

Status: Point in time view as at 01/12/2000. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Cross Heading: Bankruptcy (Scotland) Act 1985 (c.66). (See end of Document for details)

SCHEDULES

SCHEDULE 12

CONSEQUENTIAL AMENDMENTS

PART II

OTHER CONSEQUENTIAL AMENDMENTS

VALID FROM 26/03/2002

Bankruptcy (Scotland) Act 1985 (c.66)

67 The Bankruptcy (Scotland) Act 1985 has effect subject to the following amendments.

Commencement Information

I1 Sch. 12 para. 67 wholly in force at 6.4.2002; Sch. 12 para. 67 not in force at Royal Assent see s. 89(1); Sch. 12 para. 67 in force at 26.3.2002 for certain purposes and at 6.4.2002 otherwise by S.I. 2002/818, art. 2 (with art. 3 which omitted S.I. 2002/153, art. 2(h)(k))

68 In section 35(1), in paragraph (a) for “under the said section 8(2) for the transfer of property by him” substitute “ a court has, under the said section 8(2), made an order for the transfer of property by him or made a pension sharing order ”.

Commencement Information

I2 Sch. 12 para. 68 wholly in force at 6.4.2002; Sch. 12 para. 68 not in force at Royal Assent see s. 89(1); Sch. 12 para. 68 in force at 26.3.2002 for certain purposes and 6.4.2002 otherwise by S.I. 2002/818, art. 2 (with art. 3 which omitted S.I. 2002/153, art. 2(h)(k))

69 After section 36C there is inserted—

“36D Recovery of excessive contributions in pension-sharing cases.

(1) For the purposes of section 34 of this Act, 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 an alienation challengeable under that section only so far as it is a transfer of so much of the appropriate amount as is recoverable.

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- (2) For the purposes of section 35 of this Act, a pension-sharing transaction shall be taken—
- (a) to be a pension sharing order made by the court under section 8(2) of the Family Law (Scotland) Act 1985; and
 - (b) to be an order capable of being recalled under that section only so far as it is a payment or transfer of so much of the appropriate amount as is recoverable.
- (3) For the purposes of section 36 of this Act, 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 an unfair preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (4) Where—
- (a) an alienation is challenged under section 34;
 - (b) an application is made under section 35 for the recall of an order made in divorce proceedings; or
 - (c) a transaction is challenged under section 36,
- if 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 (5) to (9).
- (5) 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.
- (6) 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").
- (7) 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.
- (8) 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.
- (9) In making the determination mentioned in subsection (6) the court shall consider in particular—

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- (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 arrangement 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.

(10) In this section and sections 36E and 36F—

“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.

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.

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- (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.

36F Recovery orders: supplementary.

- (1) The person responsible for a pension arrangement under which the transferee has, at any time, acquired rights by virtue of the transfer of the appropriate amount shall, on the permanent trustee making a written request, provide the trustee with such information about the arrangement and the rights under it of the transferor and transferee as the permanent trustee may reasonably require for, or in connection with, the making of an application for a recovery order.
- (2) 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 assignation 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

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- 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 power to make a recovery order.
- (3) 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 36E(4)(c);
- (b) any such amounts as are mentioned in section 36E(6)(a) and (b).
- (4) The power conferred by subsection (3) 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.
- (5) 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.
- (6) In this section—
- “prescribed” means prescribed by regulations;
- “the recovery provisions” means this section and sections 34, 35, 36 and 36E of this Act;
- “regulations” means regulations made by the Secretary of State.
- (7) 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.
- (8) 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

- I3** Sch. 12 para. 69 wholly in force at 6.4.2002; Sch. 12 para. 69 not in force at Royal Assent see s. 89(1); Sch. 12 para. 69 in force at 26.3.2002 for certain purposes and 6.4.2002 otherwise by S.I. 2002/818, art. 2 (with art. 3 which omitted S.I. 2002/153, art. 2(h)(k))

Marginal Citations

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

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