Welfare Reform and Pensions Act 1999

1999 CHAPTER 30

PART II

PENSIONS: GENERAL

Modifications etc. (not altering text)

C1 Pts. I-IV modified (6.4.2006) by Pensions Act 2004 (c. 35), **ss. 254(3)(c)**, 322(1) (with s. 313); S.I. 2006/560, art. 2(3), Sch. Pt. 3

C2 Pts. I-IV: power to modify conferred (6.4.2006) by Pensions Act 2004 (c. 35), **ss. 321(1)(d)**, 322(1); S.I. 2006/560, art. 2(3), Sch. Pt. 3

C3 Pts. I-IV: power to modify conferred (26.11.2008) by Pensions Act 2008 (c. 30), **ss. 146(2)(c)**, 149(2)

Payments by employers to pension schemes

9 Monitoring of employers' payments to personal pension schemes.

In Part VI of the [M1]Pension Schemes Act 1993 (further requirements for protection of scheme members), after section 111 there shall be inserted—

"**111A Monitoring of employers' payments to personal pension schemes.**

(1) This section applies where—

(a) an employee is a member of a personal pension scheme; and

(b) direct payment arrangements exist between the employee and his employer.

(2) In this section "direct payment arrangements" means arrangements under which contributions fall to be paid by or on behalf of the employer towards the scheme—

(a) on the employer's own account (but in respect of the employee); or

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Changes to legislation: *There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Part II. (See end of Document for details)*

(b) on behalf of the employee out of deductions from the employee's earnings.

(3) The employer must secure that there is prepared, maintained and from time to time revised a record of the direct payment arrangements which complies with subsection (4).

(4) The record must—

(a) show the rates and due dates of contributions payable under the direct payment arrangements, and

(b) satisfy prescribed requirements.

(5) The employer must, within the prescribed period after the preparation or any revision of the record, send a copy of the record or (as the case may be) of the revised record to the trustees or managers of the scheme.

(6) Except in prescribed circumstances, the trustees or managers of the scheme must, where any contribution shown by the record to be payable under the direct payment arrangements has not been paid on or before its due date, give notice of that fact, within the prescribed period, to the Regulatory Authority and the employee.

(7) The trustees or managers of the scheme must before the end of prescribed intervals send the employee a statement setting out the amounts and dates of the payments made under the direct payment arrangements during a prescribed period.

(8) If—

(a) the employer fails to take all such steps as are reasonable to secure compliance with subsection (3) or (5), or

(b) a contribution payable under the direct payment arrangements is not paid to the trustees or managers of the scheme on or before its due date,

section 10 of the [M2]Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) applies to the employer.

(9) If subsection (6) or (7) is not complied with, section 10 of the [M3]Pensions Act 1995 applies to any trustee or manager of the scheme who has failed to take all such steps as are reasonable to secure compliance.

(10) If—

(a) subsection (6) or (7) is not complied with, and

(b) the scheme—

(i) is established under a trust, and

(ii) is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (stakeholder schemes),

section 3 of the [M4]Pensions Act 1995 (power of the Regulatory Authority to remove trustees) applies to any trustee of the scheme who has failed to take all such steps as are reasonable to secure compliance.

(11) A person shall not be required by virtue of subsection (8)(b) above to pay a penalty under section 10 of the [M5]Pensions Act 1995 in respect of a failure if in respect of that failure he has been—

(a) required to pay a penalty under that section by virtue of section 3(7) of the Welfare Reform and Pensions Act 1999 (failures in respect of stakeholder pensions), or

(b) convicted of an offence under subsection (12) below.

(12) A person is guilty of an offence if he is knowingly concerned in the fraudulent evasion of the direct payment arrangements so far as they are arrangements for the payment by him or any other person of any such contribution towards the scheme as is mentioned in subsection (2)(b).

(13) A person guilty of an offence under subsection (12) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both.

(14) No prosecution shall be brought against the Crown for an offence under subsection (12), but that subsection applies to persons in the public service of the Crown as to other persons.

(15) In this section "due date", in relation to a contribution payable under the direct payment arrangements, means—

(a) if the contribution falls to be paid on the employer's own account, the latest day under the arrangements for paying it;

(b) if the contribution falls to be paid on behalf of the employee, the last day of a prescribed period.

(16) Regulations may provide for this section to apply with such modifications as may be prescribed in a case where—

(a) the direct payment arrangements give effect to a requirement arising under subsection (5) of section 3 of the Welfare Reform and Pensions Act 1999 (deduction and payment of employee's contributions to stakeholder scheme), and

(b) in accordance with regulations under that subsection, that requirement is for the employer to pay contributions to a person prescribed by such regulations (instead of to the trustees or managers of the scheme).

(17) Nothing in this section shall be taken as varying the provisions of the direct payment arrangements or as affecting their enforceability.

111B Obtaining information for purposes of section 111A and corresponding Northern Ireland legislation.

(1) Any person appearing to the Regulatory Authority to be a person who holds, or is likely to hold, information which is relevant to the issue—

(a) whether any provision made by or under section 111A is being, or has been, complied with by an employer or the trustees or managers of a personal pension scheme,

(b) whether, in the case of any direct payment arrangements existing between an employee and his employer, there has been such a failure to pay a contribution as is mentioned in subsection (8)(b) of that section, or

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(c) whether an offence has been committed under subsection (12) of that section in relation to any such arrangements,

must, if required to do so by the Regulatory Authority by notice in writing, produce any document which is so relevant.

(2) To comply with subsection (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.

(3) An inspector may, for the purposes of investigating any of the matters set out in subsection (1)(a) to (c), at any reasonable time enter premises liable to inspection and, while there—

(a) may make such examination and inquiry as may be necessary for such purposes,

(b) may require any person on the premises to produce for his inspection, or secure the production for his inspection of, any document relevant—

(i) to compliance with any provision made by or under section 111A, or with the direct payment arrangements, or

(ii) to the issue whether an offence has been committed under subsection (12) of that section in relation to those arrangements, and

(c) may, as to any matter so relevant, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

(4) An inspector applying for admission to any premises in pursuance of subsection (3) must, if so required, produce his certificate of appointment.

(5) For the purposes of subsection (3) premises are liable to inspection if the inspector has reasonable grounds to believe that—

(a) employees of the employer are employed there,

(b) documents relevant to the administration of—

(i) the employer's business,

(ii) the direct payment arrangements, or

(iii) the scheme to which those arrangements relate,

are kept there, or

(c) either of the following is being carried out there, namely—

(i) the administration of the employer's business, the arrangements or the scheme, or

(ii) work connected with the administration of the employer's business, the arrangements or the scheme,

unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

(6) Section 100 of the [M6]Pensions Act 1995 (warrants) shall have effect as if references to section 98(1) or 99(1)(b) of that Act included references to subsection (1) or (3)(b).

(7) Sections 101 to 103 of that Act (penalties, savings and reports) shall have effect as if references which are or include references to section 98 or 99 of that Act included references to this section.

(8) In this section—

"direct payment arrangements" has the same meaning as in section 111A;

"document" includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form;

"inspector" means a person appointed by the Regulatory Authority as an inspector.

(9) References in this section to, or to any provision of, section 111A include references to corresponding provisions of Northern Ireland legislation; and in this section as it has effect in relation to those corresponding provisions, "employee" and "employer" have the meaning they have for the purposes of those provisions."

Commencement Information

I1 S. 9 wholly in force at 6.4.2001; s. 9 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 9 in force at 6.4.2001 insofar as not already in force by S.I. 2000/2958, **art. 2(1)**

Marginal Citations

M1 1993 c. 48.
M2 1995 c. 26.
M3 1995 c. 26.
M4 1995 c. 26.
M5 1995 c. 26.
M6 1995 c. 26.

10 Late payments by employers to occupational pension schemes.

(1) For section 49(8) of the [M7]Pensions Act 1995 (offence where deduction from earnings not paid in timely fashion to occupational pension scheme) there shall be substituted—

"(8) Where on making a payment of any earnings in respect of any employment there is deducted any amount corresponding to any contribution payable on behalf of an active member of an occupational pension scheme, the amount deducted is to be paid, within a prescribed period, to the trustees or managers of the scheme.

(9) If in any case there is a failure to comply with subsection (8)—

(a) section 10 applies to the employer; and

(b) except in prescribed circumstances, the trustees or managers must give notice of the failure, within the prescribed period, to the Authority and the member.

(10) If in any case subsection (9)(b) is not complied with—

(a) section 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance; and

(b) section 10 applies to any trustee or manager who has failed to take all such steps.

(11) If any person is knowingly concerned in the fraudulent evasion of the obligation imposed by subsection (8) in any case, he is guilty of an offence.

(12) A person guilty of an offence under subsection (11) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both.

(13) A person shall not be required by virtue of subsection (9)(a) above to pay a penalty under section 10 in respect of a failure if in respect of that failure he has been—

(a) required to pay a penalty under that section by virtue of section 3(7) of the Welfare Reform and Pensions Act 1999 (failures in respect of stakeholder pensions), or

(b) convicted of an offence under subsection (11) above."

(2) In section 88(3) of that Act (civil penalty where contributions by or on behalf of employer to occupational pension scheme not paid by due date), after "by or on behalf of the employer" there shall be inserted " on the employer's own account ".

Commencement Information

I2 S. 10 wholly in force at 3.4.2000; s. 10 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 10 in force at 3.4.2000 insofar as not already in force by S.I. 2000/629, **art. 2**

Marginal Citations

M7 1995 c. 26.

Pensions and bankruptcy

11 Effect of bankruptcy on pension rights: approved arrangements.

(1) Where a bankruptcy order is made against a person on a petition presented after the coming into force of this section, any rights of his under an approved pension arrangement are excluded from his estate.

(2) In this section "approved pension arrangement" means—

[[F1](a) a pension scheme registered under section 153 of the Finance Act 2004;**]**

[F2](b) . . . . . .

(c) **[**[F3]an occupational pension scheme**]** set up by a government outside the United Kingdom for the benefit, or primarily for the benefit, of its employees;

[F4](d) . . . . . .

[F4](e) . . . . . .

[F4](f) . . . . . .

[[F5](g) an annuity purchased for the purpose of giving effect to rights under a scheme falling within paragraph (a), including an annuity in payment before 6th April 2006, giving effect to rights under any scheme approved—

(i) before that date under Chapters 1, 3 or 4 of Part 14 of the Taxes Act; or

(ii) any relevant statutory scheme, as defined in section 611 of that Act;**]**

(h) any pension arrangements of any description which may be prescribed by regulations made by the Secretary of State.

[F6](3) . . . . . .

[[F7](4) Subsection (5) applies if—

(a) at the time when a bankruptcy order is made against a person, an appeal against a decision not to register a pension scheme has been made under section 156 of the Finance Act 2004, and

(b) the decision of the **[**[F8]tribunal**]** (see section 156(3) of that Act) is to uphold the decision of Her Majesty's Revenue and Customs not to register the scheme.**]**

(5) Any rights of that person under the scheme shall (without any conveyance, assignment or transfer) vest in his trustee in bankruptcy, as part of his estate, immediately on—

(a) the **[**[F9]tribunal's**]** decision being made, or

(b) (if later) the trustee's appointment taking effect or, in the case of the official receiver, his becoming trustee.

[[F10](6) Subsection (7) applies if, at any time after a bankruptcy order is made against a person Her Majesty's Revenue and Customs—

(a) give notice withdrawing registration of the pension scheme under section 157 of the Finance Act 2004, and

(b) the date specified as being that from which de-registration occurs under subsection (4) of that section ("the de-registration date") is the date from which the scheme ceases to be a registered pension scheme.**]**

(7) Any rights of that person under the scheme or arising by virtue of the arrangements, and any rights of his under any related annuity, shall (without any conveyance, assignment or transfer) vest in his trustee in bankruptcy, as part of his estate, immediately on—

(a) the giving of the notice, or

(b) (if later) the trustee's appointment taking effect or, in the case of the official receiver, his becoming trustee.

(8) In subsection (7) "related annuity" means an annuity purchased on or after the **[**[F11]de-registration date**]** for the purpose of giving effect to rights under the scheme or (as the case may be) to rights arising by virtue of the arrangements.

(9) Where under subsection (5) or (7) any rights vest in a person's trustee in bankruptcy, the trustee's title to them has relation back to the commencement of the person's bankruptcy; but where any transaction is entered into by the trustees or managers of the scheme in question—

(a) in good faith, and

(b) without notice of the making of the decision mentioned in subsection (4)(b) or (as the case may be) the giving of the notice mentioned in subsection (6),

the trustee in bankruptcy is not in respect of that transaction entitled by virtue of this subsection to any remedy against them or any person whose title to any property derives from them.

(10) Without prejudice to section 83, regulations under subsection (2)(h) may, in the case of any description of arrangements prescribed by the regulations, make provision corresponding to any provision made by subsections (4) to (9).

(11) In this section—

[F12(a) "occupational pension scheme" has the meaning given in section 150(5) of the Finance Act 2004;]

[F12(b) "pension scheme" has the meaning given in section 150(1) of the Finance Act 2004 and "registered pension scheme" means a pension scheme registered under section 153 of the Finance Act 2004;]

(c) "estate", in relation to a person against whom a bankruptcy order is made, means his estate for the purposes of Parts VIII to XI of the [M8]Insolvency Act 1986;

(d) "the Taxes Act" means the [M9]Income and Corporation Taxes Act 1988.

(12) For the purposes of this section a person shall be treated as having a right under an approved pension arrangement where—

(a) he is entitled to a credit under section 29(1)(b) as against the person responsible for the arrangement (within the meaning of Chapter I of Part IV), and

(b) the person so responsible has not discharged his liability in respect of the credit.

Textual Amendments

F1 S. 11(2)(a) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(i)**

F2 S. 11(2)(b) omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(ii)**

F3 Words in s. 11(2)(c) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(iii)**

F4 S. 11(2)(d)-(f) omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(ii)**

F5 S. 11(2)(g) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(a)(iv)**

F6 S. 11(3) omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(b)**

F7 S. 11(4) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(c)**

F8 Word in s. 11(4)(b) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 284(2)**

F9 Word in s. 11(5)(a) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 284(3)**

F10 S. 11(6) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(e)**

F11 Words in s. 11(8) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(f)**

F12 S. 11(11)(a)(b) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **15(3)(g)**

Modifications etc. (not altering text)

C4 Ss. 11-13 modified (30.12.2005) by Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 16, **Sch. 2 para. 5**

Commencement Information

I3 S. 11 wholly in force at 6.4.2002; s. 11 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 11(1)-(3)(11) in force at 29.5.2000 insofar as not already in force by S.I. 2000/1382, **art. 2(a)**; s.

11(12) in force at 1.12.2000 insofar as not already in force by S.I. 2000/1382, **art. 2(b)**; s. 11(4)-(10) in force at 6.4.2002 insofar as not already in force by S.I. 2002/153, **art. 2(a)**

Marginal Citations

M8 1986 c. 45.

M9 1988 c. 1.

12 Effect of bankruptcy on pension rights: unapproved arrangements.

(1) The Secretary of State may by regulations make provision for or in connection with enabling rights of a person under an unapproved pension arrangement to be excluded, in the event of a bankruptcy order being made against that person, from his estate for the purposes of Parts VIII to XI of the [M10]Insolvency Act 1986.

(2) Regulations under this section may, in particular, make provision—

(a) for rights under an unapproved pension arrangement to be excluded from a person's estate—

(i) by an order made on his application by a prescribed court, or

(ii) in accordance with a qualifying agreement made between him and his trustee in bankruptcy;

(b) for the court's decision whether to make such an order in relation to a person to be made by reference to—

(i) future likely needs of him and his family, and

(ii) whether any benefits (by way of a pension or otherwise) are likely to be received by virtue of rights of his under other pension arrangements and (if so) the extent to which they appear likely to be adequate for meeting any such needs;

(c) for the prescribed persons in the case of any pension arrangement to provide a person or his trustee in bankruptcy on request with information reasonably required by that person or trustee for or in connection with the making of such applications and agreements as are mentioned in paragraph (a).

(3) In this section—

"prescribed" means prescribed by regulations under this section;

"qualifying agreement" means an agreement entered into in such circumstances, and satisfying such requirements, as may be prescribed;

"unapproved pension arrangement" means a pension arrangement which—

(a) is not an approved pension arrangement within the meaning of section 11, and

(b) is of a prescribed description.

(4) For the purposes of this section a person shall be treated as having a right under an unapproved pension arrangement where—

(a) he is entitled to a credit under section 29(1)(b) as against the person responsible for the arrangement (within the meaning of Chapter I of Part IV), and

(b) the person so responsible has not discharged his liability in respect of the credit.

Modifications etc. (not altering text)

C4 Ss. 11-13 modified (30.12.2005) by Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 16, **Sch. 2 para. 5**

Commencement Information

I4 S. 12 wholly in force at 6.4.2002; s. 12 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 12 in force at 6.4.2002 insofar as not already in force by S.I. 2002/153, **art. 2(b)**

Marginal Citations

M10 1986 c. 45.

13 Sections 11 and 12: application to Scotland.

(1) This section shall have effect for the purposes of the application of sections 11 and 12 to Scotland.

(2) A reference to—

(a) the making of a bankruptcy order against a person is a reference to the award of sequestration on his estate or the making of the appointment on his estate of a judicial factor under section 41 of the [M11]Solicitors (Scotland) Act 1980;

(b) the estate of a person is a reference to his estate for the purposes of the [M12]Bankruptcy (Scotland) Act 1985 or of the Solicitors (Scotland) Act 1980, as the case may be;

(c) assignment is a reference to assignation;

(d) a person's trustee in bankruptcy is a reference to his permanent trustee or judicial factor, as the case may be;

(e) the commencement of a person's bankruptcy is a reference to the date of sequestration (within the meaning of section 12(4) of the Bankruptcy (Scotland) Act 1985) or of the judicial factor's appointment taking effect, as the case may be.

(3) For paragraph (b) of each of subsections (5) and (7) of section 11 there shall be substituted—

"(b) if later, the date of sequestration (within the meaning of section 12(4) of the [M13]Bankruptcy (Scotland) Act 1985) or of the judicial factor's appointment taking effect, as the case may be."

Modifications etc. (not altering text)

C4 Ss. 11-13 modified (30.12.2005) by Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 16, **Sch. 2 para. 5**

Commencement Information

I5 S. 13 wholly in force at 6.4.2002; s. 13 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 13(1)(2) in force for certain further purposes at 29.5.2000 by S.I. 2000/1382, **art. 2(a)**; s. 13 in force at 6.4.2002 insofar as not already in force by S.I. 2002/153, **art. 2(c)**

Marginal Citations

M11 1980 c. 46.

M12 1985 c. 66.

M13 1985 c. 66.

14 No forfeiture on bankruptcy of rights under pension schemes.

(1) In the [M14]Pension Schemes Act 1993, after section 159 there shall be inserted—

"**159A No forfeiture on bankruptcy of rights under personal pension schemes.**

(1) A person's rights under a personal pension scheme cannot be forfeited by reference to his bankruptcy.

(2) For the purposes of this section—

(a) a person shall be treated as having a right under a personal pension scheme where—

(i) he is entitled to a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (sharing of rights on divorce etc.),

(ii) he is so entitled as against the person responsible for the scheme (within the meaning of Chapter I of Part IV of that Act), and

(iii) the person so responsible has not discharged his liability in respect of the credit; and

(b) forfeiture shall be taken to include any manner of deprivation or suspension."

(2) In section 159(6) of that Act (application of section 159 to Scotland), after "this section" there shall be inserted " and section 159A ".

(3) In section 92(2) of the [M15]Pensions Act 1995 (exceptions to the rule preventing forfeiture of rights under occupational pension schemes), paragraph (b) (which allows forfeiture of such rights by reference to a scheme member's bankruptcy) shall cease to have effect.

Commencement Information

I6 S. 14 wholly in force at 6.4.2002; s. 14 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 14 in force at 6.4.2002 insofar as not already in force by S.I. 2002/153, **art. 2(d)**

Marginal Citations

M14 1993 c. 48.

M15 1995 c. 26.

15 Excessive pension contributions made by persons who have become bankrupt.

For sections 342A to 342C of the [M16]Insolvency Act 1986 there shall be substituted—

"**342A Recovery of excessive pension contributions.**

(1) Where an individual who is adjudged bankrupt—

(a) has rights under an approved pension arrangement, or

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(b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) If the court is satisfied—

(a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and

(b) that the making of any of the relevant 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 had the excessive contributions not been made.

(3) Subsection (4) applies where the court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999 (debits giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this subsection applies—

(a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of subsection (2), be taken to be contributions of which the rights under the arrangement are the fruits, and

(b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that paragraph.

(5) In subsections (2) to (4) "relevant contributions" means contributions to the arrangement or any other pension arrangement—

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

(b) which have at any time been made on his behalf.

(6) The court shall, in determining whether it is satisfied under subsection (2)(b), consider in particular—

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

(b) whether the total amount of any contributions—

(i) made by or on behalf of the individual to pension arrangements, and

(ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,

is an amount which is excessive in view of the individual's circumstances when those contributions were made.

(7) For the purposes of this section and sections 342B and 342C ("the recovery provisions"), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by

virtue of regulations under section 12 of the Welfare Reform and Pensions Act 1999.

(8) In the recovery provisions—

"approved pension arrangement" has the same meaning as in section 11 of the Welfare Reform and Pensions Act 1999;

"unapproved pension arrangement" has the same meaning as in section 12 of that Act.

342B Orders under section 342A.

(1) Without prejudice to the generality of section 342A(2), an order under section 342A may include provision—

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

(b) adjusting the liabilities of the arrangement in respect of the individual,

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

(d) for the recovery by the person responsible for the 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 bankrupt's case with any requirement under section 342C(1) or in giving effect to the order.

(2) In subsection (1), references to adjusting the liabilities of the 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.

(3) In subsection (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (pension sharing orders and agreements).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under section 342A is the lesser of—

(a) the amount of the excessive contributions, and

(b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under section 342A which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(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.

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(7) An order under section 342A in respect of an arrangement—
- (a) shall be binding on the person responsible for the arrangement, and
- (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

342C Orders under section 342A: supplementary.

(1) The person responsible for—
- (a) an approved pension arrangement under which a bankrupt has rights,
- (b) an unapproved pension arrangement under which a bankrupt has excluded rights, or
- (c) a pension arrangement under which a bankrupt has at any time had rights,

shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under section 342A.

(2) Nothing in—
- (a) any provision of section 159 of the [M17]Pension Schemes Act 1993 or section 91 of the [M18]Pensions Act 1995 (which prevent assignment and the making of orders that 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 arrangement in question corresponding to any of those provisions,

applies to a court exercising its powers under section 342A.

(3) 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.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—
- (a) any such value as is mentioned in section 342B(4)(b);
- (b) any such amounts as are mentioned in section 342B(6)(a) and (b).

(5) The power conferred by subsection (4) 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.

(6) References in the recovery provisions 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.

(7) In this section and sections 342A and 342B—

"prescribed" means prescribed by regulations;

"the recovery provisions" means this section and sections 342A and 342B;

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

(8) Regulations under the recovery provisions may—

(a) make different provision for different cases;

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

(9) Regulations under the recovery provisions shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I7 S. 15 wholly in force at 6.4.2002; s. 15 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 15 in force at 6.4.2002 insofar as not already in force by S.I. 2002/153, **art. 3(e)**

Marginal Citations

M16 1986 c. 45.
M17 1993 c. 48.
M18 1995 c. 26.

16 Excessive pension contributions made by persons who have become bankrupt: Scotland.

For sections 36A to 36C of the [M19]Bankruptcy (Scotland) Act 1985 there shall be substituted—

"**36A Recovery of excessive pension contributions.**

(1) Where a debtor's estate has been sequestrated and he—

(a) has rights under an approved pension arrangement, or

(b) has excluded rights under an unapproved pension arrangement,

the permanent trustee may apply to the court for an order under this section.

(2) If the court is satisfied—

(a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and

(b) that the making of any of the relevant 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 had the excessive contributions not been made.

(3) Subsection (4) applies where the court is satisfied that the value of the rights under the arrangement is, as a result of rights of the debtor under the

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arrangement or any other pension arrangement having at any time become subject to a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999 (debits giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this subsection applies—

(a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of subsection (2), be taken to be contributions of which the rights under the arrangement are the fruits, and

(b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that paragraph.

(5) In subsections (2) to (4) "relevant contributions" means contributions to the arrangement or any other pension arrangement—

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

(b) which have at any time been made on his behalf.

(6) The court shall, in determining whether it is satisfied under subsection (2)(b), consider in particular—

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

(b) whether the total amount of any contributions—

(i) made by or on behalf of the debtor to pension arrangements, and

(ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pensions arrangements,

is an amount which is excessive in view of the debtor's circumstances when those contributions were made.

(7) For the purposes of this section and sections 36B and 36C ("the recovery provisions"), rights of a debtor under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under section 12 of the Welfare Reform and Pensions Act 1999.

(8) In the recovery provisions—

"approved pension arrangement" has the same meaning as in section 11 of the Welfare Reform and Pensions Act 1999;

"unapproved pension arrangement" has the same meaning as in section 12 of that Act.

36B Orders under section 36A.

(1) Without prejudice to the generality of section 36A(2) an order under section 36A may include provision—

(a) requiring the person responsible for the arrangement to pay an amount to the permanent trustee,

(b) adjusting the liabilities of the arrangement in respect of the debtor,

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

(d) for the recovery by the person responsible for the 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 debtor's case with any requirement under section 36C(1) or in giving effect to the order.

(2) In subsection (1), references to adjusting the liabilities of the 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.

(3) In subsection (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (pension sharing orders and agreements).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under section 36A is the lesser of—

(a) the amount of the excessive contributions, and

(b) the value of the debtor's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under section 36A which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the permanent trustee must provide for the liabilities of the arrangement to be correspondingly reduced.

(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) An order under section 36A in respect of an arrangement—

(a) shall be binding on the person responsible for the arrangement; and

(b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

36C Orders under section 36A: supplementary.

(1) The person responsible for—

(a) an approved pension arrangement under which a debtor has rights,

(b) an unapproved pension arrangement under which a debtor has excluded rights, or

(c) a pension arrangement under which a debtor has at any time had rights,

shall, on the permanent trustee making a written request, provide the permanent trustee with such information about the arrangement and rights as the

permanent trustee may reasonably require for, or in connection with, the making of applications under section 36A.

(2) Nothing in—

(a) any provision of section 159 of the [M20]Pensions Schemes Act 1993 or section 91 of the [M21]Pensions Act 1995 (which prevent assignation and the making of orders that 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 arrangement in question corresponding to any of those provisions,

applies to a court exercising its powers under section 36A.

(3) Where any sum is required by an order under section 36A to be paid to the permanent trustee, that sum shall be comprised in the debtor's estate.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

(a) any such value as is mentioned in section 36B(4)(b);

(b) any such amounts as are mentioned in section 36B(6)(a) and (b).

(5) The power conferred by subsection (4) 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.

(6) References in the recovery provisions 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.

(7) In this section and sections 36A and 36B—

"the recovery provisions" means this section and sections 36A and 36B;

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

(8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient."

Commencement Information

I8 S. 16 wholly in force at 6.4.2002: s. 16 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 15 in force at 6.4.2002 insofar as not already in force by S.I. 2002/153, **art. 2(f)**

Marginal Citations

M19 1985 c. 66.
M20 1993 c. 48.
M21 1995 c. 26.

Miscellaneous

[F13]17 Compensating occupational pension schemes.

. . . . . .

Textual Amendments

F13 S. 17 repealed (1.9.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), Sch. Pt. 3

18 Miscellaneous amendments.

Schedule 2 (which contains amendments of the law relating to pensions) shall have effect.

Commencement Information

I9 S. 18 partly in force; s. 18 in force for certain purposes at Royal Assent see s. 89(1)(5); s. 18 in force for certain purposes at 25.4.2000 by S.I. 2000/1047, art. 2(2)(b), **Sch. Pt. II**; s. 18 in force for certain purposes at 29.5.2000 by S.I. 2000/1382, **art. 2(c)**; s. 18 in force for certain purposes at 1.1.2002 and for certain purposes at 6.4.2002 by S.I. 2001/4049, **art. 2(1)(a)(3)(a)**; s. 18 in force for certain purposes at 19.3.2002 by S.I. 2002/381, **art. 2(a)**; s. 18 in force for certain purposes at 6.4.2002 by S.I. 2002/153, **art. 2(g)** (with art. 3 which omits S.I. 2001/4049, **art. 2(2)**)

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