

2002 No. 836

PENSIONS

INSOLVENCY: ENGLAND AND WALES INSOLVENCY: SCOTLAND

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

<i>Made</i> - - - - -	<i>26th March 2002</i>
<i>Laid before Parliament</i>	<i>2nd April 2002</i>
<i>Coming into force</i> - -	<i>6th April 2002</i>

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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(a), sections 342C(4)(a) and (7) to (9) and 342F(6)(a) and (9) to (11) of the Insolvency Act 1986(b) and sections 11(2)(h), 12(1) to (3) and 83(1), (2), (4) and (6) of the Welfare Reform and Pensions Act 1999 (c) 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(d), 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.

(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;

▶ “the 2003 Act” means the Income Tax (Earnings and Pensions) Act 2003(e); ◀
“income-related benefit” has the meaning given in section 123(1) of the Social Security Contributions and Benefits Act 1992(f);

▶ “relevant benefits” means any pension, lump sum, gratuity or other like benefit which is, or is to be, provided—

(a) by reason, or in anticipation, of retirement,

(b) by reason of death,

(c) by reason of a pension sharing order or provision,

(d) in connection with past service,

(e) after retirement or death,

(f) in anticipation of, or in connection with, any change in the nature of the service of the employee in question,

but does not include any benefit which is to be provided solely by reason of the disablement or death due to an accident suffered by a person during his pensionable service; ◀

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

“week” means a period of seven days;

(b) Part II of these Regulations—

“the 1986 Act” means the Insolvency Act 1986;

¹Defn. of “the 2003 Act” inserted and defn. of “relevant benefits” substituted by art. 21(2)(a) of S.I. 2006/744 as from 6.4.06.

(a) 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.

(b) 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.

(c) 1999 c. 30.

(d) S.I. 2002/427.

(e) 2003 c. 1.

(f) 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).

(g) 1988 c. 1.

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¹Defn. of “employer-financed retirement scheme” inserted by art. 21(2)(b) of S.I. 2006/744 as from 6.4.06.

“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(a);

►¹“employer-financed retirement benefits scheme” has the same meaning given by section 393A of the 2003 Act(b) (employer-financed retirement benefits scheme);◀

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

“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(d);

“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(e);

“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(f);

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

“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(h);

“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

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

(b) Section 393A was inserted by the Finance Act 2004.

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

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

(e) 1980 c. 46.

(f) 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).

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

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

rights under any such arrangement)–

(a) to which–

- (i) the holder of an office or employment has contributed by way of payments out of ►¹earnings which have been allowed as a deduction under paragraph 51 of Schedule 36 to the Finance Act 2004 (individuals with pre-commencement entitlement to corresponding relief),◀
- (ii) Article 17A of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976(a) (pension scheme contributions) applies;

¹Words in reg. 2(1)(a)(i) & sub-para. (b) substituted by art. 21(3)(a)(i) & (ii) of S.I. 2006/744 as from 6.4.06.

►¹(b) made with a scheme which is an occupational pension scheme–

- (i) registered under section 153 of the Finance Act 2004, or
- (ii) which is to be treated as becoming a registered pension scheme under section 153(9) of the Finance Act 2004 in accordance with Part 1 of Schedule 36 to that Act,◀

►²(c) to which section 308A of the 2003 Act (exemption of contributions to overseas pension scheme) applies;◀

²Reg. 2(1)(c), words in sub-para. (d) substituted and sub-para. (f) omitted by art. 21(3)(a)(iii)-(v) of S.I. 2006/744 as from 6.4.06.

- (d) which are exempt or qualify for relief from, or are not liable to charge to, income tax by virtue of ►²section 614 or 615 of the Taxes Act (exemptions and reliefs in respect of income from investments etc of certain pension schemes and other overseas pensions), or section 629, 630 or 643 of the 2003 Act (pre-1973 pensions paid under the Overseas Pensions Act 1973 and Malawi, Trinidad and Tobago and Zambia government 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) ►²◀

►³(2) Paragraph (1)(e) above does not apply to any employer-financed retirement benefits scheme arrangement which has been provided to an employee as part of or in addition to any pension arrangement referred to in paragraph (1)(e) above.◀

³Reg. 2(2) substituted and sub-paras. (3)(a) and (d) omitted by art. 21(3)(b) & (c) of S.I. 2006/744 as from 6.4.06.

(3) For the purposes of this regulation–

(a) ►³◀

(b) “occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993(b);

(c) “public service pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993;

(d) ►³◀

Unapproved pension arrangements

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

⁴Reg. 3(1) substituted by art. 21(4) of S.I. 2006/744 as from 6.4.06.

(a) section 157 of the Finance Act 2004 (de-registration);

(b) paragraphs 52 to 57 of Schedule 36 to that Act; or

(c) section 393A of the 2003 Act,

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–

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

(b) 1993 c. 48.

- (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(a) (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 13(1)(a) 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 on the de-registration of the scheme by Her Majesty's Revenue and Customs by virtue of section 157 of the Finance Act 2004; 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 benefit² or universal credit under Part 1 of the Welfare Reform Act 2012) 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.

¹Words in reg. 5(1)(a)(ii) substituted by art. 21(5) of S.I. 2006/744 as from 6.4.06.

²Words inserted in reg. 5(3)(b) by reg. 32(2) of S.I. 2013/630 as from 29.4.13.

(a) 1992 c. 7.

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 ►¹3(1)(a) 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 on the de-registration of the scheme by Her Majesty's Revenue and Customs by virtue of section 157 of the Finance Act 2004.◀

¹Words in Reg. 6(1)(b) substituted by art. 21(6) of S.I. 2006/744 as from 6.4.06.

(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(a), 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.

(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(b) (information about pensions and divorce ►²and dissolution of a civil partnership◀; 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. ►²and dissolution of a civil partnership◀ in England,

²Words inserted in reg. 7(2) by para. 9 of Sch. 2 to S.I. 2005/2877 as from 5.12.05.

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

(b) S.I. 2000/1048.

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(**a**) 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(**b**) 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.

(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.

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

(b) S.I. 2000/1054.

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

- (a) section 157 of the Finance Act 2004;
- (b) paragraphs 52 to 57 of Schedule 36 to that Act; or
- (c) section 393A of the 2003 Act,

¹Reg. 12(1) substituted by art. 21(7) of S.I. 2006/744 as from 6.4.06.

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 ²12(1)(a) 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 on the de-registration of the scheme by Her Majesty’s Revenue and Customs by virtue of section 157 of the Finance Act 2004; or◀

²Words in reg. 14(1)(a)(ii) substituted by art. 21(8) of S.I. 2006/744 as from 6.4.06.

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- (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 ¹or universal credit under Part 1 of the Welfare Reform Act 2012²) 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.

¹Words inserted in reg. 14(3)(b) by reg. 32(3) of S.I. 2013/630 as from 29.4.13.

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 ²12(1)(a) 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 on the de-registration of the scheme by Her Majesty's Revenue and Customs by virtue of section 157 of the Finance Act 2004. ³

²Words in reg. 15(1)(b) substituted by art. 21(9) of S.I. 2006/744 as from 6.4.06.

(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(a).

(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

(a) 1995 c. 7.

- (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(a), 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(b) (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(c) 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—

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

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

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

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- (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.