



# Bankruptcy (Scotland) Act 1985 (repealed)

## 1985 CHAPTER 66

*Safeguarding of interests of creditors of insolvent persons*

VALID FROM 26/03/2002

### **[<sup>F1</sup>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.
- (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;

*Status: Point in time view as at 06/04/1996. This version of this provision is not valid for this point in time.*

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- (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—
- (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.]

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#### Textual Amendments

- F1** S. 36D 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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