Status: *Point in time view as at 01/12/1993. This version of this provision is not valid for this point in time.*
Changes to legislation: *Bankruptcy (Scotland) Act 1985 (repealed), Section 36E is up to date with all changes known*
to be in force on or before 14 July 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)

Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

Safeguarding of interests of creditors of insolvent persons

VALID FROM 26/03/2002

[F1**36E** **Recovery orders.**

(1) In this section and section 36F of this Act, "recovery order" means—

    (a)   a decree granted under section 34(4) of this Act;

    (b)   an order made under section 35(2) of this Act;

    (c)   a decree granted under section 36(5) of this Act,

in any proceedings to which section 36D of this Act applies.

(2) Without prejudice to the generality of section 34(4), 35(2) or 36(5) a recovery order may include provision—

    (a)   requiring the person responsible for a pension arrangement in which the transferee has acquired rights derived directly or indirectly from the pension-sharing transaction to pay an amount to the permanent trustee,

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

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

    (d)   for the recovery by the person responsible for the pension 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 36F(1) or in giving effect to the order.

(3) In subsection (2), references to adjusting the liabilities of a pension 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 an arrangement may be required to pay by a recovery order is the smallest of—

    (a) so much of the appropriate amount as, in accordance with section 36D of this Act, is recoverable,

    (b) so much (if any) of the amount of the unfair contributions (within the meaning given by section 36D(6)) as is not recoverable by way of an order under section 36A of this Act containing provision such as is mentioned in section 36B(1)(a), and

    (c) the value of the debtor's rights under the arrangement acquired by the transferee as a consequence of the transfer of the appropriate amount.

(5) A recovery order 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) A recovery order 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.]

Textual Amendments

F1   S. 36E inserted (26.3.2002 for certain purposes and otherwise 6.4.2002) by 1999 c. 30, ss. 84(1), 89(1), **Sch. 12 Pt. II para. 69**; S.I 2002/818, {art. 3(b)}

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