Insolvency Act 1986

1986 CHAPTER 45

PART IX

BANKRUPTCY

CHAPTER V

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS TRANSACTTIONS, ETC.

Adjustment of prior transactions, etc.

339 Transactions at an undervalue.

(1) Subject as follows in this section and sections 341 and 342, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this section and sections 341 and 342, an individual enters into a transaction with a person at an undervalue if—

(a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration,

(b) he enters into a transaction with that person in consideration of marriage, or

(c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

Status: *Point in time view as at 01/02/1991. This version of this cross heading contains provisions that are not valid for this point in time.*
Changes to legislation: *Insolvency Act 1986, Cross Heading: Adjustment of prior transactions, etc. is up to date with all changes known to be in force on or before 16 August 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)*

Modifications etc. (not altering text)

C1 S.339 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 339 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C2 S. 339 restricted by Drug Trafficking Offences Act 1986 (c.32, SIF 39:1), **s. 15(6)(a)(7)**
S. 339 restricted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 30(6)**, 34(5)(a), 47(4)(a)
S. 339 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 8(1)(a)**; S.I. 1991/878, art. 2, **Sch.**
S. 339 restricted by 1986 c. 32, **s. 15(6)(a)(b)** (as substituted (prosp.) by 1993 c. 36, **ss. 13(9)**, 78(3) (with s. 78(6)) (which amending provision was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), **Sch. 3**))
S. 339 restricted (3.2.1995) by 1994 c. 37, ss. 32(5)(a), 69(2), **Sch. 2 para. 5** (with s. 66(2))
S. 339 restricted (1.11.1995) by 1988 c. 33, **s. 84(6)(a)** (as substituted by 1995 c. 11, **s. 8(7)** (with s. 16(5)(6)); S.I. 1995/2650, **art. 2**)
S. 339 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 2(5)**
S. 339 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)**
S. 339 restricted (24.3.2003) by 2002 c. 29, ss. 419(1)-(4), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))

C3 S. 339 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(1)(a); S.I. 1991/878, art. 2, **Sch.**

C4 S. 339 modified (3.2.1995) by 1994 c. 37, ss. 32(5)(b), 69(2), **Sch. 2 para. 5** (with s. 66(2))

340 Preferences.

(1) Subject as follows in this and the next two sections, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) given a preference to any person, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.

(3) For the purposes of this and the next two sections, an individual gives a preference to a person if—

(a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and

(b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The court shall not make an order under this section in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3)(b) above.

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).

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(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

Modifications etc. (not altering text)

C5 S. 340 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 340 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C6 S. 340 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(1)(b); S.I. 1991/878, art. 2, **Sch.**.

C7 S. 340 restricted (25.4.1991) by Companies Act 1989 (c.40), ss. 182(4), **Sch. 22 para. 8(1)(b)**; S.I. 1991/878, art. 2, **Sch.**
S. 340 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)**
S. 340 restricted (24.3.2003) by 2002 c. 29, ss. 419(1)-(4), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))

341 "Relevant time" under ss. 339, 340.

(1) Subject as follows, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—

(a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt,

(b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time in the period of 2 years ending with that day, and

(c) in any other case of a preference which is not a transaction at an undervalue, at a time in the period of 6 months ending with that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a), (b) or (c) of subsection (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the end of the period mentioned in paragraph (a)), that time is not a relevant time for the purposes of sections 339 and 340 unless the individual—

(a) is insolvent at that time, or

(b) becomes insolvent in consequence of the transaction or preference;

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

(3) For the purposes of subsection (2), an individual is insolvent if—

(a) he is unable to pay his debts as they fall due, or

(b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

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[[F1](4) A transaction entered into or preference given by a person who is subsequently adjudged bankrupt on a petition under section 264(1)(d) (criminal bankruptcy) is to be treated as having been entered into or given at a relevant time for the purposes of sections 339 and 340 if it was entered into or given at any time on or after the date specified for the purposes of this subsection in the criminal bankruptcy order on which the petition was based.**]**

[[F1](5) No order shall be made under section 339 or 340 by virtue of subsection (4) of this section where an appeal is pending (within the meaning of section 277) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made.**]**

Textual Amendments

F1 S. 341(4)(5) repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

Modifications etc. (not altering text)

C8 S. 341 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

342 Orders under ss. 339, 340.

(1) Without prejudice to the generality of section 339(2) or 340(2), an order under either of those sections with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject as follows)—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;

(b) require any property to be so vested it if represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security given by the individual;

(d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and

(g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

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(2) An order under section 339 or 340 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be the person to whom the preference was given; but such an order—

(a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction or preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the trustee of the bankrupt's estate except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

(3) Any sums required to be paid to the trustee in accordance with an order under section 339 or 340 shall be comprised in the bankrupt's estate.

(4) For the purposes of this section the relevant circumstances, in relation to a transaction or prefernce, are—

(a) the circumstances by virtue of which an order under section 339 or 340 could be made in respect of the transaction or preference if the individual in question were adjudged bankrupt within a particular period after the transaction is entered into or the preference given, and

(b) if that period has expired, the fact that that individual has been adjudged bankrupt within that period.

Modifications etc. (not altering text)

C9 Ss. 342–345 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

VALID FROM 06/04/1996

[F2 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.

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(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.**]**

Textual Amendments

F2 Ss. 342A-342C inserted (6.4.1996 for the purpose only of authorising the making of regulations) by 1995 c. 26, **s. 95(1)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

VALID FROM 06/04/1996

[F3 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.**]**

Textual Amendments

F3 Ss. 342A-342C inserted (6.4.1996 for the purpose of authorising the making of regulations) by 1995 c. 26, **s. 95(1)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

VALID FROM 06/04/1996

[F4 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

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(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.**]**

Textual Amendments

F4 Ss. 342A-342C inserted (6.4.1996 for the purpose only of authorising the making of regulations) by 1995 c. 26, **s. 95(1)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

VALID FROM 26/03/2002

[F5 342D Recovery of excessive contributions in pension-sharing cases.

(1) For the purposes of sections 339, 341 and 342, a pension-sharing transaction shall be taken—

(a) to be a transaction, entered into by the transferor with the transferee, by which the appropriate amount is transferred by the transferor to the transferee; and

(b) to be capable of being a transaction entered into at an undervalue only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(2) For the purposes of sections 340 to 342, a pension-sharing transaction shall be taken—

(a) to be something (namely a transfer of the appropriate amount to the transferee) done by the transferor; and

(b) to be capable of being a preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(3) If on an application under section 339 or 340 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 shall be determined in accordance with subsections (4) to (8).

(4) The court shall first determine the extent (if any) to which the transferor'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")—

(a) which the transferor has at any time made on his own behalf, or

(b) which have at any time been made on the transferor's behalf,

to the shared arrangement or any other pension arrangement.

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(5) Where it appears that those rights were to any extent the fruits of personal contributions, the court shall then determine the extent (if any) to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced the transferor's creditors ("the unfair contributions").

(6) 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.

(7) 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.

(8) In making the determination mentioned in subsection (5) the court shall consider in particular—

(a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of the transferor's creditors or any of them, and

(b) whether the total amount of any personal contributions represented, at the time the pension-sharing transaction was made, by rights under pension arrangements is an amount which is excessive in view of the transferor's circumstances when those contributions were made.

(9) In this section and sections 342E and 342F—

"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 Welfare Reform and Pensions Act 1999 (creation of pension credits and debits);

"pension-sharing transaction" means an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (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", in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made;

"transferor", in relation to a pension-sharing transaction, means the person to whose rights the transaction relates.**]**

Textual Amendments

F5 S. 342D inserted (26.3.2002 for specified purposes otherwise 6.4.2002) by 1999 c. 30, s. 85, **Sch. 12 Pt II para. 71**; S.I. 2002/818, **art. 3**

Modifications etc. (not altering text)

C10 S. 342B-342F applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

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VALID FROM 26/03/2002

[F6]342E Orders under section 339 or 340 in respect of pension-sharing transactions.

(1) This section and section 342F apply if the court is making an order under section 339 or 340 in a case where—

(a) the transaction or preference is, or is any part of, a pension-sharing transaction, and

(b) the transferee has rights under a pension arrangement ("the destination arrangement", which may be the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.

(2) Without prejudice to the generality of section 339(2) or 340(2), or of section 342, the order may include provision—

(a) requiring the person responsible for the destination arrangement to pay an amount to the transferor's trustee in bankruptcy,

(b) adjusting the liabilities of the destination arrangement in respect of the transferee,

(c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,

(d) for the recovery by the person responsible for the destination 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 transferor's case with any requirement under section 342F(1) or in giving effect to the order,

(e) for the recovery, from the transferor's trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor's case with any requirement under section 342F(2) or (3).

(3) In subsection (2), references to adjusting the liabilities of the destination 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.

(4) The maximum amount which the person responsible for the destination arrangement may be required to pay by the order is the smallest of—

(a) so much of the appropriate amount as, in accordance with section 342D, is recoverable,

(b) so much (if any) of the amount of the unfair contributions (within the meaning given by section 342D(5)) as is not recoverable by way of an order under section 342A containing provision such as is mentioned in section 342B(1)(a), and

(c) the value of the transferee's rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.

(5) If the order requires the person responsible for the destination arrangement to pay an amount ("the restoration amount") to the transferor's trustee in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.

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(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) The order—
  (a) shall be binding on the person responsible for the destination arrangement, and
  (b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

Textual Amendments

F6 S. 342E inserted (26.3.2002 for specified purposes otherwise 6.4.2002) by 1999 c. 30, s. 85, **Sch. 12 Pt. II para. 71**; S.I. 2002/818, **art. 3**

Modifications etc. (not altering text)

C11 S. 342B-342F applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

VALID FROM 26/03/2002

[F7]342F Orders under section 339 or 340 in pension-sharing cases: supplementary.

(1) On the transferor's trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—
  (a) the arrangement,
  (b) the transferee's rights under it, and
  (c) where the destination arrangement is the shared arrangement, the transferor's rights under it,
  as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor's trustee in bankruptcy making a written request to that person, provide the trustee with such information about—
  (a) the arrangement, and
  (b) the transferor's rights under it,
  as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(3) On the transferor's trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—
  (a) the arrangement, and

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(b) the transferee's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(4) In subsection (3) "intermediate arrangement" means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—

(a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and

(b) the transferee's rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in paragraph (a).

(5) Nothing in—

(a) any provision of section 159 of the [M1]Pension Schemes Act 1993 or section 91 of the [M2]Pensions Act 1995 (which prevent assignment and the making of orders which 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 destination arrangement corresponding to any of those provisions,

applies to a court exercising its powers under section 339 or 340.

(6) Regulations may, for the purposes of sections 339 to 342, sections 342D and 342E and this section, make provision about the calculation and verification of—

(a) any such value as is mentioned in section 342E(4)(c);

(b) any such amounts as are mentioned in section 342E(6)(a) and (b).

(7) The power conferred by subsection (6) 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.

(8) In section 342E and this section, references 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.

(9) In this section—

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State.

(10) Regulations under this section may—

(a) make different provision for different cases;

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(b) contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.

(11) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F7 S. 342F inserted (26.3.2002 for specified purposes otherwise 6.4.2002) by 1999 c. 30, s. 15, **Sch. 12 Pt. II para. 71**; S.I. 2002/818, **art. 3**

Modifications etc. (not altering text)

C12 S. 342B-342F applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

Marginal Citations

M1 1993 c. 48.
M2 1995 c. 26.

343 Extortionate credit transactions.

(1) This section applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.

(2) The court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than 3 years before the commencement of the bankruptcy.

(3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or

(b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction, with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—

(a) provision setting aside the whole or part of any obligation created by the transaction;

(b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

(c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;

(d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;

(e) provision directing accounts to be taken between any persons.

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(5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this section shall be comprised in the bankrupt's estate.

(6) Neither the trustee of a bankrupt's estate nor an undischarged bankrupt is entitled to make an application under section 139(1)(a) of the [M3]Consumer Credit Act 1974 (re-opening of extortionate credit agreements) for any agreement by which credit is or has been provided to the bankrupt to be re-opened.

But the powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exerciseable under this Act in relation to that transaction as a transaction at an undervalue.

Modifications etc. (not altering text)

C13 Ss. 342-345 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 343 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

Marginal Citations

M3 1974 c. 39.

344 Avoidance of general assignment of book debts.

(1) The following applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.

(2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the [M4]Bills of Sale Act 1878.

(3) For the purposes of subsections (1) and (2)—

(a) "assignment" includes an assignment by way of security or charge on book debts, and

(b) "general assignment" does not include—

(i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or

(ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Act of 1878 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of that Act with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under that Act.

Modifications etc. (not altering text)

C14 Ss. 342–345 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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Marginal Citations

M4 1878 c. 31.

345 Contracts to which bankrupt is a party.

(1) The following applies where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The court may, on the application of any other paty to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the court under this section are provable as a bankruptcy debt.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

Modifications etc. (not altering text)

C15 Ss. 342–345 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C16 S. 345 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 164(1), 182(4), **Sch. 22 para. 7(1)**; S.I. 1991/878, art. 2, **Sch.** .
S. 345 excluded (11.12.1999) by S.I. 1999/2979, **reg. 16(1)**

346 Enforcement procedures.

(1) Subject to section 285 in Chapter II (restriction on proceedings and remedies) and to the following provisions of this section, where the creditor of any person who is adjudged bankrupt has, before the commencement of the bankruptcy—

(a) issued execution against the goods or land of that person, or

(b) attached a debt due to that person from another person,

that creditor is not entitled, as against the official reciever or trustee of the bankrupt's estate, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.

(2) Subject as follows, where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the sheriff or other officer charged with the execution that that person has been adjudged bankrupt—

(a) the sheriff or other officer shall on request deliver to the official receiver or trustee of the bankrupt's estate the goods and any money seized or recovered in part satisfaction of the execution, but

(b) the costs of the execution are a first charge on the goods or money so delivered and the official receiver or trustee may sell the goods or a sufficient part of them for the purpose of satisfying the charge.

(3) Subject to subsection (6) below, where—

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(a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale, and

(b) before the end of the period of 14 days beginning with the day of the sale or payment the sheriff or other officer charged with the execution is given notice that a bankruptcy petition has been presented in relation to that person, and

(c) a bankruptcy order is or has been made on that petition,

the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.

(4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3), the sheriff or other officer charged with the execution—

(a) shall not dispose of the balance mentioned in subsection (3) at any time within the period of 14 days so mentioned or while there is pending a bankruptcy petition of which he has been given notice under that subsection, and

(b) shall pay that balance, where by virtue of that subsection it is comprised, in the bankrupt's estate, to the official receiver or (if there is one) to the trustee or that estate.

(5) For the purposes of this section—

(a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 1 of the [M5]Charging Orders Act 1979;

(b) an execution against land is completed by seizure, by the appointment of a receiver or by the making of a charging order under that section;

(c) an attachment of a debt is completed by the receipt of the debt.

(6) The rights conferred by subsections (1) to (3) on the official receiver or the trustee may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt.

(7) Nothing in this section entitles the trustee of a bankrupt's estate to claim goods from a person who has acquired them in good faith under a sale by a sheriff or other officer charged with an execution.

(8) Neither subsection (2) nor subsection (3) applies in relation to any execution against property which has been acquired by or has devolved upon the bankrupt since the commencement of the bankruptcy, unless, at the time the execution is issued or before it is completed—

(a) the property has been or is claimed for the bankrupt's estate under section 307 (after-acquired property), and

(b) a copy of the notice given under that section has been or is served on the sheriff or other officer charged with the execution.

Marginal Citations

M5 1979 c. 53.

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347 Distress, etc.

(1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of an undischarged bankrupt for rent due to him from the bankrupt is available (subject to subsection (5) below) against goods and effects comprised in the bankrupt's estate, but only for 6 months' rent accrued due before the commencement of the bankruptcy.

(2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy petition relates and a bankruptcy order is subsequently made on that petition, any amount recovered by way of that distress which—

(a) is in excess of the amount which by virtue of subsection (1) would have been recoverable after the commencement of the bankruptcy, or

(b) is in respect of rent for a period or part of a period after the distress was levied,

shall be held for the bankrupt as apart of his estate.

(3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of 3 months beginning with the distraint, so much of those goods or effects, or of the proceeds of their sale, as is not held for the bankrupt under subsection (2) shall be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting those debts.

(4) Where by virtue of any charge under subsection (3) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

(5) A landlord or other person to whom rent is payable is not at any time after the discharge of a bankrupt entitled to distrain upon any goods or effects comprised in the bankrupt's estate.

(6) Where in the case of any execution—

(a) a landlord is (apart from this section) entitled under section 1 of the [M6]Landlord and Tenant Act 1709 or section 102 of the [M7]County Courts Act 1984 (claims for rent where goods seized in execution) to claim for an amount not exceeding one year's rent, and

(b) the person against whom the execution is levied is adjudged bankrupt before the notice of claim is served on the sheriff or other officer charged with the execution,

the right of the landlord to claim under that section is restricted to a right to claim for an amount not exceeding 6 months' rent and does not extend to any rent payable in respect of a period after the notice of claim is so served.

(7) Nothing in subsection (6) imposes any liability on a sheriff or other officer charged with an execution to account to the official receiver or the trustee of a bankrupt's estate for any sums paid by him to a landlord at any time before the sheriff or other officer was served with notice of the banktuptcy order in question.

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But this subsection is without prejudice to the liability of the landlord.

(8) Nothing in this Group of Parts affects any right to distrain otherwise than for rent; and any such right is at any time exerciseable without restriction against property comprised in a bankrupt's estate, even if that right is expressed by any enactment to be exerciseable in like manner as a right to distrain for rent.

(9) Any right to distrain against property comprised in a bankrupt's estate is exerciseable notwithstanding that the propety has vested in the trustee.

(10) The provisions of this section are without prejudice to a landlord's right in a bankruptcy to prove for any bankruptcy debt in respect of rent.

Marginal Citations

M6 1709 c. 18.

M7 1984 c. 28.

348 Apprenticeships, etc.

(1) This section applies where—

(a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articled clerk at the time when the petition on which the order was made was presented, and

(b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

(2) Subject to subsection (6) below, the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.

(3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as to the trustee thinks reasonable, having regard to—

(a) the amount of the fee,

(b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and

(c) the other circumstances of the case.

(4) The power of the trustee to make a payment under subsection (3) has priority over his obligation to distribute the bankrupt's estate.

(5) Instead of making a payment under subsection (3), the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.

(6) Where a transfer is made under subsection (5), subsection (2) has effect only as between the apprentice or clerk and the bankrupt.

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349 Unenforceability of liens on books, etc.

(1) Subject as follows, a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.

(2) Subsection (1) does not apply to a lien on documents which give a title to property and are held as such.

Modifications etc. (not altering text)

C17 Ss. 349, 350(1)(2)(4)–(6) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

VALID FROM 31/01/1997

[F8 349A Arbitration agreements to which bankrupt is party.

(1) This section applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the trustee in bankruptcy adopts the contract, the arbitration agreement is enforceable by or against the trustee in relation to matters arising from or connected with the contract.

(3) If the trustee in bankruptcy does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings—

(a) the trustee with the consent of the creditors' committee, or

(b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

(4) In this section—

"arbitration agreement" has the same meaning as in Part I of the Arbitration Act 1996; and

"the court" means the court which has jurisdiction in the bankruptcy proceedings.]

Textual Amendments

F8 S. 349A inserted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3 para. 46** (with s. 81(2)); S.I. 1996/3146, art. 2, **Sch. 1** (with transitional provisions in Sch. 2)

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