

*Changes to legislation:* There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Cross Heading: Insolvency Act 1986 (c.45). (See end of Document for details)

## SCHEDULES

### SCHEDULE 12 **U.K.**

#### CONSEQUENTIAL AMENDMENTS

#### PART II **U.K.**

#### OTHER CONSEQUENTIAL AMENDMENTS

##### *Insolvency Act 1986 (c.45)*

70 The Insolvency Act 1986 is amended as follows.

#### **Commencement Information**

- II** Sch. 12 para. 70 wholly in force at 6.4.2002; Sch. 12 para. 70 not in force at Royal Assent see s. 89(1); Sch. 12 para. 70 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\(h\)\(k\)](#))

71 After section 342C there is inserted—

#### **“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).

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- (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”)—
- (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.

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### **342E Orders under section 339 or 340 in respect of pension-sharing transactions.**

- (1) This section and section 342F apply if the court is making an order under section 339 or 340 in a case where—
  - (a) the transaction or preference is, or is any part of, a pension-sharing transaction, and
  - (b) the transferee has rights under a pension arrangement (“the destination arrangement”, which may be the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.
- (2) Without prejudice to the generality of section 339(2) or 340(2), or of section 342, the order may include provision—
  - (a) requiring the person responsible for the destination arrangement to pay an amount to the transferor’s trustee in bankruptcy,
  - (b) adjusting the liabilities of the destination arrangement in respect of the transferee,
  - (c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,
  - (d) for the recovery by the person responsible for the destination 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 transferor’s case with any requirement under section 342F(1) or in giving effect to the order,
  - (e) for the recovery, from the transferor’s trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor’s case with any requirement under section 342F(2) or (3).
- (3) In subsection (2), references to adjusting the liabilities of the destination 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 the destination arrangement may be required to pay by the order is the smallest of—
  - (a) so much of the appropriate amount as, in accordance with section 342D, is recoverable,
  - (b) so much (if any) of the amount of the unfair contributions (within the meaning given by section 342D(5)) as is not recoverable by way of an order under section 342A containing provision such as is mentioned in section 342B(1)(a), and
  - (c) the value of the transferee’s rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.
- (5) If the order requires the person responsible for the destination arrangement to pay an amount (“the restoration amount”) to the transferor’s trustee

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in bankruptcy it 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) The order—
- (a) shall be binding on the person responsible for the destination arrangement, and
  - (b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

**342F Orders under section 339 or 340 in pension-sharing cases: supplementary.**

- (1) On the transferor’s trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—
- (a) the arrangement,
  - (b) the transferee’s rights under it, and
  - (c) where the destination arrangement is the shared arrangement, the transferor’s rights under it,
- as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.
- (2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor’s trustee in bankruptcy making a written request to that person, provide the trustee with such information about—
- (a) the arrangement, and
  - (b) the transferor’s rights under it,
- as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.
- (3) On the transferor’s trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—
- (a) the arrangement, and
  - (b) the transferee’s rights under it,
- as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.
- (4) In subsection (3) “intermediate arrangement” means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—
- (a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and

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- (b) the transferee's rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in paragraph (a).
- (5) Nothing in—
  - (a) any provision of section 159 of the <sup>M1</sup>Pension Schemes Act 1993 or section 91 of the <sup>M2</sup>Pensions Act 1995 (which prevent assignment 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 1999) corresponding to any of the provisions mentioned in paragraph (a), or
  - (c) any provision of the destination arrangement corresponding to any of those provisions,applies to a court exercising its powers under section 339 or 340.
- (6) Regulations may, for the purposes of sections 339 to 342, sections 342D and 342E and this section, make provision about the calculation and verification of—
  - (a) any such value as is mentioned in section 342E(4)(c);
  - (b) any such amounts as are mentioned in section 342E(6)(a) and (b).
- (7) The power conferred by subsection (6) 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.
- (8) In section 342E and this section, references 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.
- (9) In this section—
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made by the Secretary of State.
- (10) Regulations under this section 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.
- (11) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

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#### Commencement Information

- I2** Sch. 12 para. 71 wholly in force at 6.4.2002; Sch. 12 para. 71 not in force at Royal Assent see s. 89(2); Sch. 12 para. 71 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\(h\)\(k\)](#))

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#### Marginal Citations

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

- 72 In section 384(1) (meaning of “prescribed” in the second Group of Parts), after “Subject to the next subsection” insert “ and sections 342C(7) and 342F(9) in Chapter V of Part IX ”.

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#### Commencement Information

- I3** Sch. 12 para. 72 wholly in force at 6.4.2002; Sch. 12 para. 72 not in force at Royal Assent see s. 89(1); Sch. 12 para. 72 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\(h\)\(k\)](#))

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