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STATUTORY INSTRUMENTS

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**2002 No. 836**

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

**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of a judicial factor, has its approval under Chapter I or, as the case may be, Chapter IV of Part XIV of the Taxes Act withdrawn from a date not later than the date of that order); or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<sup>(1)</sup>.

(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<sup>(2)</sup>, 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<sup>(3)</sup>(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.

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(1) 1995 c. 7.

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

(3) S.S.I. 2000/112.

**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(4) applies, the value of a transferee's rights under a pension 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 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.

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