in this section referred to as “TE”), by which the appropriate amount is transferred by TR to TE, and
 - (b) to be capable of being an alienation challengeable under that section only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (2) For the purposes of section 99, a pension-sharing transaction is taken—
 - (a) to be something (namely a transfer of the appropriate amount to TE) done by TR, and
 - (b) to be capable of being an unfair preference given to TE only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (3) For the purposes of section 100, a pension-sharing transaction is taken—
 - (a) to be a pension sharing order made by the court under section 8(2) of the Family Law (Scotland) Act 1985, and
 - (b) to be an order capable of being recalled under that section only so far as it is a payment or transfer of so much of the appropriate amount as is recoverable.
- (4) Subsection (5) applies where—
 - (a) an alienation is challenged under section 98,
 - (b) a transaction is challenged under section 99, or
 - (c) an application is made under section 100 for the recall of an order made in divorce proceedings.

Changes to legislation: Bankruptcy (Scotland) Act 2016, Section 104 is up to date with all changes known to be in force on or before 14 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

- (5) If any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question must be determined in accordance with subsections (6) to (10).
- (6) The court is first to determine the extent, if any, to which TR's rights under the shared arrangement at the time of the transaction appear to have been, whether directly or indirectly, the fruits of contributions (“personal contributions”) to the shared arrangement or any other pension arrangement—
- (a) which TR has at any time made on TR's own behalf, or
 - (b) which have at any time been made on TR's behalf.
- (7) Where it appears that those rights were to any extent the fruits of personal contributions, the court is then to determine the extent, if any, to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced TR's creditors (“the unfair contributions”).
- (8) If it appears to the court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.
- (9) If it appears to the court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the court that the transfer could not have been so made.
- (10) In making the determination mentioned in subsection (7) the court must consider in particular—
- (a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of TR's creditors or any of them, and
 - (b) whether the total amount of any personal contributions represented, at the time the pension sharing arrangement was made, by rights under pension arrangements is an amount which is excessive in view of TR's circumstances when those contributions were made.
- (11) In this section and sections 105 and 106—
- “appropriate amount”, in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of section 29(1) of the 1999 Act (creation of pension credits and debits),
- “pension-sharing transaction” means an order or provision falling within section 28(1) of that Act (orders and agreements which activate pension-sharing),
- “shared arrangement”, in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates,
- “transferee” (or “TE”), in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made, and
- “transferor” (or “TR”), in relation to a pension-sharing transaction, means the person to whose rights the transaction relates.

Commencement Information

II S. 104 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Changes to legislation:

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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. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)