
STATUTORY INSTRUMENTS

2005 No. 1455

The Insolvency (Northern Ireland) Order 2005

Individuals

Bankrupt's home

17.—(1) In Chapter II of Part IX of the 1989 Order (protection of bankrupt's estate and investigation of his affairs) the following shall be inserted before Article 257 (restrictions on dispositions of property)—

“Bankrupt's home ceasing to form part of estate

256A.—(1) This Article applies where property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (a) the bankrupt,
- (b) the bankrupt's spouse, or
- (c) a former spouse of the bankrupt.

(2) At the end of the period of 3 years beginning with the date of the bankruptcy the interest mentioned in paragraph (1) shall—

- (a) cease to be comprised in the bankrupt's estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer).

(3) Paragraph (2) shall not apply if during the period mentioned in that paragraph—

- (a) the trustee realises the interest mentioned in paragraph (1),
- (b) the trustee applies for an order for sale in respect of the dwelling-house,
- (c) the trustee applies for an order for possession of the dwelling-house,
- (d) the trustee applies for an order under Article 286 in Chapter IV in respect of that interest, or
- (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in paragraph (1) shall cease to form part of the estate.

(4) Where an application of a kind described in paragraph (3)(b) to (d) is made during the period mentioned in paragraph (2) and is dismissed, unless the High Court orders otherwise the interest to which the application relates shall on the dismissal of the application—

- (a) cease to be comprised in the bankrupt's estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer).

(5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of 3 months beginning with the date of the bankruptcy, the period of 3 years mentioned in paragraph (2)—

- (a) shall not begin with the date of the bankruptcy, but
 - (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.
- (6) The High Court may substitute for the period of 3 years mentioned in paragraph (2) a longer period—
- (a) in prescribed circumstances, and
 - (b) in such other circumstances as the Court thinks appropriate.
- (7) The rules may make provision for this Article to have effect with the substitution of a shorter period for the period of 3 years mentioned in paragraph (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).
- (8) The rules may also, in particular, make provision—
- (a) requiring or enabling the trustee of a bankrupt's estate to give notice that this Article applies or does not apply;
 - (b) about the effect of a notice under sub-paragraph (a);
 - (c) requiring the trustee of a bankrupt's estate to make an application to the Land Registry or the Registry of Deeds.
- (9) Rules under paragraph (8)(b) may, in particular—
- (a) disapply this Article;
 - (b) enable the High Court to disapply this Article;
 - (c) make provision in consequence of a disapplication of this Article;
 - (d) enable the Court to make provision in consequence of a disapplication of this Article;
 - (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”.
- (2) Article 286 of the 1989 Order (charge on bankrupt's home) shall be amended as follows—
- (a) in paragraph (2) for “, up to the value from time to time of the property secured,” substitute “, up to the charged value from time to time,”
 - (b) after paragraph (2) insert—
 - “(2A) In paragraph (2) “the charged value” means—
 - (a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus
 - (b) interest on that amount from the date of the charging order at the prescribed rate.
 - (2B) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the rules.”, and
 - (c) at the end insert—
 - “(8) But an order under paragraph (6) may not vary a charged value.”.
- (3) The following shall be inserted after Article 286 of the 1989 Order—

“Low value home: application for sale, possession or charge

286A.—(1) This Article applies where—

- (a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
 - (i) the bankrupt,
 - (ii) the bankrupt's spouse, or

- (iii) a former spouse of the bankrupt, and
 - (b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under Article 286 in respect of the property.
- (2) The High Court shall dismiss the application if the value of the interest is below such amount as may for the time being be specified for the purposes of this paragraph by order under Article 362(1)(b).
- (3) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the order which specifies the amount for the purposes of paragraph (2).”
- (4) The following shall be inserted after Article 280(2)(a) of the 1989 Order (after-acquired property: exclusions)—
 - “(aa) any property vesting in the bankrupt by virtue of Article 256A in Chapter II,”
- (5) In Article 362(1)(b) of the 1989 Order (monetary limits in bankruptcy) after the entry for Article 247 there shall be inserted—
 - “Article 286A (value of property below which application for sale, possession or charge to be dismissed);”
- (6) In paragraph (7)—
 - (a) “pre-commencement bankrupt” means an individual who is adjudged bankrupt before paragraph (1) comes into operation, and
 - (b) “the transitional period” is the period of 3 years beginning with the date on which paragraph (1) comes into operation.
- (7) If a pre-commencement bankrupt’s estate includes an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of him, his spouse or a former spouse of his, at the end of the transitional period that interest shall—
 - (a) cease to be comprised in the estate, and
 - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (8) But paragraph (7) shall not apply if before or during the transitional period—
 - (a) any of the events mentioned in Article 256A(3) of the 1989 Order (inserted by paragraph (1) above) occurs in relation to the interest or the dwelling-house, or
 - (b) the trustee obtains any order of a court, or makes any agreement with the bankrupt, in respect of the interest or the dwelling-house.
- (9) Paragraphs (4) to (9) of Article 256A of the 1989 Order shall have effect, with any necessary modifications, in relation to the provision made by paragraphs (6) to (8); in particular—
 - (a) a reference to the period mentioned in Article 256A(2) shall be construed as a reference to the transitional period; and
 - (b) in the application of Article 256A(5) a reference to the date of the bankruptcy shall be construed as a reference to the date on which paragraph (1) comes into operation.
- (10) In Article 11 of the 1989 Order (meaning of “bankrupt’s estate”), after paragraph (5) insert—
 - “(5A) This Article has effect subject to Article 256A.”