



Insolvency Act 1986

1986 CHAPTER 45

PART IX

BANKRUPTCY

CHAPTER V

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS TRANSACTIONS, ETC.

Adjustment of prior transactions, etc.

[^{F1}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")—

Status: Point in time view as at 26/03/2002.

Changes to legislation: Insolvency Act 1986, Section 342D is up to date with all changes known to be in force on or before 22 May 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)

- (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.
- (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

F1 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)

C1 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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