

This Statutory Instrument supersedes S.I.2002/427 published on 7th March 2002 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2002 No. 836

**PENSIONSINSOLVENCY: ENGLAND
AND WALESINSOLVENCY: SCOTLAND**

**The Occupational and Personal Pension
Schemes (Bankruptcy) (No. 2) Regulations 2002**

Made - - - - 26th March 2002

Laid before Parliament 2nd April 2002

Coming into force - - 6th April 2002

The Secretary of State for Work and Pensions, in exercise of powers conferred by sections 36C(4) (a) and (7) and (8) and 36F(3)(a) and (6) to (8) of the Bankruptcy (Scotland) Act 1985(1), sections 342C(4)(a) and (7) to (9) and 342F(6)(a) and (9) to (11) of the Insolvency Act 1986(2) and sections 11(2)(h), 12(1) to (3) and 83(1), (2), (4) and (6) of the Welfare Reform and Pensions Act 1999(3) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**PART I
GENERAL**

Citation, commencement, extent and interpretation

1.—(1) These Regulations, which supersede the Occupational and Personal Pension Schemes (Bankruptcy) Regulations 2002(4), may be cited as the Occupational and Personal Pension Schemes (Bankruptcy) (No. 2) Regulations 2002 and shall come into force on 6th April 2002.

(2) Part II of these Regulations applies to England and Wales.

(1) 1985 c. 66. Section 36C was substituted by section 16 of the Welfare Reform and Pensions Act 1999 (c. 30) (“the 1999 Act”) and section 36F was inserted by paragraph 69 of Schedule 12 to the Act.
(2) 1986 c. 45. Section 342C was substituted by section 15 of the 1999 Act and section 342F was inserted by paragraph 71 of Schedule 12 to that Act.
(3) 1999 c. 30.
(4) S.I. 2002/427.

(3) Part III, and (by virtue of regulation 11 of that Part) regulation 2 of Part II, of these Regulations apply to Scotland.

(4) In this paragraph and—

(a) Parts II and III of these Regulations—

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“income-related benefit” has the meaning given in section 123(1) of the Social Security Contributions and Benefits Act 1992⁽⁵⁾;

“relevant benefits” has the meaning given in section 612 of the Taxes Act;

“the Taxes Act” means the Income and Corporation Taxes Act 1988⁽⁶⁾;

“week” means a period of seven days;

(b) Part II of these Regulations—

“the 1986 Act” means the Insolvency Act 1986;

“court” means the court which made the bankruptcy order against the bankrupt;

“destination arrangement” has the meaning given in section 342E(1)(b) of the 1986 Act⁽⁷⁾;

“pension-sharing transaction” has the meaning given in section 342D(9) of the 1986 Act⁽⁸⁾;

“responsible person” means the person responsible for a pension arrangement within the meaning of section 342C(6) of the 1986 Act;

“restoration order” means an order made under section 342A of the 1986 Act⁽⁹⁾;

“transferee” has the meaning given in section 342D(9) of the 1986 Act;

“transferor” has the meaning given in section 342D(9) of the 1986 Act;

(c) Part III of these Regulations—

“the 1980 Act” means the Solicitors (Scotland) Act 1980⁽¹⁰⁾;

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985;

“court” means the sheriff before whom the sequestration is depending or to whom it has been transferred or remitted in terms of section 15 of the 1985 Act or, where a judicial factor has been appointed, the court which appointed the judicial factor;

“debtor” has the meaning given in section 73 of the 1985 Act, and in relation to regulations 12 to 15 and 19 also includes a solicitor on whose estate a judicial factor has been appointed;

“judicial factor” means a judicial factor appointed under section 41 of the 1980 Act⁽¹¹⁾;

“pension-sharing transaction” has the meaning given in section 36D(10) of the 1985 Act⁽¹²⁾;

(5) 1992 c. 4. Section 123(1) was amended by section 103 of, and paragraph 1(1) of Schedule 9 to, the Local Government Finance Act 1992 (c. 14) and paragraphs 1(a) and (b) and 2(f) of Schedule 1 to the Tax Credits Act 1999 (c. 10).

(6) 1988 c. 1.

(7) Section 342E(1)(b) was inserted by paragraph 71 of Schedule 12 to the 1999 Act.

(8) Section 342D(9) was inserted by paragraph 71 of Schedule 12 to the 1999 Act.

(9) Section 342A was substituted by section 15 of the 1999 Act.

(10) 1980 c. 46.

(11) Section 41 was amended by section 56 of, and paragraph 19(a)–(g) of Part I of Schedule 1 to, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) and section 6(1) and (2) to, and paragraph 13 of Schedule 1 and Schedule 2 to, the Solicitors (Scotland) Act 1988 (c. 42).

(12) Section 36D(10) was inserted by paragraph 69 of Schedule 12 to the 1999 Act.

- “permanent trustee” shall be construed in accordance with section 3 of the 1985 Act;
“responsible person” means the person responsible for a pension arrangement within the meaning of section 36C(6) of the 1985 Act;
“restoration order” means an order made under section 36A of the 1985 Act⁽¹³⁾;
“transferee” has the meaning given in section 36D(10) of the 1985 Act;
“transferor” has the meaning given in section 36D(10) of the 1985 Act.

PART II

ENGLAND AND WALES

Prescribed pension arrangements

2.—(1) The arrangements prescribed for the purposes of section 11(2)(h) of the 1999 Act (pension arrangements which are “approved pension arrangements”) are arrangements (including an annuity purchased for the purpose of giving effect to rights under any such arrangement)—

- (a) to which—
- (i) the holder of an office or employment has contributed by way of payments out of foreign emoluments which have been allowed as a deduction in computing the amount of those emoluments by virtue of section 192(3) of the Taxes Act (relief from tax for foreign emoluments),
 - (ii) Article 17A of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976⁽¹⁴⁾ (pension scheme contributions) applies;
- (b) made with a scheme which is a retirement benefits scheme—
- (i) approved by the Board of Inland Revenue pursuant to section 590 or 591 of the Taxes Act⁽¹⁵⁾ (conditions for approval of retirement benefit schemes and discretionary approval respectively) and which is not an exempt approved scheme under section 592 of that Act⁽¹⁶⁾, or
 - (ii) to which section 608 of the Taxes Act (superannuation funds approved before 6th April 1980) applies;
- (c) to which section 595(1) of the Taxes Act (charge to tax in respect of certain sums paid by the employer etc.) does not apply by virtue of section 596(2)(b) of that Act⁽¹⁷⁾;

⁽¹³⁾ Section 36A was substituted by section 16 of the 1999 Act.

⁽¹⁴⁾ S.I. 1976/2151. Article 17A was added by Article 1 of the Protocol set out in the Schedule to S.I. 1995/764.

⁽¹⁵⁾ Section 590 was amended by section 35 of, and paragraph 18 of Part I of Schedule 3 to, the Finance Act 1988 (c. 39), sections 75 and 187 of, and paragraphs 3(1) to (4) and 18(2) and (3) of Schedule 6 and Part IV of Schedule 17 to, the Finance Act 1989 (c. 26), sections 34(2) to (4), 36(2) and (3) and 123 of, and Part V of Schedule 19 to, the Finance Act 1991 (c. 31) and section 79 of, and paragraph 2 of Schedule 10 to, the Finance Act 1999 (c. 16). Section 591 was amended by section 146 of, and paragraph 6 of Part I of Schedule 13 to, the Finance Act 1988, sections 107(2) to (4) and 258 of, and Part V of Schedule 26 to, the Finance Act 1994 (c. 9), sections 59(2) and 60(1) of the Finance Act 1995 (c. 4) and section 79 of, and paragraphs 3 and 18(1) and (3) of Schedule 10 to, the Finance Act 1999.

⁽¹⁶⁾ Section 592 was amended by section 75 of, and paragraphs 5(2) to (4) and 18(4) of Schedule 6 to, the Finance Act 1989 and section 112(1) of the Finance Act 1993 (c. 34).

⁽¹⁷⁾ Paragraph 2 was amended by section 187 of, and Part IV of Schedule 17 to, the Finance Act 1995.

- (d) which are exempt or qualify for relief from, or are not liable to charge to, income tax by virtue of section 614, 615 or 616 of the Taxes Act(18) (exemptions and reliefs in respect of income from investments etc. of certain pension schemes and other overseas pensions);
- (e) made with—
 - (i) a public service pension scheme, or
 - (ii) an occupational pension scheme established under the auspices of a government department or by any person acting on behalf of the Crown;
- (f) referred to in paragraph (b)(ii) of section 630(1) of the Taxes Act(19) (definition of “approved” for the purposes of Chapter IV of Part XIV of that Act).

(2) Paragraph (1)(e) above does not apply to an arrangement entered into on, or after, 14th March 1989 for the purpose of providing an employee with relevant benefits calculated by reference to so much of his annual remuneration as is in excess of the permitted maximum; and for these purposes the “permitted maximum” means the permitted maximum for any year of assessment during which such a person is a member of a scheme referred to in paragraph (1)(e) above and shall be the figure specified—

- (a) in section 590C(3) of the Taxes Act(20) for the years 1988-89 and 1989-90;
 - (b) by order in accordance with subsection (6) of that section for each year subsequent to 1989-90.
- (3) For the purposes of this regulation—
- (a) “foreign emoluments” has the meaning given in section 192(1) of the Taxes Act;
 - (b) “occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993(21);
 - (c) “public service pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993;
 - (d) “year of assessment” has the meaning given in section 832(1) of the Taxes Act.

Unapproved pension arrangements

3.—(1) For the purposes of section 12 of the 1999 Act (effect of bankruptcy on pension rights: unapproved arrangements), a pension arrangement—

- (a) falling within section 11(4) of the 1999 Act (which deals with schemes which are not subsequently approved under Chapter I of Part XIV of the Taxes Act and, at the date of the bankruptcy order, were being considered for such approval);
- (b) falling within section 11(6) of the 1999 Act (which deals with a scheme which, after the date of the bankruptcy order, has its approval under Chapter I or, as the case may be, Chapter IV of Part XIV of the Taxes Act withdrawn from a date not later than the date of that order); or
- (c) under—
 - (i) a funded unapproved retirement benefits scheme, or
 - (ii) an unfunded unapproved retirement benefits scheme,

(18) Section 614 was amended by section 258 of, and Part V of Schedule 26 to, the Finance Act 1994 and sections 104 and 105 of, and paragraph 34 of Schedule 14 to, the Finance Act 1996 (c. 8). Section 615 was amended by section 2 of the Overseas Superannuation Act 1991 (c. 16) and section 79 of, and paragraph 11 of Schedule 10 to, the Finance Act 1999.

(19) Section 630 was amended by paragraph 2 of Schedule 11 to the Finance Act 1995 and the definition of “approved” was amended by section 61 of, and paragraph 5(2) of Schedule 13 to, the Finance Act 2000 (c. 17).

(20) Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989.

(21) 1993 c. 48.

shall be an “unapproved pension arrangement” if it satisfies the conditions specified in paragraph (2) below.

- (2) The conditions referred to in paragraph (1) above are that the pension arrangement—
 - (a) is established under—
 - (i) an irrevocable trust, or
 - (ii) a contract, agreement or arrangement made with the bankrupt;
 - (b) has as its primary purpose the provision of relevant benefits; and
 - (c) is the bankrupt’s sole pension arrangement or his main means of pension provision (other than a pension under Part II of the Social Security Contributions and Benefits Act 1992 (contributory benefits) or Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(22) (contributory benefits)).
- (3) For the purposes of section 12(2)(c) of the 1999 Act, the prescribed person shall be the responsible person.

Exclusion of rights under unapproved pension arrangements

4. For the purpose of excluding his rights under an unapproved pension arrangement from his estate for the purposes of Parts VIII to XI of the 1986 Act (which cover individual voluntary arrangements, bankruptcy and individual insolvency), a bankrupt may—

- (a) make an application to the court for an exclusion order in accordance with the provisions of regulation 5 below;
- (b) enter into a qualifying agreement with the trustee in bankruptcy in accordance with the provisions of regulation 6 below.

Exclusion orders

5.—(1) Subject to paragraph (2) below, an application for an exclusion order shall be made to the court within a period of—

- (a) thirteen weeks beginning with—
 - (i) the date on which the bankrupt’s estate vests in the trustee in bankruptcy in accordance with the provisions of section 306 of the 1986 Act (vesting of bankrupt’s estate in trustee), or
 - (ii) in the case of a scheme referred to in regulation 3(1)(a) or (b) above, the date, if later than that referred to in head (i) above, on which any rights of the bankrupt vest in the trustee in bankruptcy in accordance with section 11(5) or, as the case may be, (7) of the 1999 Act; or
- (b) thirty days beginning with the date on which a qualifying agreement is revoked in accordance with the provisions of regulation 6 below.

(2) The court may, either before or after it has expired and where good cause is shown, extend the period referred to in paragraph (1)(a) or, as the case may be, (1)(b) above.

(3) In deciding whether to make an exclusion order and, if so, whether to make it in respect of part or all (but not exceeding the total amount) of the excludable rights, the court shall have reference to—

- (a) the future likely needs of the bankrupt and his family;
- (b) whether any benefits by way of pension or otherwise (other than a pension under Part II of the Social Security Contributions and Benefits Act 1992 or Part II of the Social

Security Contributions and Benefits (Northern Ireland) Act 1992 (contributory benefits) or an income-related benefit) are likely to be received by virtue of rights of the bankrupt which have already accrued under any other pension arrangements at the date on which the application for an exclusion order is made and the extent to which they appear likely to be adequate for meeting any such needs.

Qualifying agreements

6.—(1) A qualifying agreement shall be made within a period of nine weeks beginning with the later of the following—

- (a) the date on which the bankrupt's estate vests in the trustee in bankruptcy in accordance with the provisions of section 306 of the 1986 Act (vesting of bankrupt's estate in trustee); or
- (b) in the case of a scheme referred to in regulation 3(1)(a) or (b) above, the date, if later than that referred to in sub-paragraph (a) above, on which any rights of the bankrupt vest in the trustee in bankruptcy in accordance with section 11(5) or, as the case may be, (7) of the 1999 Act.

(2) A qualifying agreement made between the bankrupt and the trustee in bankruptcy shall be by deed and incorporate all the terms which they have expressly agreed.

(3) Where—

- (a) the bankrupt has failed to make full disclosure of all material facts in respect of any pension arrangement which is the subject of a qualifying agreement; and
- (b) has failed to do so for the purpose of enabling his rights under such an arrangement to be excluded from his estate for the purposes of Parts VIII to XI of the 1986 Act where they would not have otherwise been excluded,

the trustee in bankruptcy may revoke that agreement by giving the bankrupt notice of revocation.

(4) A notice of revocation shall—

- (a) be dated;
- (b) be in writing;
- (c) specify the reasons for revocation of the qualifying agreement;
- (d) specify the date on which the agreement shall be revoked, such date not being one falling within a period of thirty days beginning with the date of the notice; and
- (e) inform the bankrupt that he has the right to apply for an exclusion order within a period of thirty days beginning with the date referred to in sub-paragraph (d) above.

(5) Where a qualifying agreement has been made or revoked in accordance with the provisions of this regulation, the trustee in bankruptcy shall, within a period of thirty days beginning with the date on which that agreement was made or, in the case of a notice of revocation, the date required under paragraph (4)(a) above, notify the responsible person in writing of that fact.

Calculation and verification of rights under pension arrangements

7.—(1) For the purposes of section 342B(4)(b) of the 1986 Act⁽²³⁾, the value of the individual's ("the bankrupt's") rights under an approved pension arrangement, or of his excluded rights under an unapproved pension arrangement, shall be the cash equivalent of those rights as calculated and verified in accordance with paragraph (2) below.

⁽²³⁾ Section 342B was substituted by section 15 of the 1999 Act.

(2) In calculating and verifying the cash equivalent of the rights referred to in paragraph (1) above, regulation 3 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000⁽²⁴⁾ (information about pensions and divorce: valuation of pension benefits) shall have effect for the purposes of this regulation in like manner to that in which it has effect for the valuation of benefits in connection with the supply of information in connection with domestic and overseas divorce etc. in England, Wales and Northern Ireland for the purposes of those Regulations; and for these purposes “the date on which the request for the valuation was received” in that regulation shall be read as “the date on which the trustee in bankruptcy’s request for the valuation was received”.

Time for compliance with restoration order

8. The responsible person shall comply with the restoration order before the end of a period of seventeen weeks beginning with the date of service of that order.

Calculation and verification of rights under destination arrangements

9.—(1) Where section 342E of the 1986 Act⁽²⁵⁾ applies, the value of a transferee’s rights under a destination arrangement, derived directly or indirectly from a pension-sharing transaction, shall be—

- (a) the cash equivalent of those rights at the date on which the trustee in bankruptcy’s request for that valuation is received by the responsible person; and
- (b) calculated and verified in accordance with paragraph (2) below.

(2) In calculating and verifying the cash equivalent of the transferee’s rights referred to in paragraph (1) above, regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽²⁶⁾ shall have effect for the purposes of this regulation in like manner to that in which it has effect for the calculation and verification of pension credit for the purposes of those Regulations.

Time for compliance with request for information

10.—(1) Subject to paragraph (2) below, where a request for information has been made to the responsible person by—

- (a) the trustee in bankruptcy or the bankrupt in connection with the making of an application for an exclusion order;
- (b) the bankrupt for, or in connection with, the making of a qualifying agreement referred to in regulation 6 above; or
- (c) the trustee in bankruptcy—
 - (i) pursuant to section 342C(1) of the 1986 Act (which enables the trustee in bankruptcy to request the responsible person to provide information which he may reasonably need for the making of an application for a restoration order) and relating to the cash equivalent of a bankrupt’s rights or excluded rights,
 - (ii) pursuant to section 342F(1) to (3) of the 1986 Act (which enables the transferor’s trustee in bankruptcy to request the responsible person to provide information which he may reasonably need for the making of an application under sections 339 and 340 of the 1986 Act) and relating to the cash equivalent of a transferee’s rights under a destination arrangement,

he shall comply with that request within a period of nine weeks beginning with the day on which it is received.

⁽²⁴⁾ S.I. 2000/1048.

⁽²⁵⁾ Section 342E was inserted by paragraph 71 of Schedule 12 to the 1999 Act.

⁽²⁶⁾ S.I. 2000/1054.

(2) In the case of a request for information falling within sub-paragraph (a) of paragraph (1) above, the court may, either before or after it has expired and where good cause is shown, extend the period referred to in that paragraph.

PART III SCOTLAND

Prescribed pension arrangements

11. For the purposes of section 11(2)(h) of the 1999 Act, regulation 2 above shall apply to Scotland in like manner to that in which it applies to England and Wales.

Unapproved pension arrangements

12.—(1) For the purposes of section 12 of the 1999 Act, a pension arrangement—

- (a) falling within section 11(4) of the 1999 Act (which deals with schemes which are not subsequently approved under Chapter I of Part XIV of the Taxes Act and, at the date of the award of sequestration or the appointment of a judicial factor, were being considered for such approval);
- (b) falling within section 11(6) of the 1999 Act (which deals with a scheme which, after the date of the award of sequestration or the appointment of a judicial factor, has its approval under Chapter I or, as the case may be, Chapter IV of Part XIV of the Taxes Act withdrawn from a date not later than the date of that order); or
- (c) under—
 - (i) a funded unapproved retirement benefits scheme, or
 - (ii) an unfunded unapproved retirement benefits scheme,

shall be an “unapproved pension arrangement” if it satisfies the conditions specified in paragraph (2) below.

(2) The conditions referred to in paragraph (1) above are that the pension arrangement—

- (a) is established under—
 - (i) an irrevocable trust, or
 - (ii) a contract, agreement or arrangement made with the debtor;
- (b) has as its primary purpose the provision of relevant benefits; and
- (c) is the debtor’s sole pension arrangement or his main means of pension provision (other than a pension under Part II of the Social Security Contributions and Benefits Act 1992 (contributory benefits) or Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (contributory benefits)).

(3) For the purposes of section 12(2)(c) of the 1999 Act, the prescribed person shall be the responsible person.

Exclusion of rights under unapproved pension arrangements

13. For the purpose of excluding his rights under an unapproved pension arrangement from his estate for the purposes of the 1980 Act or the 1985 Act, as the case may be, a debtor may—

- (a) make an application to the court for an exclusion order in accordance with the provisions of regulation 14 below;

- (b) enter into a qualifying agreement with the permanent trustee or judicial factor in accordance with the provisions of regulation 15 below.

Exclusion orders

14.—(1) Subject to paragraph (2) below, an application to the court for an exclusion order shall be made within a period of—

- (a) thirteen weeks beginning with—
 - (i) the date on which the act and warrant is issued on confirmation of the permanent trustee's appointment in accordance with the provisions of the 1985 Act or the date of the appointment of a judicial factor, or
 - (ii) in the case of a scheme referred to in regulation 12(1)(a) or (b) above, the date, if later than that referred to in head (i) above, on which any rights of the debtor vest in the permanent trustee or judicial factor in accordance with section 11(5) or, as the case may be, (7) of the 1999 Act; or
- (b) thirty days beginning with the date on which a qualifying agreement is revoked in accordance with the provisions of regulation 15 below.

(2) The court may, either before or after it has expired and on cause shown, extend the period referred to in paragraph (1)(a) or, as the case may be, (1)(b) above.

(3) In deciding whether to make an exclusion order and, if so, whether to make it in respect of part or all (but not exceeding the total amount) of the excludable rights, the court shall have reference to—

- (a) the future likely needs of the debtor and his family;
- (b) whether any benefits by way of pension or otherwise (other than a pension under Part II of the Social Security Contributions and Benefits Act 1992 or Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (contributory benefits) or an income-related benefit) are likely to be received by virtue of rights of the debtor which have already accrued under any other pension arrangements at the date on which the application for an exclusion order is made and the extent to which they appear likely to be adequate for meeting any such needs.

Qualifying agreements

15.—(1) A qualifying agreement shall be made within a period of nine weeks beginning with the later of the following dates—

- (a) the date on which the act and warrant is issued on confirmation of the permanent trustee's appointment in accordance with the provisions of the 1985 Act or the date of the appointment of a judicial factor; or
- (b) in the case of a scheme referred to in regulation 12(1)(a) or (b) above, the date, if later than that referred to in sub-paragraph (a) above, on which any rights of the debtor vest in the permanent trustee or judicial factor in accordance with section 11(5) or, as the case may be, (7) of the 1999 Act.

(2) A qualifying agreement shall—

- (a) be in writing;
- (b) incorporate all the terms which the debtor and the permanent trustee or judicial factor have expressly agreed; and
- (c) be subscribed by the debtor and the permanent trustee or judicial factor, in each case in accordance with section 3(1) of the Requirements of Writing (Scotland) Act 1995(27).

(27) 1995 c. 7.

(3) Where—

- (a) the debtor has failed to make full disclosure of all material facts in respect of any pension arrangement which is the subject of a qualifying agreement; and
- (b) has failed to do so for the purpose of enabling his rights under such an arrangement to be excluded from his estate for the purposes of the 1980 Act or the 1985 Act where they would not have otherwise been excluded,

the permanent trustee or judicial factor may revoke that agreement by giving the debtor notice of revocation.

(4) A notice of revocation shall—

- (a) be dated;
- (b) be in writing;
- (c) specify the reasons for revocation of the qualifying agreement;
- (d) specify the date on which that agreement shall be revoked, such date not being one falling within a period of thirty days beginning with the date of the notice; and
- (e) inform the debtor that he has the right to apply for an exclusion order within a period of thirty days beginning with the date on which the agreement falls to be revoked in accordance with that notice.

(5) Where a qualifying agreement has been made or revoked in accordance with the provisions of this regulation, the permanent trustee or judicial factor shall, within a period of thirty days beginning with the date on which the agreement was made or, in the case of a notice of revocation, the date required under paragraph (4)(a) above, notify the responsible person in writing of that fact.

Calculation and verification of rights under pension arrangements

16.—(1) For the purposes of section 36B(4)(b) of the 1985 Act⁽²⁸⁾, the value of the debtor’s rights under an approved pension arrangement, or of his excluded rights under an unapproved pension arrangement, shall be the cash equivalent of those rights as calculated and verified in accordance with paragraph (2) below.

(2) In calculating and verifying the cash equivalent of the rights referred to in paragraph (1) above, regulation 3 of the Divorce etc. (Pensions) (Scotland) Regulations 2000⁽²⁹⁾(valuation), except paragraph (11) thereof, shall have effect for the purposes of this regulation in like manner to that in which it has effect for the valuation of benefits in connection with the supply of information in connection with divorce in Scotland for the purposes of those Regulations; and for these purposes “the relevant date” in that regulation shall be read as “the date on which the permanent trustee’s request for the valuation was received”.

Time for compliance with restoration order

17. The responsible person shall comply with the restoration order before the end of a period of seventeen weeks beginning with the date of service of that order.

Calculation and verification of transferee’s rights under a pension arrangement derived from a pension-sharing transaction

18.—(1) Where section 36E of the 1985 Act⁽³⁰⁾ applies, the value of a transferee’s rights under a pension arrangement derived directly or indirectly from a pension-sharing transaction, shall be—

⁽²⁸⁾ Section 36B was substituted by section 16 of the 1999 Act.

⁽²⁹⁾ S.S.I. 2000/112.

⁽³⁰⁾ Section 36E was inserted by paragraph 69 of Schedule 12 to the 1999 Act.

(a) the cash equivalent of those rights at the date on which the permanent trustee's request for that valuation is received by the responsible person; and

(b) calculated and verified in accordance with paragraph (2) below.

(2) In calculating and verifying the cash equivalent of the transferee's rights referred to in paragraph (1) above, regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 shall have effect for the purposes of this regulation in like manner to that in which it has effect for the calculation and verification of pension credit for the purposes of those Regulations.

Time for compliance with request for information

19.—(1) Subject to paragraph (2) below, where a request for information has been made to the responsible person by—

(a) the permanent trustee, judicial factor or the debtor in connection with the making of an application for an exclusion order;

(b) the debtor for, or in connection with, the making of a qualifying agreement referred to in regulation 15 above; or

(c) the permanent trustee—

(i) pursuant to section 36C(1) of the 1985 Act (which enables the permanent trustee to request the responsible person to provide information which he may reasonably need for the making of an application for a restoration order) and relating to the cash equivalent of a debtor's rights or excluded rights,

(ii) pursuant to section 36F(1) of the 1985 Act (which enables the transferor's permanent trustee to request the responsible person to provide information which he may reasonably need for the making of an application under sections 34 to 36 of the 1985 Act) and relating to the cash equivalent of a transferee's rights under a pension arrangement referred to in regulation 18(1) above,

he shall comply with that request within a period of nine weeks beginning with the day on which it is received.

(2) In the case of a request for information falling within sub-paragraph (a) of paragraph (1) above, the court may, either before or after it has expired and on cause shown, extend the period referred to in that paragraph.

Revocation of the Occupational and Personal Pension Schemes (Bankruptcy) Regulations 2002

20. The Occupational and Personal Pension Schemes (Bankruptcy) Regulations 2002 are hereby revoked.

Signed by authority of the Secretary of State for Work and Pensions.

26th March 2002

Malcolm Wicks
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supersede the Occupational and Personal Pension Schemes (Bankruptcy) Regulations 2002, which were defective. Regulations 1(2) to 19 inclusive of these Regulations replicate regulations 1(2) to 19 inclusive of those Regulations.

These Regulations, which apply to England, Wales and Scotland, make provision for the treatment of rights under certain pension arrangements in the event of a person's bankruptcy.

Part I of these Regulations provides for citation, commencement, extent and interpretation.

Part II, which consists of regulations 2 to 10, applies to England and Wales.

Regulation 2 prescribes pension arrangements which qualify as "prescribed pension arrangements" for the purposes of section 11(2)(h) of the Welfare Reform and Pensions Act 1999 thereby excluding any rights of a bankrupt under such arrangements from his estate by virtue of section 11(1) of that Act.

Regulation 3 specifies pension arrangements which qualify as "unapproved pension arrangements".

Regulation 4 sets out the ways in which an unapproved pension arrangement can be excluded from a bankrupt's estate.

Regulation 5 provides, in relation to a prescribed "unapproved pension arrangement", for the making of an "exclusion order" excluding the rights of a bankrupt under such an arrangement from his estate. Paragraph (1) sets out the time limits for applying to the court for such an order. Paragraph (3) specifies the matters to be considered by the court in deciding whether or not to make such an order.

Regulation 6 provides, in relation to a prescribed "unapproved pension arrangement", for the making of a "qualifying agreement" between the bankrupt and the trustee in bankruptcy excluding the rights of a bankrupt under such an arrangement from his estate. Paragraph (1) sets out the time limits for the making of such an agreement. Paragraph (2) specifies the form and content of a "qualifying agreement". Paragraph (3) provides, in certain circumstances, for the revocation of such an agreement by the trustee in bankruptcy by giving the bankrupt a "notice of revocation" and paragraph (4) specifies the form and content of such a notice.

Regulation 7 provides for the calculation and verification of the cash equivalent of a bankrupt's rights under an "approved pension arrangement", or his excluded rights under an "unapproved pension arrangement", for the purpose of enabling the court to determine whether to make an order ("a restoration order") under section 342A of the Insolvency Act 1986.

Regulation 8 provides that where a "restoration order" has been made, the person responsible for the pension arrangement in question must comply with that order within the prescribed time.

Regulation 9 provides for the calculation and verification of the cash equivalent of a person's pension rights where those rights are derived directly, or indirectly, from a pension-sharing transaction.

Regulation 10 specifies the periods within which the person responsible for the pension arrangement in question has to comply with a request for information.

Part III, which consists of regulations 11 to 19, applies to Scotland.

Regulation 11 applies regulation 2 to Scotland.

Regulations 12 to 15 provide for the making of exclusion orders and qualifying agreements in relation to "unapproved pension arrangements" in like manner to the provisions which apply to England and Wales by virtue of regulations 3 to 6.

Regulations 16 and 18 provide for the calculation and verification of cash equivalents of a debtor's or a transferee's rights under an "approved pension arrangement", or his excluded rights under an "unapproved pension arrangement", on a similar basis to that which applies in England and Wales in respect of a bankrupt's rights by virtue of regulations 7 and 9.

Regulation 17 is the equivalent of regulation 8.

Regulation 19 is the equivalent of regulation 10.

Regulation 20 revokes the Occupational and Personal Pension Schemes (Bankruptcy) Regulations 2002.

Regulation 1(4)(c), which applies specifically to Scotland, provides that in regulations 12 to 15 and 19 "debtor" includes a solicitor on whose estate a judicial factor has been appointed under section 41 of the Solicitors (Scotland) Act 1980.

These Regulations have only a negligible cost for business: a Regulatory Impact Assessment is not therefore necessary.