



Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

Assignment, forfeiture, bankruptcy etc.

91 Inalienability of occupational pension

- (1) Subject to subsection (5), where a person is entitled, or has an accrued right, to a pension under an occupational pension scheme—
 - (a) the entitlement or right cannot be assigned, commuted or surrendered,
 - (b) the entitlement or right cannot be charged or a lien exercised in respect of it, and
 - (c) no set-off can be exercised in respect of it,and an agreement to effect any of those things is unenforceable.
- (2) Where by virtue of this section a person's entitlement, or accrued right, to a pension under an occupational pension scheme cannot, apart from subsection (5), be assigned, no order can be made by any court the effect of which would be that he would be restrained from receiving that pension.
- (3) Where a bankruptcy order is made against a person, any entitlement or right of his which by virtue of this section cannot, apart from subsection (5), be assigned is excluded from his estate for the purposes of Parts VIII to XI of the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985.
- (4) Subsection (2) does not prevent the making of—
 - (a) an attachment of earnings order under the Attachment of Earnings Act 1971, or
 - (b) an income payments order under the Insolvency Act 1986.

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- (5) In the case of a person (“the person in question”) who is entitled, or has an accrued right, to a pension under an occupational pension scheme, subsection (1) does not apply to any of the following, or any agreement to effect any of the following—
- (a) an assignment in favour of the person in question’s widow, widower or dependant,
 - (b) a surrender, at the option of the person in question, for the purpose of—
 - (i) providing benefits for that person’s widow, widower or dependant, or
 - (ii) acquiring for the person in question entitlement to further benefits under the scheme,
 - (c) a commutation—
 - (i) of the person in question’s benefit on or after retirement or in exceptional circumstances of serious ill health,
 - (ii) in prescribed circumstances, of any benefit for that person’s widow, widower or dependant, or
 - (iii) in other prescribed circumstances,
 - (d) subject to subsection (6), a charge or lien on, or set-off against, the person in question’s entitlement, or accrued right, to pension (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him,
 - (e) subject to subsection (6), except in prescribed circumstances a charge or lien on, or set-off against, the person in question’s entitlement, or accrued right, to pension, for the purpose of discharging some monetary obligation due from the person in question to the scheme and—
 - (i) arising out of a criminal, negligent or fraudulent act or omission by him, or
 - (ii) in the case of a trust scheme of which the person in question is a trustee, arising out of a breach of trust by him.
- (6) Where a charge, lien or set-off is exercisable by virtue of subsection (5)(d) or (e)—
- (a) its amount must not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person in question’s entitlement or accrued right, and
 - (b) the person in question must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme,
- and where there is a dispute as to its amount, the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.
- (7) This section is subject to section 159 of the Pension Schemes Act 1993 (inalienability of guaranteed minimum pension and protected rights payments).

92 Forfeiture, etc

- (1) Subject to the provisions of this section and section 93, an entitlement, or accrued right, to a pension under an occupational pension scheme cannot be forfeited.
- (2) Subsection (1) does not prevent forfeiture by reference to—

- (a) a transaction or purported transaction which under section 91 is of no effect, or
 - (b) the bankruptcy of the person entitled to the pension or whose right to it has accrued,
- whether or not that event occurred before or after the pension became payable.
- (3) Where such forfeiture as is mentioned in subsection (2) occurs, any pension which was, or would but for the forfeiture have become, payable may, if the trustees or managers of the scheme so determine, be paid to all or any of the following—
- (a) the member of the scheme to or in respect of whom the pension was, or would have become, payable,
 - (b) the spouse, widow or widower of the member,
 - (c) any dependant of the member, and
 - (d) any other person falling within a prescribed class.
- (4) Subsection (1) does not prevent forfeiture by reference to the person entitled to the pension, or whose right to it has accrued, having been convicted of one or more offences—
- (a) which are committed before the pension becomes payable, and
 - (b) which are—
 - (i) offences of treason,
 - (ii) offences under the Official Secrets Acts 1911 to 1989 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years, or
 - (iii) prescribed offences.
- (5) Subsection (1) does not prevent forfeiture by reference to a failure by any person to make a claim for pension—
- (a) where the forfeiture is in reliance on any enactment relating to the limitation of actions, or
 - (b) where the claim is not made within six years of the date on which the pension becomes due.
- (6) Subsection (1) does not prevent forfeiture in prescribed circumstances.
- (7) In this section and section 93, references to forfeiture include any manner of deprivation or suspension.

93 Forfeiture by reference to obligation to employer

- (1) Subject to subsection (2), section 92(1) does not prevent forfeiture of a person's entitlement, or accrued right, to a pension under an occupational pension scheme by reference to the person having incurred some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by the person.
- (2) A person's entitlement or accrued right to a pension may be forfeited by reason of subsection (1) to the extent only that it does not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person's entitlement or accrued right to a pension under the scheme.
- (3) Such forfeiture as is mentioned in subsection (1) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an

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award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.

- (4) Where a person's entitlement or accrued right to a pension is forfeited by reason of subsection (1), the person must be given a certificate showing the amount forfeited and the effect of the forfeiture on his benefits under the scheme.
- (5) Where such forfeiture as is mentioned in subsection (1) occurs, an amount not exceeding the amount forfeited may, if the trustees or managers of the scheme so determine, be paid to the employer.

94 Sections 91 to 93: supplementary

- (1) Regulations may—
 - (a) modify sections 91 to 93 in their application to public service pension schemes or to other schemes falling within a prescribed class or description, or
 - (b) provide that those sections do not apply in relation to schemes falling within a prescribed class or description.
- (2) In those sections, “pension” in relation to an occupational pension scheme, includes any benefit under the scheme and any part of a pension and any payment by way of pension.
- (3) In the application of sections 91 and 92 to Scotland—
 - (a) references to a charge are to be read as references to a right in security or a diligence and “charged” is to be interpreted accordingly,
 - (b) references to assignment are to be read as references to assignation and “assign” is to be interpreted accordingly,
 - (c) the reference to a person's bankruptcy is to be read as a reference to the sequestration of his estate or the appointment on his estate of a judicial factor under section 41 of the Solicitors (Scotland) Act 1980,
 - (d) the reference to an income payments order under the Insolvency Act 1986 is to be read as a reference to an order under section 32(2) of the Bankruptcy (Scotland) Act 1985, and
 - (e) the reference to the making of a bankruptcy order is to be read as a reference to the award of sequestration or the making of the appointment of such a judicial factor.

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,
 - (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.

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- (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 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.
- (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.

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- (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—

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- (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.”