

## STATUTORY INSTRUMENTS

# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART IX BANKRUPTCY

#### Modifications etc. (not altering text)

- C1** Pts. VIII-X (arts. 209-345) modified by Foyle Fisheries Act (Northern Ireland) 1952 (c. 5), s. 52K(2) (as inserted (prosp.) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **3(1)** (with art. 32))

#### CHAPTER I

#### BANKRUPTCY PETITIONS; BANKRUPTCY ORDERS

#### *Preliminary*

#### Who may present a bankruptcy petition

**238.**—(1) A petition for a bankruptcy order (a bankruptcy petition) to be made against an individual may be presented to the High Court in accordance with the following provisions of this Part—

- (a) by one of the individual's creditors or jointly by more than one of them,
- (b) by the individual himself,
- [<sup>F1</sup>(ba) by a temporary administrator (within the meaning of Article 38 of the EC Regulation),
- (bb) by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation,]
- (c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part VIII,<sup>F2</sup> . . .
- (d) <sup>F3</sup> . . . . .

(2) Subject to those provisions, the High Court may make a bankruptcy order on any such petition.

**F1** SR 2002/334

**F2** Word before art. 238(1)(d) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 3, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

**F3** Art. 238(1)(d) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 3, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

*Status: Point in time view as at 01/03/2016.*

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### Conditions to be satisfied in respect of debtor

**239.**—(1) A bankruptcy petition shall not be presented to the High Court under Article 238(1) (a) or (b) unless the debtor—

- (a) is domiciled in Northern Ireland,
- (b) is personally present in Northern Ireland on the day on which the petition is presented, or
- (c) at any time in the 3 years immediately preceding that day—
  - (i) has been ordinarily resident, or has had a place of residence, in Northern Ireland, or
  - (ii) has carried on business in Northern Ireland.

(2) The reference in paragraph (1)(c) to an individual carrying on business includes—

- (a) the carrying on of business by a firm or partnership of which the individual is a member, and
- (b) the carrying on of business by an agent or manager for the individual or for such a firm or partnership.

[<sup>F4</sup>(3) This Article is subject to Article 3 of the EC Regulation.]

<b>F4</b> SR 2002/334
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### Other preliminary conditions

**240.**—(1) Where a bankruptcy petition relating to an individual is presented by a person who is entitled to present a petition under 2 or more sub#paragraphs of Article 238(1), the petition is to be treated for the purposes of this Part as a petition under such one of those sub#paragraphs as may be specified in the petition.

(2) A bankruptcy petition shall not be withdrawn without the leave of the High Court.

(3) The High Court may, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, dismiss a bankruptcy petition or stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.

### *Creditor's petition*

#### Grounds of creditor's petition

**241.**—(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to Articles 242 to 244, a creditor's petition may be presented to the High Court in respect of a debt or debts only if, at the time the petition is presented—

- (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
- (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
- (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and

(d) there is no outstanding application to set aside a statutory demand served (under Article 242) in respect of the debt or any of the debts.

(3) “The bankruptcy level” is £750; but the Department may by order subject to affirmative resolution substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

### **Definition of “inability to pay”, etc.; the statutory demand**

**242.**—(1) For the purposes of Article 241(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

- (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as “the statutory demand”) in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules; or
- (b) a certificate of unenforceability has been granted under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>F5</sup> in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed.

(2) For the purposes of Article 241(2)(c) the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—

- (a) the petitioning creditor to whom it is owed has served on the debtor a demand (also known as “the statutory demand”) in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due,
- (b) at least 3 weeks have elapsed since the demand was served, and
- (c) the demand has been neither complied with nor set aside in accordance with the rules.

**F5** 1981 NI 6

### **Creditor with security**

**243.**—(1) A debt which is the debt, or one of the debts, in respect of which a creditor's petition is presented need not be unsecured if either—

- (a) the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors, or
- (b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.

(2) In a case falling within paragraph (1)(b) the secured and unsecured parts of the debt are to be treated for the purposes of Articles 241 to 244 as separate debts.

### **Expedited petition**

**244.** In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under Article 242, the petition may be presented before the expiration of the period of 3 weeks mentioned in that Article if there is a serious possibility that the debtor's

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property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect.

### Proceedings on creditor's petition

**245.**—(1) The High Court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—

- (a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or
- (b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.

(2) In a case in which the petition contains such a statement as is required by Article 244, the High Court shall not make a bankruptcy order within 3 weeks from the service of any statutory demand under Article 242.

(3) The High Court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—

- (a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,
- (b) that the acceptance of that offer would have required the dismissal of the petition, and
- (c) that the offer has been unreasonably refused;

and, in determining for the purposes of this paragraph whether the debtor is able to pay all his debts, the Court shall take into account his contingent and prospective liabilities.

(4) In determining for the purposes of this Article what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.

(5) Nothing in Articles 241 to 244 and this Article prejudices the power of the High Court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those Articles and this Article had been done only by or in relation to the remaining creditors or debts.

### *Debtor's petition*

#### Grounds of debtor's petition

[<sup>F6</sup>**246.** A joint debtor's petition in Form 8 in Schedule 3 to the Insolvent Partnerships Order (Northern Ireland) 1991 may be presented to the High Court by individual members only on the grounds that the partnership is unable to pay its debts.]

<b>F6</b> SR 1991/366
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#### Appointment of insolvency practitioner by the High Court

**247.**—(1) Subject to Article 248, on the hearing of a debtor's petition the High Court shall not make a bankruptcy order if it appears to the Court—

- (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts, so far as unsecured, would be less than the small bankruptcies level,
- (b) that if a bankruptcy order were made, the value of the bankrupt's estate would be equal to or more than the minimum amount,

(c) that within the 5 years immediately preceding the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, and

(d) that it would be appropriate to appoint a person to prepare a report under Article 248;

and in this paragraph “the minimum amount” and “the small bankruptcies level” mean such amounts as may for the time being be specified by order under Article 362(1)(b).

(2) Where on the hearing of the petition it appears to the High Court as mentioned in paragraph (1), the Court shall appoint a person who is qualified to act as an insolvency practitioner in relation to the debtor—

- (a) to prepare a report under Article 248, and
- (b) subject to Article 232(3), to act in relation to any voluntary arrangement to which the report relates either as trustee or otherwise for the purpose of supervising its implementation.

### **Action on report of insolvency practitioner**

**248.**—(1) A person appointed under Article 247 shall inquire into the debtor's affairs and, within such period as the High Court may direct, shall submit a report to the Court stating whether the debtor is willing, for the purposes of Part VIII, to make a proposal for a voluntary arrangement.

(2) A report which states that the debtor is willing as is mentioned in paragraph (1) shall also state—

- (a) whether, in the opinion of the person making the report, a meeting of the debtor's creditors should be summoned to consider the proposal, and
  - (b) if in that person's opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (3) On considering a report under this Article the High Court may—
- (a) without any application, make an interim order under Article 226, if it thinks that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal, or
  - (b) if it thinks it would be inappropriate to make such an order, make a bankruptcy order.

(4) An interim order made by virtue of this Article ceases to have effect at the end of such period as the High Court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the applicable provisions of Part VIII.

(5) Where it has been reported to the High Court under this Article that a meeting of the debtor's creditors should be summoned, the person making the report shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report; and the meeting is then deemed to have been summoned under Article 231, and paragraphs (2) and (3) of that Article, and Articles 232 to 237 apply accordingly.

### **[<sup>F7</sup> Debtor who meets conditions for a debt relief order**

**248A.**—(1) This Article applies where, on the hearing of a debtor's petition—

- (a) it appears to the High Court that a debt relief order would be made in relation to the debtor if, instead of presenting the petition, he had made an application under Part 7A; and
- (b) the Court does not appoint an insolvency practitioner under Article 247.

(2) If the High Court thinks it would be in the debtor's interests to apply for a debt relief order instead of proceeding on the petition, the Court may refer the debtor to an approved intermediary (within the meaning of Part 7A) for the purposes of making an application for a debt relief order.

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(3) Where a reference is made under paragraph (2) the High Court shall stay proceedings on the petition on such terms and conditions as it thinks fit; but if following the reference a debt relief order is made in relation to the debtor the Court shall dismiss the petition.]

**F7** Art. 248A inserted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 6, 7(1), Sch. para. 4(7); S.R. 2011/13, art. 2

**Summary administration**

**249.** <sup>F8</sup> .....

**F8** Art. 249 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 4, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

*Other cases for special consideration*

**Default in connection with voluntary arrangement**

**250.**—(1) The High Court shall not make a bankruptcy order on a petition under Article 238(1)(c) (supervisor of, or person bound by, voluntary arrangement proposed and approved) unless it is satisfied—

- (a) that the debtor has failed to comply with his obligations under the voluntary arrangement, or
- (b) that information which was false or misleading in any material particular or which contained material omissions—
  - (i) was contained in any statement of affairs or other document supplied by the debtor under Part VIII to any person, or
  - (ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under that Part, or
- (c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.

(2) Where a bankruptcy order is made on a petition under Article 238(1)(c), any costs properly incurred as costs of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

**Petition in respect of a solicitor**

**251.** <sup>F9</sup> .....

**F9** Art. 251 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 5, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

## Commencement and duration of bankruptcy; discharge

### Commencement and continuance

- 252.** The bankruptcy of an individual against whom a bankruptcy order has been made—
- (a) commences with the day on which the order is made, and
  - (b) continues until the individual is discharged under the following provisions of this Chapter.

### [<sup>F10</sup>Duration

**253.**—(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.

(2) If before the end of that period the official receiver files with the High Court a notice stating that investigation of the conduct and affairs of the bankrupt under Article 262 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.

(3) On the application of the official receiver or the trustee of a bankrupt's estate, the High Court may order that the period specified in paragraph (1) shall cease to run until—

- (a) the end of a specified period, or
- (b) the fulfilment of a specified condition.

(4) The High Court may make an order under paragraph (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In paragraph (3)(b) “condition” includes a condition requiring that the High Court be satisfied of something.

(6) This Article is without prejudice to any power of the High Court to annul a bankruptcy order.

(7) Nothing in this Article applies to a bankrupt who is a solicitor.]

**F10** Art. 253 substituted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 12(1) (with art. 4, Sch. 4 paras. 3-5); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7)

#### Modifications etc. (not altering text)

**C2** Art. 253 excluded (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 12(3), Sch. 4 para. 3 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

### [<sup>F11</sup>Discharge where bankrupt is a solicitor]

**254.**—[<sup>F12</sup>(1) A bankrupt who is a solicitor is discharged from bankruptcy by an order of the High Court under this Article.

(1A) An application for an order under this Article may be made at any time.]

(2) On an application under this Article the High Court may—

- (a) refuse to discharge the bankrupt from bankruptcy,
- (b) make an order discharging him absolutely, or
- (c) make an order discharging him subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order.

(3) The High Court may provide for an order falling within paragraph (2)(b) or (c) to have immediate effect or to have its effect suspended for such period, or until the fulfilment of such

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conditions (including a condition requiring the Court to be satisfied as to any matter), as may be specified in the order.

- F11** Art. 254 heading substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 12(2)(a) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))
- F12** Art. 254(1)(1A) substituted (27.3.2006) for art. 254(1) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 12(2)(b) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

### Effect of discharge

**255.**—(1) Subject to the following provisions of this Article, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—

- (a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or
- (b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part;

and, in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.

(2) Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.

(3) Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party.

(4) Discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under a statutory provision relating to the public revenue or of a recognisance, with the consent of the Treasury.

[<sup>F13</sup>(4A) In paragraph (4) the reference to a fine includes a reference to a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002.]

(5) Discharge does not, except to such extent and on such conditions as the High Court may direct, release the bankrupt from any bankruptcy debt which—

- (a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987<sup>F14</sup>, being in either case damages in respect of personal injuries to any person, or
- (b) arises under any order made in family proceedings or in domestic proceedings<sup>F15</sup> or under a maintenance assessment made under the Child Support (Northern Ireland) Order 1991].

(6) Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.

(7) Discharge does not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(8) In this Article—

“domestic proceedings” means domestic proceedings within the meaning of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F16</sup>;



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[<sup>F17</sup>“family proceedings” has the meaning given by Article 12(5) of the Family Law (Northern Ireland) Order 1993;]

“fine” includes any pecuniary penalty, pecuniary forfeiture or pecuniary compensation payable on a conviction; and

“personal injuries” includes death and any disease or other impairment of a person's physical or mental condition.

- F13 2002 c. 29
- F14 1987 NI 20
- F15 1991 NI 23
- F16 1981 NI 26
- F17 1995 NI 2

### [<sup>F18</sup>Post-discharge restrictions

**255A.** Schedule 2A (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.]

- F18 Art. 255A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(1) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7)

### Power of High Court to annul bankruptcy order

**256.—**(1) The High Court may annul a bankruptcy order if it at any time appears to the Court—

- (a) that, on any grounds existing at the time the order was made, the order ought not to have been made, or
- (b) that, to the extent required by the rules, the bankruptcy debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the Court.

(2) The High Court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(3) <sup>F19</sup>.....

(4) Where the High Court annuls a bankruptcy order (whether under this Article or under Article 235[<sup>F20</sup> or 237D])—

- (a) any sale or other disposition of property, payment made or other thing duly done, under any provision in Parts VIII to X, by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the Court is valid, but
- (b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the Court may appoint or, in default of any such appointment, revert to the bankrupt on such terms (if any) as the Court may direct;

and the Court may include in its order such supplemental provisions as may be authorised by the rules.

(5) <sup>F21</sup>.....

- F19 Art. 256(3) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 6(a), Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

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- F20** Words in art. 256(4) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 6(b) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)
- F21** Art. 256(5) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 6(c), Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

## CHAPTER II

### PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS

#### [<sup>F22</sup>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 [<sup>F23</sup>or civil partner] , or
- (c) a former spouse [<sup>F24</sup>or former civil partner] 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

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(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.]

- F22** Art. 256A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(1) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7)
- F23** Words in art. 256A(1)(b) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(2)(a) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)
- F24** Words in art. 256A(1)(c) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(2)(b) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

**Modifications etc. (not altering text)**

- C3** Art. 256A(2) modified (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(9)(a) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)
- C4** Art. 256A(4) - (9) modified (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(9) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

**Restrictions on dispositions of property**

**257.**—(1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this Article applies is void except to the extent that it is or was made with the consent of the High Court, or is or was subsequently ratified by the Court.

(2) Paragraph (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that paragraph, the person paid shall hold the sum paid for the bankrupt as part of his estate.

(3) This Article applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Articles 278 to 308, of the bankrupt's estate in a trustee.

(4) The preceding provisions of this Article do not give a remedy against any person—

*Status: Point in time view as at 01/03/2016.*

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- (a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented, or
  - (b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this paragraph, no remedy.
- (5) Where after the commencement of his bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this Article, that debt is deemed for the purposes of any of Parts VIII to X to have been incurred before the commencement of the bankruptcy unless—
- (a) that banker or person had notice of the bankruptcy before the debt was incurred, or
  - (b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.
- (6) A disposition of property is void under this Article notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this Article affects any disposition made by a person of property held by him on trust for any other person.

**Modifications etc. (not altering text)**

**C5** Art. 257 excluded by [Financial Markets and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), reg. 16(3) (as amended (1.10.2009) by [Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), reg. 6(b))

**Restriction on proceedings and remedies**

**258.**—(1) At any time when proceedings on a bankruptcy petition are pending or an individual has been adjudged bankrupt the High Court may stay any action, proceedings, execution or other legal process against the property or person of the debtor or, as the case may be, of the bankrupt.

(2) Any court in which proceedings are pending against any individual may, on proof that a bankruptcy petition has been presented in respect of that individual or that he is an undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit.

(3) Subject to paragraph (4) and to Part VI of the Judgments Enforcement (Northern Ireland) Order 1981<sup>F25</sup> after the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall—

- (a) have any remedy against the property or person of the bankrupt in respect of that debt, or
- (b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the High Court and on such terms as the Court may impose.

(4) Nothing in Parts VIII to X affects any right of distress against property comprised in a bankrupt's estate and such right is exercisable notwithstanding that the property has vested in the trustee.

(5) Subject to paragraphs (6) and (7), paragraph (3) does not affect the right of a secured creditor of the bankrupt to enforce his security.

(6) Where any goods of an undischarged bankrupt are held by any person by way of pledge, pawn or other security, the official receiver may, after giving notice in writing of his intention to do so, inspect the goods.

(7) Where a notice such as is mentioned in paragraph (6) has been given to any person, that person is not entitled, without leave of the High Court, to realise his security unless he has given the

trustee of the bankrupt's estate a reasonable opportunity of inspecting the goods and of exercising the bankrupt's right of redemption.

(8) References in this Article to the property or goods of the bankrupt are to any of his property or goods, whether or not comprised in his estate.

F25 1981 NI 6

### **Power to appoint interim receiver**

**259.**—(1) The High Court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver to be interim receiver of the debtor's property.

(2) Where the High Court has, on a debtor's petition, appointed an insolvency practitioner under Article 247 and it is shown to the Court as mentioned in paragraph (1) of this Article, the Court may, without making a bankruptcy order, appoint that practitioner, instead of the official receiver, to be interim receiver of the debtor's property.

(3) The High Court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities of a receiver and manager under Article 260.

(4) An order of the High Court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.

(5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information, and shall attend on the interim receiver at such times, as the latter may for the purpose of carrying out his functions under this Article reasonably require.

(6) Where an interim receiver is appointed, Article 258(3) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.

(7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the High Court by order otherwise terminates the appointment.

(8) References in this Article to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were adjudged bankrupt.

### **Receivership pending appointment of trustee**

**260.**—(1) Between the making of a bankruptcy order and the time at which the bankrupt's estate vests in a trustee under Articles 278 to 308, the official receiver is the receiver and (subject to Article 341 (special manager)) the manager of the bankrupt's estate and is under a duty to act as such.

(2) The function of the official receiver while acting as receiver or manager of the bankrupt's estate under this Article is to protect the estate; and for this purpose—

- (a) he has the same powers as if he were a receiver or manager appointed by the High Court, and
- (b) he is entitled to sell or otherwise dispose of any perishable goods comprised in the estate and any other goods so comprised the value of which is likely to diminish if they are not disposed of.

(3) The official receiver while acting as receiver or manager of the estate under this Article—

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- (a) shall take all such steps as he thinks fit for protecting any property which may be claimed for the estate by the trustee of that estate,
  - (b) is not, except in pursuance of directions given by the Department, required to do anything that involves his incurring expenditure,
  - (c) may, if he thinks fit (and shall, if so directed by the High Court) at any time summon a general meeting of the bankrupt's creditors.
- (4) Where—
- (a) the official receiver acting as receiver or manager of the estate under this Article seizes or disposes of any property which is not comprised in the estate, and
  - (b) at the time of the seizure or disposal the official receiver believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,

the official receiver is not to be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by his negligence; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

(5) This Article does not apply where by virtue of Article 270 (appointment of trustee; special cases) the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

#### Statement of affairs

**261**<sup>F26</sup>.—(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs to the official receiver within 21 days from the commencement of the bankruptcy.

- (2) The statement of affairs shall contain—
  - (a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed, and
  - (b) such other information as may be prescribed.
- (3) The official receiver may, if he thinks fit—
  - (a) release the bankrupt from his duty under paragraph (1), or
  - (b) extend the period specified in paragraph (1);

and where the official receiver has refused to exercise a power conferred by this Article, the High Court, if it thinks fit, may exercise it.

- (4) A bankrupt who—
  - (a) without reasonable excuse fails to comply with the obligation imposed by this Article, or
  - (b) without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements,

is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

**F26** mod. by SR 1991/365

#### <sup>F27</sup>Investigatory duties of official receiver

**262.**—(1) The official receiver shall—

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- (a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and
  - (b) make such report (if any) to the High Court as the official receiver thinks fit.
- (2) Paragraph (1) shall not apply to a case in which the official receiver thinks an investigation under that paragraph unnecessary.
- (3) Where a bankrupt makes an application for discharge under Article 254—
- (a) the official receiver shall make a report to the Court about such matters as may be prescribed, and
  - (b) the Court shall consider the report before determining the application.
- (4) A report by the official receiver under this Article shall in any proceedings be prima facie evidence of the facts stated in it.]

**F27** Art. 262 substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 14 (with art. 4); [S.R. 2006/21](#), art. 2 (with [S.R. 2006/22](#), arts. 2-7)

### Public examination of bankrupt

**263.**—(1) Where a bankruptcy order has been made, the official receiver may at any time before the discharge of the bankrupt apply to the High Court for the public examination of the bankrupt.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than one-half, in value, of those creditors (including the creditor giving notice).

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the bankrupt shall be held on a day appointed by the Court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.

(4) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure, namely—

- (a) the official receiver,
- (b) the trustee of the bankrupt's estate, if his appointment has taken effect,
- (c) any person who has been appointed as special manager of the bankrupt's estate or business,
- (d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.

(5) If a bankrupt without reasonable excuse fails at any time to attend his public examination under this Article he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

### Duties of bankrupt in relation to official receiver

**264.**—(1) Where a bankruptcy order has been made, the bankrupt is under a duty—

- (a) to deliver possession of his estate to the official receiver, and
- (b) to deliver up to the official receiver all books, papers and other records of which he has possession or control and which relate to his estate and affairs (including any which would be privileged from disclosure in any proceedings).

(2) In the case of any part of the bankrupt's estate which consists of things possession of which cannot be delivered to the official receiver, and in the case of any property that may be claimed for the bankrupt's estate by the trustee, it is the bankrupt's duty to do all such things as may reasonably be required by the official receiver for the protection of those things or that property.

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(3) Paragraphs (1) and (2) do not apply where by virtue of Article 270 the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

<sup>F28</sup>(4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may reasonably require—

- (a) for a purpose of this Chapter, or
- (b) in connection with the making of a bankruptcy restrictions order.]

(5) Paragraph (4) applies to a bankrupt after his discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

**F28** Art. 264(4) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 7 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

### CHAPTER III

#### TRUSTEES IN BANKRUPTCY

##### *Tenure of office as trustee*

##### **Power to make appointments**

**265.**—(1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) is exercisable—

- (a) <sup>F29</sup> . . . by a general meeting of the bankrupt's creditors;
- (b) under Articles 268(2), 269(2) or 273(6) by the Department; or
- (c) under Article 270, by the High Court.

(2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.

(3) Any power to appoint a person as trustee of a bankrupt's estate includes power to appoint 2 or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(4) Subject to paragraph (5), the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

(5) The appointment of any person as trustee takes effect only if that person accepts the appointment in accordance with the rules.

(6) This Article is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the estate.

**F29** Words in art. 265(1)(a) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 8, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)



**Summoning of meeting to appoint first trustee**

**266.**—(1) Subject to Articles 267(3) and 270(5), where a bankruptcy order has been made<sup>F30</sup> . . . the official receiver shall, as soon as practicable within the 12 weeks from the day on which the order was made, decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.

(2) Subject to Article 267, if the official receiver decides not to summon such a meeting, he shall, before the expiration of the period of 12 weeks mentioned in paragraph (1), give notice of his decision to the High Court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.

(3) As from the giving to the High Court of a notice under paragraph (2), the official receiver is the trustee of the bankrupt's estate.

**F30** Words in art. 266(1)(a) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 9, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

**Power of creditors to requisition meeting**

**267.**—(1) Where in the case of any bankruptcy—

(a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee,<sup>F31</sup> . . .

(b) <sup>F32</sup> . . . . .

any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.

(2) If such a request appears to the official receiver to be made with the concurrence of not less than one-quarter, in value, of the bankrupt's creditors (including the creditor making the request), the official receiver shall summon the requested meeting.

(3) Accordingly, where the duty imposed by paragraph (2) has arisen, the official receiver is required neither to reach a decision for the purposes of Article 266(1) nor (if he has reached one) to serve any notice under Article 266(2).

**F31** Art. 267(1)(b) and preceding word repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 10, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)  
**F32** Art. 267(1)(b) and preceding word repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 10, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

**Failure of meeting to appoint trustee**

**268.**—(1) If a meeting summoned under Article 266 or 267 is held but no appointment of a person as trustee is made, the official receiver shall decide whether to refer the need for an appointment to the Department.

(2) On a reference made in pursuance of that decision, the Department shall either make an appointment or decline to make one.

(3) If—

(a) the official receiver decides not to refer the need for an appointment to the Department, or

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(b) on such a reference the Department declines to make an appointment, the official receiver shall give notice of his decision or, as the case may be, of the Department's decision to the High Court.

(4) As from the giving of notice under paragraph (3) in a case in which no notice has been given under Article 266(2), the official receiver shall be trustee of the bankrupt's estate.

**Appointment of trustee by Department**

**269.**—(1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter he may apply to the Department for the appointment of a person as trustee instead of the official receiver.

(2) On an application under paragraph (1) the Department shall either make an appointment or decline to make one.

(3) Such an application may be made notwithstanding that the Department has declined to make an appointment either on a previous application under paragraph (1) or on a reference under Article 268 or under Article 273(4).

(4) Where the trustee of a bankrupt's estate has been appointed by the Department (whether under this Article or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the High Court so allows, shall advertise his appointment in accordance with the Court's directions.

(5) In that notice or advertisement the trustee shall—

- (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under Article 274, and
- (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

**Special cases**

**270.**—(1) <sup>F33</sup> .....

(2) <sup>F33</sup> .....

(3) Where a bankruptcy order is made in a case in which an insolvency practitioner's report has been submitted to the High Court under Article 248<sup>F34</sup> . . . , the Court, if it thinks fit, may on making the order appoint the person who made the report as trustee.

(4) Where a bankruptcy order is made (whether or not on a petition under Article 238(1)(c)) at a time when there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII, the High Court, if it thinks fit, may on making the order appoint the supervisor of the arrangement as trustee.

(5) Where an appointment is made under paragraph (3) or (4), the official receiver is not under the duty imposed by Article 266(1) (to decide whether or not to summon a meeting of creditors).

(6) Where the trustee of a bankrupt's estate has been appointed by the High Court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the Court so allows, shall advertise his appointment in accordance with the directions of the Court.

(7) In that notice or advertisement he shall—

- (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under Article 274, and
- (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

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- F33** Art. 270(1)(2) repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, 31, Sch. 8 para. 11(a), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F34** Words in art. 270(3) repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, 31, Sch. 8 para. 11(b), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

### Removal of trustee; vacation of office

**271.**—(1) Subject to paragraph (4), the trustee of a bankrupt's estate may be removed from office only by an order of the High Court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the rules.

(2) <sup>F35</sup> .....

(3) Where the official receiver is trustee by virtue of Article 266(3) or 268(4) or a trustee is appointed by the Department or (otherwise than under Article 270(4)) by the High Court, a general meeting of the bankrupt's creditors shall be summoned for the purpose of replacing the trustee only if—

- (a) the trustee thinks fit, or
- (b) the High Court so directs, or
- (c) the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one#quarter, in value, of the creditors (including the creditor making the request).

(4) If the trustee was appointed by the Department, he may be removed by a direction of the Department.

(5) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.

(6) The trustee may, in the prescribed circumstances, resign his office by giving notice of his resignation to the High Court.

(7) The trustee shall vacate office on giving notice to the High Court that a final meeting has been held under Article 304 and of the decision (if any) of that meeting.

(8) The trustee shall vacate office if the bankruptcy order is annulled.

- F35** Art. 271(2) repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, 31, Sch. 8 para. 12, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

### Release of trustee

**272.**—(1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—

- (a) where that person is appointed by a general meeting of the bankrupt's creditors or by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced, and
- (b) where that person is appointed by the High Court, such time as the Court may determine.

(2) If the official receiver while he is the trustee gives notice to the Department that the administration of the bankrupt's estate in accordance with Chapter IV is for practical purposes complete, he shall have his release with effect from such time as the Department may determine.

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(3) A person other than the official receiver who has ceased to be the trustee shall have his release with effect from the following time, that is to say—

- (a) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has not resolved against his release or who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has resolved against his release, or by the High Court, or by the Department, or who has vacated office under Article 271(5), such time as the Department may, on an application by that person, determine;
- (c) in the case of a person who has resigned, such time as may be prescribed;
- (d) in the case of a person who has vacated office under Article 271(7)—
  - (i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine; and
  - (ii) if that meeting has not so resolved, the time at which the person vacated office.

(4) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the High Court may determine.

(5) Where the official receiver or the trustee has his release under this Article, he shall, with effect from the time specified in paragraphs (1) to (4), be discharged from all liability both in respect of acts or omissions of his in the administration of the estate and otherwise in relation to his conduct as trustee.

(6) Nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 277.

**Vacancy in office of trustee**

**273.**—(1) This Article applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.

(2) The official receiver shall be trustee until the vacancy is filled.

(3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of Article 287(9) (creditors' requisition).

(4) If at the expiration of 28 days from the day on which the vacancy first came to the official receiver's attention he has not summoned, and is not proposing to summon, a general meeting of creditors for the purpose of filling the vacancy, he shall refer the need for an appointment to the Department.

(5) <sup>F36</sup>.....

(6) On a reference to the Department under paragraph (4)<sup>F37</sup> . . . the Department shall either make an appointment or decline to make one.

(7) If on a reference under paragraph (4)<sup>F37</sup> . . . no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate, but without prejudice to his power to make a further reference.

(8) References in this Article to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that

estate after the holding of a final meeting summoned under Article 304 or the giving by the official receiver of notice under Article 272(2).

- F36** Art. 273(5) repealed (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 13(a), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F37** Words in art. 273(6)(7) repealed (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 13(b), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

### *Control of trustee*

#### **Creditors' committee**

**274.**—(1) Subject to paragraph (2), a general meeting of a bankrupt's creditors (whether summoned under the preceding provisions of this Chapter or otherwise) may, in accordance with the rules, establish a committee (“the creditors' committee”) to exercise the functions conferred on it by or under this Order.

(2) A general meeting of the bankrupt's creditors shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt's estate, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver.

#### **Exercise by Department of functions of creditors' committee**

**275.**—(1) The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is trustee of the bankrupt's estate; but at any such time the functions of the committee under this Order shall be vested in the Department, except to the extent that the rules otherwise provide.

(2) Where in the case of any bankruptcy there is for the time being no creditors' committee and the trustee of the bankrupt's estate is a person other than the official receiver, the functions of such a committee shall be vested in the Department, except to the extent that the rules otherwise provide.

#### **General control of trustee by the High Court**

**276.**—(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the High Court; and on such an application the Court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.

(2) The trustee of a bankrupt's estate may apply to the High Court for directions in relation to any particular matter arising under the bankruptcy.

[<sup>F38</sup>(2A) Where at any time after a bankruptcy petition has been presented to the High Court against any person, whether under the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 or not, the attention of the Court is drawn to the fact that the person in question is a member of an insolvent partnership, the Court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(2B) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in paragraph (2A), the High Court may give such directions for consolidating the proceedings, or any of them, as it thinks just.

*Status: Point in time view as at 01/03/2016.*

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(2C) Any order or directions under paragraph (2A) or (2B) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership, or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.]

F38 SR 1995/225

### **Liability of trustee**

277.—(1) Where on an application under this Article the High Court is satisfied—

- (a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or
- (b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

the Court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the Court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

(2) Paragraph (1) is without prejudice to any liability arising apart from this Article.

(3) An application under this Article may be made by the official receiver, the Department, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of Article 303(5) (final distribution)) the bankrupt himself.

(4) Where an application under paragraph (3) is to be made by the bankrupt or if it is to be made after the trustee has had his release under Article 272, the leave of the High Court is required for the making of the application.

(5) Where—

- (a) the trustee seizes or disposes of any property which is not comprised in the bankrupt's estate, and
- (b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,

the trustee is not liable to any person (whether under this Article or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

## CHAPTER IV

### ADMINISTRATION BY TRUSTEE

#### *Preliminary*

### **General functions of trustee**

278.—(1) This Chapter applies in relation to any bankruptcy where either—

- (a) the appointment of a person as trustee of a bankrupt's estate takes effect, or
- (b) the official receiver becomes trustee of a bankrupt's estate.

(2) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion.

(3) It is the duty of the trustee, if he is not the official receiver—

- (a) to furnish the official receiver with such information,
- (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
- (c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.

(4) The official name of the trustee shall be “the trustee of the estate of a bankrupt” (inserting the name of the bankrupt); but he may be referred to as “the trustee in bankruptcy” of the particular bankrupt.

#### *Acquisition, control and realisation of bankrupt's estate*

#### **Vesting of bankrupt's estate in trustee**

**279.**—(1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

(2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this Article or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

#### **[<sup>F39</sup> Property subject to restraint order**

**279A.**—(1) This Article applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
- (b) an order under [<sup>F40</sup>section 50, 67A, 128, 131A, 198 or 215A] of that Act has not been made in respect of the property, <sup>F41</sup>...
- (c) the restraint order is discharged [<sup>F42</sup>, and
- (d) immediately after the discharge of the restraint order the property is not detained under or by virtue of section 44A, 47J, 122A, 127J, 193A or 195J of that Act.]

[<sup>F43</sup>(2) The property vests in the trustee as part of the bankrupt's estate.]

(3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

**F39** 2002 c. 29

**F40** Words in art. 279A(1)(b) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by *Policing and Crime Act 2009* (c. 26), s. 116(1), **Sch. 7 para. 60(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(k); S.I. 2016/147, art. 3(i)

**F41** Word in art. 279A(1)(b) repealed (1.6.2015) by *Policing and Crime Act 2009* (c. 26), s. 116(1), **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(f)

**Status:** Point in time view as at 01/03/2016.

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- F42** Art. 279A(1)(d) and word inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 60(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(k); S.I. 2016/147, art. 3(i)
- F43** Art. 279A(2) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 60(3)**; S.I. 2015/983, arts. 2(2)(e), 3(k)

### Property released from detention

**279AA.**—(1) This Article applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(b) of the Proceeds of Crime Act 2002 (property detained under certain provisions),
  - (b) no order is in force in respect of the property under section 41, 50, 120, 128, 190 or 198 of that Act, and
  - (c) the property is released.
- (2) The property vests in the trustee as part of the bankrupt's estate.

### Property in respect of which receivership or administration order made

**279B.**—(1) This Article applies where—

- (a) property is excluded from the bankrupt's estate by virtue of [<sup>F45</sup>section 423(2)(c)] of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the receiver or administrator (as the case may be).
- (2) The property vests in the trustee as part of the bankrupt's estate.

**F39** 2002 c. 29

**F45** Words in art. 279B(1)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 62**; S.I. 2015/983, arts. 2(2)(e), 3(l)

### Property in respect of which realisation order made

**279BA.**—(1) This Article applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(d) of the Proceeds of Crime Act 2002 (property in respect of which an order has been made authorising realisation of the property by an appropriate officer),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the appropriate officer.
- (2) The property vests in the trustee as part of the bankrupt's estate.

### Property subject to certain orders where confiscation order discharged or quashed

**279C.**—(1) This Article applies where—



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- (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property [<sup>F47</sup>excluded from the bankrupt's estate]),
- (b) a confiscation order is made under section 6, 92 or 156 of that Act, and
- (c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

[<sup>F48</sup>(2) Any such property vests in the trustee as part of the bankrupt's estate if it is in the hands of—

- (a) a receiver appointed under Part 2 or 4 of that Act,
- (b) an administrator appointed under Part 3 of that Act,
- (c) an appropriate officer (within the meaning of section 41A, 120A or 190A of that Act).]

(3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).]

**F39** 2002 c. 29

**F47** Words in art. 279C(1)(a) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), s. 116\(1\), Sch. 7 para. 64\(2\)](#); S.I. 2015/983, arts. 2(2)(e), 3(m)

**F48** Art. 279C(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by [Policing and Crime Act 2009 \(c. 26\), s. 116\(1\), Sch. 7 para. 64\(3\)](#); S.I. 2015/983, arts. 2(2)(e), 3(m); S.I. 2016/147, art. 3(i)

### After#acquired property

**280.**—(1) Subject to this Article and Article 282, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2) A notice under this Article shall not be served in respect of—

- (a) any property falling within paragraph (2) or (3) of Article 11,

[<sup>F49</sup>(aa) any property vesting in the bankrupt by virtue of Article 256A in Chapter II,]

- (b) any property which by virtue of any other statutory provision is excluded from the bankrupt's estate, or
- (c) without prejudice to Article 254(2)(c) (order of High Court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.

(3) Subject to paragraph (4), upon the service on the bankrupt of a notice under this Article the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.

(4) Where, whether before or after service of a notice under this Article—

- (a) a person acquires property in good faith, for value and without notice of the bankruptcy, or
- (b) a banker enters into a transaction in good faith and without such notice,

the trustee is not in respect of that property or transaction entitled by virtue of this Article to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.

(5) References in this Article to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under Article 283.

*Status: Point in time view as at 01/03/2016.*

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**F49** Art. 280(2)(aa) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(4) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

### Vesting in trustee of certain items of excess value

**281.**—(1) Subject to Article 282, where—

- (a) property is excluded by virtue of Article 11(2) (tools of trade, household effects, etc.) from the bankrupt's estate, and
- (b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

the trustee may by notice in writing claim that property or, as the case may be, that part of it for the bankrupt's estate.

(2) Upon the service on the bankrupt of a notice under this Article, the property to which the notice relates vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this Article; and the duty imposed by this paragraph has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this Article property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

### Time#limit for notice under Article 280 or 281

**282.**—(1) Except with the leave of the High Court, a notice shall not be served—

- (a) under Article 280, after the expiration of 42 days from the day on which it first came to the knowledge of the trustee that the property in question had been acquired by, or had devolved upon, the bankrupt;
- (b) under Article 281, after the expiration of 42 days from the day on which the property in question first came to the knowledge of the trustee.

(2) For the purposes of this Article—

- (a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and
- (b) anything which comes (otherwise than under sub#paragraph (a)) to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

### Income payments orders

**283.**—(1) The High Court may<sup>F50</sup> . . . make an order (“an income payments order”) claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

[<sup>F51</sup>(1A) An income payments order may be made only on an application instituted—

- (a) by the trustee, and
- (b) before the discharge of the bankrupt.]

(2) The High Court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt<sup>F52</sup> when taken together with any payments to which paragraph (8) applies] below what appears to the Court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payment of income to which it is to apply, either—

- (a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order, or
- (b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) Where the High Court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

<sup>F53</sup>(6) An income payments order shall specify the period during which it is to have effect; and that period—

- (a) may end after the discharge of the bankrupt, but
- (b) may not end after the period of 3 years beginning with the date on which the order is made.

(6A) An income payments order may (subject to paragraph (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).

(6B) Where the Court has made an income payments order in relation to a bankrupt who is a solicitor, nothing in paragraph (6) shall affect the continuance of a condition with respect to income specified in an order made under Article 254(2)(c).]

(7) For the purposes of this Article the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment<sup>F54</sup> and<sup>F55</sup> (despite anything in Article 12 or 13 of the Welfare Reform and Pensions (Northern Ireland) Order 1999)] any payment under a pension scheme but excluding any scheme to which paragraph (8) applies.]

<sup>F54</sup>(8) This paragraph applies to—

- (a) payments by way of guaranteed minimum pension; <sup>F56</sup> ...

<sup>F57</sup>(b) .....

(9) In this Article, “guaranteed minimum pension” <sup>F58</sup>has] the same meaning as in the Pension Schemes (Northern Ireland) Act 1993.]

**F50** Words in art. 283(1) repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 15(2), 31, Sch. 9 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

**F51** Art. 283(1A) inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 15(3) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

**F52** 1995 NI 22

**F53** Art. 283(6)(6A)(6B) substituted (27.3.2006) for art. 283(6) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 15(4) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

**F54** 1995 NI 22

**F55** 1999 NI 11

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- F56** Word in art. 283(8)(a) omitted (6.4.2012) by virtue of [The Pensions \(2008 No. 2 Act\) \(Abolition of Protected Rights\) \(Consequential Provisions\) Order \(Northern Ireland\) 2012 \(S.R. 2012/124\)](#), arts. 1(b), **2(a)**
- F57** Art. 283(8)(b) omitted (6.4.2012) by virtue of [The Pensions \(2008 No. 2 Act\) \(Abolition of Protected Rights\) \(Consequential Provisions\) Order \(Northern Ireland\) 2012 \(S.R. 2012/124\)](#), arts. 1(b), **2(b)**
- F58** Word in art. 283(9) substituted (6.4.2012) by [The Pensions \(2008 No. 2 Act\) \(Abolition of Protected Rights\) \(Consequential Provisions\) Order \(Northern Ireland\) 2012 \(S.R. 2012/124\)](#), arts. 1(b), **2(c)**

### [<sup>F59</sup>Income payments agreement

**283A.**—(1) In this Article “income payments agreement” means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

- (a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt's income for a specified period, or
- (b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

(2) A provision of an income payments agreement of a kind specified in paragraph (1)(a) or (b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the High Court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(4) The following provisions of Article 283 shall apply to an income payments agreement as they apply to an income payments order—

- (a) paragraph (5) (receipts to form part of estate), and
- (b) paragraphs (7) to (9) (meaning of income).

(5) An income payments agreement must specify the period during which it is to have effect; and that period—

- (a) may end after the discharge of the bankrupt, but
- (b) may not end after the period of 3 years beginning with the date on which the agreement is made.

(6) An income payments agreement may (subject to paragraph (5)(b)) be varied—

- (a) by written agreement between the parties, or
- (b) by the High Court on an application made by the bankrupt, the trustee or the official receiver.

(7) The High Court—

- (a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and
- (b) shall grant an application to vary an income payments agreement if and to the extent that the Court thinks variation necessary to avoid the effect mentioned in Article 283(2).]

- F59** Art. 283A inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 16 (with art. 4); [S.R. 2006/21](#), art. 2 (with [S.R. 2006/22](#), arts. 2-7)

### Acquisition by trustee of control

**284.**—(1) The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings).

(2) In relation to, and for the purpose of acquiring or retaining possession of, the bankrupt's estate, the trustee is in the same position as if he were a receiver of property appointed by the High Court; and the Court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee; but notice of the deemed assignment need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself, for protecting the priority of the trustee.

(5) Where any goods comprised in the estate are held by any person by way of pledge, pawn or other security and no notice has been served in respect of those goods by the official receiver under paragraph (6) of Article 258 (restriction on realising security), the trustee may serve such a notice in respect of the goods; and whether or not a notice has been served under this paragraph or that paragraph, the trustee may, if he thinks fit, exercise the bankrupt's right of redemption in respect of any such goods.

(6) A notice served by the trustee under paragraph (5) has the same effect as a notice served by the official receiver under Article 258(6).

### Obligation to surrender control to trustee

**285.**—(1) Without prejudice to the general duties of the bankrupt under Article 306, the bankrupt shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession.

(2) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—

- (a) the official receiver,
- (b) a person who has ceased to be trustee of the bankrupt's estate, or
- (c) a person who has been the supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII,

the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

(3) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee.

(4) If any person without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

### Charge on bankrupt's home

**286.**—(1) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse<sup>F60</sup> or by his civil partner or former civil partner]

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is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the High Court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

(2) If on an application under this Article the High Court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and is enforceable<sup>F61</sup>, up to the charged value from time to time,] for the payment of any amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the prescribed rate.

<sup>F62</sup>(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.]

(3) An order under this Article made in respect of property vested in the trustee shall provide, in accordance with the rules, for the property to cease to be comprised in the bankrupt's estate and, subject to the charge (and any prior charge), to vest in the bankrupt.

(4) An order under this Article may be made either absolutely or subject to conditions as to notifying the bankrupt or any person holding any interest in the property to which the order relates or as to the time when the charge is to become enforceable, or as to other matters.

(5) Subject to any provision made by rules, a charge imposed by an order under this Article shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the bankrupt by writing under his hand.

(6) The High Court may at any time, on the application of the bankrupt or of any person holding any interest in the property to which the order relates make an order discharging or varying the order imposing a charge on the property.

(7) Where an order under this Article has been protected by an entry registered under the Land Registration Act (Northern Ireland ) 1970<sup>F63</sup> or the Registration of Deeds Acts, an order under paragraph (6) discharging that order may direct that the entry be vacated.

<sup>F64</sup>(8) But an order under paragraph (6) may not vary a charged value.]

**F60** 2004 c. 33

**F61** Words in art. 286(2) substituted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(2)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

**F62** Art. 286(2A)(2B) inserted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(2)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

**F63** 1970 c. 18 (NI)

**F64** Art. 286(8) inserted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(2)(c) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

<sup>F65</sup>**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 <sup>F66</sup>or civil partner] , or

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- (iii) a former spouse [<sup>F67</sup>or former civil partner] 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).]

- F65** Art. 286A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(3) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)
- F66** Words in art. 286A(1)(a)(ii) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(3)(a) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)
- F67** Words in art. 286A(1)(a)(iii) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(3)(b) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

## Powers of trustee

- 287.**—(1) The trustee may—
- with the permission of the creditors' committee or the High Court, exercise any of the powers specified in Part I of Schedule 3, and
  - without that permission, exercise any of the general powers specified in Part II of Schedule 3.
- (2) With the permission of the creditors' committee or the High Court, the trustee may appoint the bankrupt—
- to superintend the management of his estate or any part of it,
  - to carry on his business (if any) for the benefit of his creditors, or
  - in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.
- (3) A permission given for the purposes of paragraph (1)(a) or (2) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.
- (4) Subject to paragraph (5), where the trustee has done anything without the permission required by paragraph (1)(a) or (2), the High Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.
- (5) The committee shall not ratify the trustee's action under paragraph (4) unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay.
- (6) Part III of Schedule 3 has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to X.
- (7) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by any provision in Parts VIII to X—
- disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt, or

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(b) employs a solicitor,

he shall, if there is for the time being a creditors' committee, give notice to the committee of that exercise of his powers.

(8) Without prejudice to the generality of paragraph (6) and Part III of Schedule 3, the trustee may, if he thinks fit, at any time summon a general meeting of the bankrupt's creditors.

(9) Subject to the preceding provisions in Part VIII and this Part, he shall summon such a meeting if he is requested to do so by a creditor of the bankrupt and the request is made with the concurrence of not less than one-tenth, in value, of the bankrupt's creditors (including the creditor making the request).

(10) Nothing in this Order is to be construed as restricting the capacity of the trustee to exercise any of his powers outside Northern Ireland.

#### *Disclaimer of onerous property*

#### **Disclaimer (general power)**

**288.**—(1) Subject to paragraph (4) and Articles 289 to 291, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this Article, that is to say—

- (a) any unprofitable contract, and
- (b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this Article—

- (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and
- (b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this Article in respect of any property that has been claimed for the estate under Article 280 (after-acquired property) or 281 (personal property of bankrupt exceeding reasonable replacement value), except with the leave of the High Court.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

#### **Notice requiring trustee's decision**

**289.**—(1) Notice of disclaimer shall not be given under Article 288 in respect of any property if—

- (a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee or that predecessor to decide whether he will disclaim or not, and
- (b) the period of 28 days from the day on which that application was made has expired without a notice of disclaimer having been given under Article 288 in respect of that property.



(2) The trustee is deemed to have adopted any contract which by virtue of this Article he is not entitled to disclaim.

### **Disclaimer of leaseholds**

**290.**—(1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee of mortgagee and either—

- (a) no application under Article 293 is made with respect to the property before the expiration of 14 days from the day on which the last notice served under this paragraph was served, or
- (b) where such an application has been made, the High Court directs that the disclaimer is to take effect.

(2) Where the High Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 293, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

(3) For the purposes of this Article, property held under a fee farm grant creating the relation of landlord and tenant is property of a leasehold nature and a reference to an underlessee includes a person who holds a lease from the fee farm grantee.

### **Disclaimer of dwelling house**

**291.** Without prejudice to Article 290, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

- (a) no application under Article 293 is made with respect to the property before the expiration of 14 days from the day on which the last notice served under this Article was served, or
- (b) where such an application has been made, the High Court directs that the disclaimer is to take effect.

### **Disclaimer of land subject to rentcharge**

**292.**—(1) The following applies where, in consequence of the disclaimer under Article 288 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in paragraph (2) as “the proprietor”).

(2) The proprietor, and the successors in title of the proprietor, are not subject to any personal liability in respect of any sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

### **High Court order vesting disclaimed property**

**293.**—(1) This Article and Article 294 apply where the trustee has disclaimed property under Article 288.

- (2) An application may be made to the High Court under this Article by—
  - (a) any person who claims an interest in the disclaimed property,
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or

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(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(3) Subject to the following provisions of this Article and to Article 294, the High Court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—

- (a) a person entitled to it or a trustee for such a person,
- (b) a person subject to such a liability as is mentioned in paragraph (2)(b) or a trustee for such a person, or
- (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(4) The High Court shall not make an order by virtue of paragraph (3)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this Article shall be taken into account in assessing for the purposes of Article 288(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this Article vesting property in any person need not be completed by any conveyance, assignment or transfer.

#### **Order under Article 293 in respect of leaseholds**

**294.**—(1) The High Court shall not make an order under Article 293 vesting property of a leasehold nature in any person, except on terms making that person—

- (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented, or
- (b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him on that day.

(2) For the purposes of an order under Article 293 relating to only part of any property comprised in a lease, the requirements of paragraph (1) apply as if the lease comprised only the property to which the order relates.

(3) Where paragraph (1) applies and no person is willing to accept an order under Article 293 on the terms required by that paragraph, the High Court may (by order under Article 293) vest the estate or interest of the bankrupt in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease.

(4) An order of the High Court under paragraph (3) may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.

(5) Where paragraph (1) applies and a person declines to accept any order under Article 293, that person shall be excluded from all interest in the property.

(6) Paragraph (3) of Article 290 shall apply for the purposes of this Article as it applies for the purposes of that Article.

## *Distribution of bankrupt's estate*

### **Proof of debts**

**295.**—(1) Subject to this Article and Article 296, the proof of any bankruptcy debt by a secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.

(2) Where a bankruptcy debt bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

(3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.

(4) Where the value of a bankruptcy debt is estimated by the trustee under paragraph (3) or, by virtue of Article 276, by the High Court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

### **Mutual credit and set#off**

**296.**—(1) This Article applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the bankrupt to another party shall not be included in the account taken under paragraph (2) if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.

(4) Only the balance (if any) of the account taken under paragraph (2) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

### **Distribution by means of dividend**

**297.**—(1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.

(2) The trustee shall give notice of his intention to declare and distribute a dividend.

(3) Where the trustee has declared a dividend, he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this paragraph shall contain the prescribed particulars of the bankrupt's estate.

(4) In the calculation and distribution of a dividend the trustee shall make provision—

- (a) for any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,
- (b) for any bankruptcy debts which are the subject of claims which have not yet been determined, and
- (c) for disputed proofs and claims.

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**Claims by unsatisfied creditors**

**298.**—(1) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

- (a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and
- (b) any dividend or dividends payable under sub#paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.

(2) No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend the High Court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

- (a) interest on the dividend, at the rate applicable to a money judgment of the Court at the time it was withheld, from that time, and
- (b) the costs of the proceedings in which the order to pay is made.

**Distribution of property in specie**

**299.**—(1) Without prejudice to Articles 288 to 292 (disclaimer), the trustee may, with the permission of the creditors' committee, divide in its existing form among the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) A permission given for the purposes of paragraph (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by paragraph (1) has been given.

(3) Where the trustee has done anything without the permission required by paragraph (1), the High Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(4) The committee shall not ratify the trustee's action under paragraph (3) unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

**Priority of debts**

**300.**—(1) In the distribution of the bankrupt's estate, his preferential debts <sup>F68</sup>... shall be paid in priority to other debts.

[<sup>F69</sup>(1A) Ordinary preferential debts rank equally among themselves after the expenses of the bankruptcy and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions between themselves.

(1B) Secondary preferential debts rank equally among themselves after the ordinary preferential debts and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions between themselves.]

<sup>F70</sup>(2) .....

(3) Debts which are neither preferential debts nor debts to which Article 302 applies also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(4) Any surplus remaining after the payment of the debts that are preferential or rank equally under paragraph (3) shall be applied in paying interest on those debts in respect of the period during

which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.

(5) The rate of interest payable under paragraph (4) in respect of any debt is whichever is the greater of the following—

- (a) the rate applicable to a money judgment of the High Court at the commencement of the bankruptcy, and
- (b) the rate applicable to that debt apart from the bankruptcy.

(6) This Article and Article 302 are without prejudice to any provision of this Order or any other statutory provision under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

[<sup>F71</sup>(7) In this Article “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in Article 346.]

- F68** Words in art. 300(1) omitted (1.1.2015) by virtue of [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **19(2)** (with art. 3)
- F69** Art. 300(1A)(1B) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **19(3)** (with art. 3)
- F70** Art. 300(2) omitted (1.1.2015) by virtue of [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **19(4)** (with art. 3)
- F71** Art. 300(7) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **19(5)** (with art. 3)

### Preferential charge on goods distrained

**301.**—[<sup>F72</sup>(1) Paragraph (1A) applies where—

- (a) any person has distrained upon the goods or effects of an individual who is adjudged bankrupt within 3 months from the distraint, or
- (b) Her Majesty's Revenue and Customs has been paid any amount from an account of an individual under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) and the individual is adjudged bankrupt within 3 months from the payment.

(1A) Where this paragraph applies—

- (a) in a case within paragraph (1)(a), the goods or effects, or the proceeds of their sale, and
- (b) in a case within paragraph (1)(b), the amount in question,

is charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting them.]

(2) Where by virtue of a charge under paragraph [<sup>F73</sup>(1A)] any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or (as the case may be) the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

- F72** Art. 301(1)(1A) substituted for art. 301(1) (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 8 para. 39(2)**
- F73** Word in art. 301(2) substituted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 8 para. 39(3)**

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### Debts to spouse<sup>F74</sup> or civil partner]

**302.**—(1) This Article applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse<sup>F74</sup> or civil partner] at the time the credit was provided) was the bankrupt's spouse<sup>F74</sup> or civil partner] at the commencement of the bankruptcy.

(2) Such debts—

(a) rank in priority after the debts and interest required to be paid in pursuance of Article 300(3) and (4), and

(b) are payable with interest at the rate specified in Article 300(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy;

and the interest payable under sub#paragraph (b) has the same priority as the debts on which it is payable.

**F74** 2004 c. 33

### Final distribution

**303.**—(1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—

(a) of his intention to declare a final dividend, or

(b) that no dividend, or further dividend, will be declared.

(2) The notice under paragraph (1) shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date ( “the final date”) specified in the notice.

(3) The High Court may, on the application of any person, postpone the final date.

(4) After the final date, the trustee shall—

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate, and

(b) <sup>F75</sup> if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

(5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt is entitled to the surplus.

[<sup>F76</sup>(6) Paragraph (5) is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).]

**F75** mod. by SR 1991/365

**F76** SR 2002/334

### Final meeting

**304.**—(1) Subject to the provisions of this Article and to Article 305, this Article applies where—

(a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and

(b) the trustee is not the official receiver.

(2) The trustee shall summon a final general meeting of the bankrupt's creditors which—

(a) shall receive the trustee's report of his administration of the bankrupt's estate, and

(b) shall determine whether the trustee should have his release under Article 272.

(3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under Article 303(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.

(4) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this Article.

### **Saving for bankrupt's home**

**305.**—(1) This Article applies where—

(a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse<sup>F77</sup> or by his civil partner or former civil partner], and

(b) the trustee has been unable for any reason to realise that property.

(2) The trustee shall not summon a meeting under Article 304 unless either—

(a) the High Court has made an order under Article 286 imposing a charge on that property for the benefit of the bankrupt's estate, or

(b) the Court has declined, on an application under that Article, to make such an order, or

(c) the Department has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.

F77 2004 c. 33

### *Supplemental*

### **Duties of bankrupt in relation to trustee**

**306.**—(1) The bankrupt shall—

(a) give to the trustee such information as to his affairs,

(b) attend on the trustee at such times, and

(c) do all such other things,

as the trustee may for the purposes of carrying out his functions under Parts VIII to X reasonably require.

(2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.

(3) Paragraph (1) applies to a bankrupt after his discharge.

(4) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

*Status: Point in time view as at 01/03/2016.*

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### **Stay of distribution in case of second bankruptcy**

**307.**—(1) This Article and Article 308 apply where a bankruptcy order is made against an undischarged bankrupt; and in both Articles—

- (a) “the later bankruptcy” means the bankruptcy arising from that order,
- (b) “the earlier bankruptcy” means the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy, and
- (c) “the existing trustee” means the trustee (if any) of the bankrupt's estate for the purposes of the earlier bankruptcy.

(2) Without prejudice to Article 257 (restrictions on dispositions of property following bankruptcy order), where the existing trustee has been given the prescribed notice of the presentation of the petition for the later bankruptcy, any distribution or other disposition by him of anything to which paragraph (3) applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the High Court or is or was subsequently ratified by the Court.

(3) This paragraph applies to—

- (a) any property which is vested in the existing trustee under Article 280(3) (after#acquired property);
- (b) any money paid to the existing trustee in pursuance of an income payments order under Article 283; and
- (c) any property or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within sub#paragraph (a) or (b).

### **Adjustment between earlier and later bankruptcy estates**

**308.**—(1) With effect from the commencement of the later bankruptcy anything to which Article 307(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, is to be dealt with by the existing trustee in accordance with the rules.

(2) Any sums which in pursuance of an income payments order under Article 283 are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy; and the High Court may give such consequential directions for the modification of the order as it thinks fit.

(3) Anything comprised in a bankrupt's estate by virtue of paragraph (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided by paragraphs (1) and (2) and in Article 307, property which is, or by virtue of Article 281 (personal property of bankrupt exceeding reasonable replacement value) is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, shall not be comprised in his estate for the purposes of the later bankruptcy.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of his in the later bankruptcy in respect of the same debts; but the existing trustee may prove in the later bankruptcy for—

- (a) the unsatisfied balance of the debts (including any debt under this paragraph) provable against the bankrupt's estate in the earlier bankruptcy;
- (b) any interest payable on that balance; and



(c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount provable under paragraph (5) ranks in priority after all the other debts provable in the later bankruptcy and after interest on those debts and, accordingly, shall not be paid unless those debts and that interest have first been paid in full.

## CHAPTER V

### EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS, ETC.

#### *Rights of occupation*

#### **Rights of occupation, etc., of bankrupt's spouse [<sup>F78</sup> or civil partner]**

**309.**—(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting of the bankrupt's estate in a trustee) is to be taken as having given rise to any [<sup>F79</sup> [<sup>F80</sup> home rights] under the Family Homes and Domestic Violence (Northern Ireland) Order 1998] in relation to a dwelling house comprised in the bankrupt's estate.

(2) Where [<sup>F80</sup> a spouse's or civil partner's home rights] [<sup>F79</sup> under the Order of 1998] are a charge on the estate or interest of the other spouse [<sup>F80</sup> or civil partner], or of trustees for the other spouse [<sup>F80</sup> or civil partner], and the other spouse [<sup>F80</sup> or civil partner] is adjudged bankrupt—

- (a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Order, binds the trustee of the bankrupt's estate and persons deriving title under that trustee, and
- (b) any application for an order under [<sup>F79</sup> Article 11] of that Order shall be made to the High Court.

(3) Notwithstanding any provision of the Partition Act 1868<sup>F81</sup>, where a person and his spouse or former spouse [<sup>F80</sup> or civil partner or former civil partner] have a legal or equitable estate in a dwelling house vested in them jointly or as tenants in common and that person is adjudged bankrupt, in a suit for partition maintained by the trustee of the bankrupt's estate the High Court may make such order as it thinks fit.

(4) On an application such as is mentioned in paragraph (2) or in a suit such as is mentioned in paragraph (3) the High Court shall make such order under paragraph (3) or [<sup>F79</sup> Article 11 of the Order of 1998] as it thinks just and reasonable having regard to—

- (a) the interests of the bankrupt's creditors,
- (b) the conduct of the spouse or former spouse [<sup>F82</sup> or civil partner or former civil partner], so far as contributing to the bankruptcy,
- (c) the needs and financial resources of the spouse or former spouse [<sup>F82</sup> or civil partner or former civil partner],
- (d) the needs of any children, and
- (e) all the circumstances of the case other than the needs of the bankrupt.

(5) Where such an application is made or such a suit is maintained after the expiration of one year from the first vesting under Chapter IV of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

**Status:** Point in time view as at 01/03/2016.

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- F78** Words in art. 309 heading inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 18(4)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F79** 1998 NI 6
- F80** 2004 c. 33
- F81** 1868 c. 40
- F82** Words in art. 309(4)(b)(c) inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 18(4)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

### Rights of occupation of bankrupt

- 310.**—(1) This Article applies where—
- (a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt, and
  - (b) any persons under the age of 18 with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.
- (2) Whether or not the bankrupt's<sup>F83</sup> spouse or civil partner (if any) has home rights<sup>F84</sup> under the Family Homes and Domestic Violence (Northern Ireland) Order 1998]
- (a) the bankrupt has the following rights as against the trustee of his estate—
    - (i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the High Court,
    - (ii) if not in occupation, a right with the leave of the Court to enter into and occupy the dwelling house, and
  - (b) the bankrupt's rights are a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.
- <sup>F84</sup>(3) The Order of 1998 has effect, with the necessary modifications, as if—
- (a) the rights conferred by sub-paragraph (a) of paragraph (2) were<sup>F83</sup> home rights] under that Order,
  - (b) any application for leave such as is mentioned in that sub-paragraph were an application for an order under Article 11 of that Order, and
  - (c) any charge under sub-paragraph (b) of that paragraph on the estate or interest of the trustee were a charge under that Order on the estate or interest of a spouse<sup>F83</sup> or civil partner].]
- (4) Any application for leave such as is mentioned in paragraph (2)(a) or otherwise by virtue of this Article for an order under<sup>F84</sup> Article 11 of the Order of 1998] shall be made to the High Court.
- (5) On such an application the High Court shall make such order under<sup>F84</sup> Article 11 of the Order of 1998] as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.
- (6) Where such an application is made after the expiration of one year from the first vesting (under Chapter IV) of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

F83 2004 c. 33

F84 1998 NI 6

### Payments in respect of premises occupied by bankrupt

**311.** Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of Article 310 or otherwise) on condition that he makes payments towards satisfying any liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt does not, by virtue of those payments, acquire any interest in the premises.

*Adjustment of prior transactions, etc.*

### Transactions at an undervalue

**312.**—(1) Subject to the following provisions of this Article and to Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) The High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this Article and Articles 314 and 315, an individual enters into a transaction with a person at an undervalue if—

- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration.
- (b) he enters into a transaction with that person in consideration of marriage<sup>F85</sup> or the formation of a civil partnership], or
- (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

F85 2004 c. 33

### Preferences

**313.**—(1) Subject to the following provisions of this Article and Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) given a preference to any person, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) The High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.

(3) For the purposes of this Article and Articles 314 and 315, an individual gives a preference to a person if—

- (a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and
- (b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

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(4) The High Court shall not make an order under this Article in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in paragraph (3)(b).

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in paragraph (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

### “Relevant time” under Articles 312, 313

**314.**—(1) Subject to the provisions of this Article, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—

- (a) in the case of a transaction at an undervalue, at a time within the 5 years immediately preceding the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt,
- (b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time within the 2 years immediately preceding that day, and
- (c) in any other case of a preference which is not a transaction at an undervalue, at a time within the 6 months immediately preceding that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in sub#paragraph (a), (b) or (c) of paragraph (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the expiration of the period of 5 years mentioned in sub#paragraph (a)), that time is not a relevant time for the purposes of Articles 312 and 313 unless the individual—

- (a) is insolvent at that time, or
- (b) becomes insolvent in consequence of the transaction or preference;

but the requirements of this paragraph are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

(3) For the purposes of paragraph (2), an individual is insolvent if—

- (a) he is unable to pay his debts as they fall due, or
- (b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

### Orders under Articles 312, 313

**315.**—(1) Without prejudice to the generality of Article 312(2) or 313(2), an order under either of those Articles with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject as follows)—

- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;
- (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the individual;

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- (d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the High Court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the Court thinks appropriate;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and
- (g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under Article 312 or 313 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—

- (a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired<sup>[F86]</sup> in good faith and for value], or prejudice any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction or preference<sup>[F86]</sup> in good faith and for value] to pay a sum to the trustee of the bankrupt's estate, except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

<sup>[F87]</sup>(2A) Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or
- (b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub#paragraph (a) or (as the case may be) sub#paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.]

(3) Any sums required to be paid to the trustee in accordance with an order under Article 312 or 313 shall be comprised in the bankrupt's estate.

<sup>[F88]</sup>(4) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

- (a) the fact that the individual in question entered into the transaction at an undervalue; or
- (b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of paragraph (2A)(a), a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the individual in question is adjudged bankrupt has been presented; or
- (b) of the fact that the individual in question has been adjudged bankrupt.

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(6) Article 7 shall apply for the purposes of paragraph (2A)(b) as it applies for the purposes of Parts II to VII.]

**F86** 1994 c. 12

**F87** 1994 c. 12

**F88** 1994 c. 12

### [<sup>F89</sup> **Recovery of excessive pension contributions**

**315A** <sup>F90</sup>.—(1) Where an individual who is adjudged bankrupt—

- (a) has rights under an approved pension arrangement, or
- (b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) If the High Court is satisfied—

- (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and
- (b) that the making of any of the relevant contributions ( “the excessive contributions”) has unfairly prejudiced the individual's creditors,

the Court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) Paragraph (4) applies where the High Court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under Article 26(1)(a) of the Welfare Reform Order (debits giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this paragraph applies—

- (a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of paragraph (2), be taken to be contributions of which the rights under the arrangement are the fruits, and
- (b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of sub-paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of sub-paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that sub-paragraph.

(5) In paragraphs (2) to (4) “relevant contributions” means contributions to the arrangement or any other pension arrangement—

- (a) which the individual has at any time made on his own behalf, or
- (b) which have at any time been made on his behalf.

(6) The High Court shall, in determining whether it is satisfied under paragraph (2)(b), consider in particular—

- (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual's creditors or any of them, and
- (b) whether the total amount of any contributions—
  - (i) made by or on behalf of the individual to pension arrangements, and
  - (ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,

is an amount which is excessive in view of the individual's circumstances when those contributions were made.

(7) For the purposes of this Article and Articles 315B and 315C (“the recovery provisions”), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under Article 13 of the Welfare Reform Order.

(8) In the recovery provisions—

“approved pension arrangement” has the same meaning as in Article 12 of the Welfare Reform Order,

“unapproved pension arrangement” has the same meaning as in Article 13 of that Order.]

**F89** 1999 NI 11

**F90** functions transf. SR 1999/481

### Orders under Article 315A

**315B**<sup>F91</sup>.—(1) Without prejudice to the generality of Article 315A(2), an order under Article 315A may include provision—

- (a) requiring the person responsible for the arrangement to pay an amount to the individual's trustee in bankruptcy,
- (b) adjusting the liabilities of the arrangement in respect of the individual,
- (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,
- (d) for the recovery by the person responsible for the 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 bankrupt's case with any requirement under Article 315C(1) or in giving effect to the order.

(2) In paragraph (1), references to adjusting the liabilities of the 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.

(3) In paragraph (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within Article 25(1) of the Welfare Reform Order (pension sharing orders and agreements).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under Article 315A is the lesser of—

- (a) the amount of the excessive contributions, and
- (b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under Article 315A which requires the person responsible for an arrangement to pay an amount (“the restoration amount”) to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (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,

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is equal to the restoration amount.

- (7) An order under Article 315A in respect of an arrangement—
- (a) shall be binding on the person responsible for the arrangement, and
  - (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

<b>F91</b> functions transf. SR 1999/481
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### Orders under Article 315A: supplementary

<sup>F92</sup>315C.—(1) The person responsible for—

- (a) an approved pension arrangement under which a bankrupt has rights,
- (b) an unapproved pension arrangement under which a bankrupt has excluded rights, or
- (c) a pension arrangement under which a bankrupt has at any time had rights,

shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under Article 315A.

(2) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),
- (b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or
- (c) any provision of the arrangement in question corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 315A.

(3) Where any sum is required by an order under Article 315A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

- (a) any such value as is mentioned in Article 315B(4)(b);
- (b) any such amounts as are mentioned in Article 315B(6)(a) and (b).

(5) The power conferred by paragraph (4) 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
- <sup>F93</sup>(b) in accordance with guidance from time to time prepared by a prescribed person.]

(6) References in the recovery provisions 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.

(7) In this Article and Articles 315A and 315B—

- “the Department” means the Department of Health and Social Services;
- “prescribed” means prescribed by regulations;



“the recovery provisions” means this Article and Articles 315A and 315B;

“regulations” means regulations made by the Department;

“the Welfare Reform Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999.

(8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.

(9) Regulations under the recovery provisions shall be subject to negative resolution.

**F92** functions transf. SR 1999/481

**F93** Art. 315C(5)(b) substituted (29.2.2008) by [Pensions Act \(Northern Ireland\) 2008 \(c. 1\), ss. 15, 21\(1\) \(c\), Sch. 5 para. 1; S.R. 2008/65, art. 2\(a\)\(b\)](#)

### [<sup>F94</sup>Recovery of excessive contributions in pension-sharing cases

**315D** <sup>F95</sup>—(1) For the purposes of Articles 312, 314 and 315, 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 Articles 313 to 315, 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 Article 312 or 313 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 paragraphs (4) to (8).

(4) The High 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 High 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 High 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 High 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.

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(8) In making the determination mentioned in paragraph (5) the High 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 Article and Articles 315E and 315F—

“appropriate amount”, in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of Article 26(1) of the Welfare Reform Order (creation of pension credits and debits);

“pension-sharing transaction” means an order or provision falling within Article 25(1) of the Welfare Reform Order (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;

“the Welfare Reform Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999.]

**F94** 1999 NI 11

**F95** functions transf. SR 1999/481

### Orders under Article 312 or 313 in respect of pension-sharing transactions

**315E**<sup>F96</sup>.—(1) This Article and Article 315F apply if the High Court is making an order under Article 312 or 313 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 maybe 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 Article 312(2) or 313(2), or of Article 315, 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 Article 315F(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 Article 315F(2) or (3).
- (3) In paragraph (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 Article 315D is recoverable,
  - (b) so much (if any) of the amount of the unfair contributions (within the meaning given by Article 315D(5)) as is not recoverable by way of an order under Article 315A containing provision such as is mentioned in Article 315B(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 in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.
- (6) For the purposes of paragraph (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.

**F96** functions transf. SR 1999/481

### **Orders under Article 312 or 313 in pension-sharing cases: supplementary**

<sup>F97</sup>**315F.**—(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 Articles 312 and 313.

(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,

*Status: Point in time view as at 01/03/2016.*

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as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(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 Articles 312 and 313.

(4) In paragraph (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
- (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 sub-paragraph (a).

(5) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders which restrain a person from receiving anything which he is prevented from assigning),
- (b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or
- (c) any provision of the destination arrangement corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 312 or 313.

(6) Regulations may, for the purposes of Articles 312 to 315, Articles 315D and 315E and this Article, make provision about the calculation and verification of—

- (a) any such value as is mentioned in Article 315E(4)(c);
- (b) any such amounts as are mentioned in Article 315E(6)(a) and (b).

(7) The power conferred by paragraph (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
- <sup>F98</sup>(b) in accordance with guidance from time to time prepared by a prescribed person.]

(8) In Article 315E and this Article, 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 Article—

“the Department” means the Department of Health and Social Services;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department.

(10) Regulations under this Article may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.

(11) Regulations under this Article shall be subject to negative resolution.

**F97** functions transf. SR 1999/481

**F98** Art. 315F(7)(b) substituted (29.2.2008) by [Pensions Act \(Northern Ireland\) 2008 \(c. 1\)](#), ss. 15, 21(1)(c), [Sch. 5 para. 2](#); S.R. 2008/65, [art. 2\(a\)\(b\)](#)

### Extortionate credit transactions

**316.**—(1) This Article applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.

(2) The High Court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than the 3 years immediately preceding the commencement of the bankruptcy.

(3) For the purposes of this Article a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
- (b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(4) An order under this Article with respect to any transaction may contain such one or more of the following as the High Court thinks fit, that is to say—

- (a) provision setting aside the whole or part of any obligation created by the transaction;
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
- (c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;
- (d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;
- (e) provision directing accounts to be taken between any persons.

(5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this Article shall be comprised in the bankrupt's estate.

(6) <sup>F99</sup> .....

(7) The powers conferred by this Article are exercisable in relation to any transaction concurrently with any powers exercisable under this Order in relation to that transaction as a transaction at an undervalue.

**F99** Art. 316(6) repealed (6.4.2007) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. 70, 71(2), [Sch. 4](#) (with [Sch. 3 para. 15\(5\)](#)); S.I. 2007/123, [art. 3\(2\)](#), [Sch. 2](#) (as amended by S.I. 2007/387, [art. 2\(3\)\(e\)\(iii\)](#))

### Avoidance of general assignment of book debts

**317.**—(1) This Article applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.

*Status: Point in time view as at 01/03/2016.*

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(2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the Bills of Sale (Ireland) Acts 1879<sup>F100</sup> and 1883<sup>F101</sup>.

(3) For the purposes of paragraphs (1) and (2)—

- (a) “assignment” includes an assignment by way of security or charge on book debts, and
- (b) “general assignment” does not include—
  - (i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or
  - (ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Acts of 1879 and 1883 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of those Acts with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under those Acts.

**F100** 1879 c. 50

**F101** 1883 c. 7

### **Contracts to which bankrupt is a party**

**318.**—(1) This Article applies where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The High Court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the Court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the High Court under this Article are provable as a bankruptcy debt.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

### **Apprenticeships, etc.**

**319.**—(1) This Article applies where—

- (a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articled clerk at the time when the petition on which the order was made was presented, and
- (b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

(2) Subject to paragraph (6), the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.

(3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as the trustee thinks reasonable, having regard to—

- (a) the amount of the fee,
- (b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and
- (c) the other circumstances of the case.

(4) The power of the trustee to make a payment under paragraph (3) has priority over his obligation to distribute the bankrupt's estate.

(5) Instead of making a payment under paragraph (3), the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.

(6) Where a transfer is made under paragraph (5), paragraph (2) has effect only as between the apprentice or clerk and the bankrupt.

#### **Unenforceability of liens on books, etc.**

**320.**—(1) Subject to paragraph (2), a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.

(2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.

#### **[<sup>F102</sup> Arbitration agreements to which bankrupt is party.**

**320A.**—(1) This Article applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the trustee in bankruptcy adopts the contract, the arbitration agreement is enforceable by or against the trustee in relation to matters arising from or connected with the contract.

(3) If the trustee in bankruptcy does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings—

- (a) the trustee with the consent of the creditors' committee, or
- (b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

(4) In this Article—

- “arbitration agreement” has the same meaning as in Part I of the Arbitration Act 1996; and
- “the court” means the court which has jurisdiction in the bankruptcy proceedings.]

**F102** 1996 c. 23

## CHAPTER VI

### BANKRUPTCY OFFENCES

#### *Preliminary*

#### **Scheme of this Chapter**

**321.**—(1) Subject to Article 331(3), this Chapter applies where the High Court has made a bankruptcy order on a bankruptcy petition.

(2) This Chapter applies whether or not the bankruptcy order is annulled under Article 256, but proceedings for an offence under this Chapter shall not be instituted after the annulment.

**Status:** Point in time view as at 01/03/2016.

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(3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his discharge; but nothing in Parts VIII to X prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.

[<sup>F103</sup>(3A) Paragraph (3) is without prejudice to any provision of this Chapter which applies to a person in respect of whom a bankruptcy restrictions order is in force.]

(4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside Northern Ireland.

(5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Department or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

**F103** Art. 321(3A) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(3), Sch. 6 para. 2 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

## Definitions for the purposes of this Chapter

**322.** In this Chapter—

- (a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt's estate include any property which would be such property if a notice in respect of it were given under Article 280 (after#acquired property) or 281 (personal property and effects of bankrupt having more than replacement value);
- (b) “the initial period” means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy; and
- (c) a reference to a number of months or years immediately preceding petition is to that period ending with the presentation of the bankruptcy petition.

## Defence of innocent intention

**323.** Where in the case of an offence under any provision of this Chapter it is stated that this Article applies, it shall be a defence for the person charged to prove that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

### *Wrongdoing by the bankrupt before and after bankruptcy*

## Non#disclosure

**324.—(1)** The bankrupt shall be guilty of an offence if—

- (a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or
- (b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Paragraph (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

(3) Article 323 applies to an offence under this Article.



## Concealment of property

**325.**—(1) The bankrupt shall be guilty of an offence if—

- (a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,
- (b) he conceals any debt due to or from him or conceals any property the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or trustee, or
- (c) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (b) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under paragraph (1).

(3) The bankrupt shall be guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the amount specified by order under Article 362(1)(b) and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

(4) Article 323 applies to an offence under paragraph (3).

(5) The bankrupt shall be guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver [<sup>F104</sup>, the trustee] or the High Court—

- (a) to account for the loss of any substantial part of his property incurred in the 12 months immediately preceding petition or in the initial period, or
- (b) to give a satisfactory explanation of the manner in which such a loss was incurred.

**F104** Words in art. 325(5) inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, Sch. 8 para. 14 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

## Concealment of books and papers; falsification

**326.**—(1) The bankrupt shall be guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

(2) The bankrupt shall be guilty of an offence if—

- (a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;
- (b) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;
- (c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or
- (d) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (b) or (c) if the bankruptcy order had been made before he did it.

(3) The bankrupt shall be guilty of an offence if—

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- (a) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs, or
  - (b) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (a) if the bankruptcy order had been made before he did it.
- (4) Article 323 applies to an offence under this Article.
- [<sup>F105</sup>(5) In their application to a trading record paragraphs (2)(d) and (3)(b) shall have effect as if the reference to 12 months were a reference to two years.
- (6) In paragraph (5) “trading record” means a book, document or record which shows or explains the transactions or financial position of a person's business, including—
- (a) a periodic record of cash paid and received,
  - (b) a statement of periodic stock-taking, and
  - (c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.]

**F105** Art. 326(5)(6) added (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, Sch. 8 para. 15 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

### **False statements**

- 327.**—(1) The bankrupt shall be guilty of an offence if he makes or has made any material omission in any statement made under any provision in Parts VIII to X and relating to his affairs.
- (2) Article 323 applies to an offence under paragraph (1).
- (3) The bankrupt shall be guilty of an offence if—
- (a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or
  - (b) he attempts to account for any part of his property by fictitious losses or expenses; or
  - (c) at any meeting of his creditors in the 12 months immediately preceding petition or (whether or not at such a meeting) at any time in the initial period, he did anything which would have been an offence under sub#paragraph (b) if the bankruptcy order had been made before he did it; or
  - (d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

### **Fraudulent disposal of property**

- 328.**—(1) The bankrupt shall be guilty of an offence if he makes or causes to be made, or has in the 5 years immediately preceding the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property.
- (2) The reference to making a transfer of or charge on any property includes causing or conniving at the enforcement of a judgment, or the levying of any execution, against that property.
- (3) The bankrupt shall be guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within the 2 months immediately preceding, the date on which a judgment or order for the payment

of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

(4) Article 323 applies to an offence under this Article.

### **Absconding**

**329.**—(1) The bankrupt shall be guilty of an offence if—

- (a) he leaves, or attempts or makes preparations to leave, Northern Ireland with any property the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or the trustee, or
- (b) in the 6 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (a) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under this Article.

### **Fraudulent dealing with property obtained on credit**

**330.**—(1) The bankrupt shall be guilty of an offence if, in the 12 months immediately preceding petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

(2) Article 323 applies to an offence under paragraph (1).

(3) A person shall be guilty of an offence if, in the 12 months immediately preceding petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—

- (a) that the bankrupt owed money in respect of the property, and
- (b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.

(4) In the case of an offence under paragraph (1) or (3) it shall be a defence for the person charged to prove that the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of this Article whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(6) In this Article references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

### **Obtaining credit; engaging in business**

**331.**—(1) The bankrupt shall be guilty of an offence if—

- (a) either alone or jointly with any other person, he obtains credit to the extent of the amount specified by order under Article 362(1)(b) or more without giving the person from whom he obtains it the relevant information about his status; or
- (b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

(2) The reference to the bankrupt obtaining credit includes the following cases—

- (a) where goods are bailed to him under a hire#purchase agreement, or agreed to be sold to him under a conditional sale agreement, and
- (b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

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(3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in England and Wales, shall be guilty of an offence if, before his discharge, he does anything in Northern Ireland which would be an offence under paragraph (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in England and Wales were an adjudication under this Part.

(4) For the purposes of paragraph (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

[<sup>F106</sup>(5) This Article applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him.

(6) For the purposes of paragraph (1)(a) as it applies by virtue of paragraph (5), the relevant information about the status of the person in question is the information that a bankruptcy restrictions order is in force in respect of him.]

**F106** Art. 331(5)(6) inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 13(3), Sch. 6 para. 3 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

**Failure to keep proper accounts of business**

**332.** <sup>F107</sup> .....

**F107** Art. 332 repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 20(a), 31, Sch. 9 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

**Gambling**

**333.** <sup>F108</sup> .....

**F108** Art. 333 repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 20(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

CHAPTER VII

POWERS OF HIGH COURT IN BANKRUPTCY

**General control of High Court**

**334.**—(1) Every bankruptcy is under the general control of the High Court and, subject to the provisions in Parts VIII to X, the Court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.

(2) Without prejudice to any other provision in Parts VIII to X, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter IV shall do all such things as he may be directed to do by the High Court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.

(3) The official receiver or the trustee of a bankrupt's estate may at any time apply to the High Court for a direction under paragraph (2).

(4) If any person without reasonable excuse fails to comply with any obligation imposed on him by paragraph (2), he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

## Power of arrest

**335.**—(1) In the cases specified in paragraph (2) the High Court may cause a warrant to be issued to a constable—

- (a) for the arrest of a debtor to whom a bankruptcy petition relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered under Chapter IV, and
- (b) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant,

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the Court may order.

(2) The powers conferred by paragraph (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the presentation of the bankruptcy petition relating to him or the making of the bankruptcy order against him, it appears to the High Court—

- (a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs, or
- (b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official receiver or the trustee of his estate, or
- (c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate, or
- (d) that he has, without the leave of the official receiver or the trustee of his estate, removed any goods in his possession which exceed in value such amount specified in an order under Article 362(1)(b) for the purposes of this sub#paragraph, or
- (e) that he has failed, without reasonable excuse, to attend any examination ordered by the Court.

## Seizure of bankrupt's property

**336.**—(1) At any time after a bankruptcy order has been made, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver or trustee.

(2) Any person executing a warrant under this Article may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the High Court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to him, it may issue a warrant authorising any constable to search those premises for the property, books, papers or records.

(4) A warrant under paragraph (3) shall not be executed except in the prescribed manner and in accordance with its terms.

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### **Inquiry into bankrupt's dealings and property**

**337.**—(1) At any time after a bankruptcy order has been made the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

- (a) the bankrupt or the bankrupt's spouse or former spouse<sup>F109</sup> or civil partner or former civil partner],
- (b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,
- (c) any person appearing to the Court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

(2) The High Court may require any person such as is mentioned in paragraph (1)(b) or (c) to submit an affidavit to the Court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(3) Without prejudice to Article 335, paragraphs (4) and (5) apply in a case where—

- (a) a person without reasonable excuse fails to appear before the High Court when he is summoned to do so under this Article, or
- (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the Court under this Article.

(4) The High Court may, for the purpose of bringing that person and anything in his possession before the Court, cause a warrant to be issued to a constable—

- (a) for the arrest of that person, and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession.

(5) The High Court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

**F109** 2004 c. 33

### **High Court's enforcement powers under Article 337**

**338.**—(1) If it appears to the High Court, on consideration of any evidence obtained under Article 337 or this Article, that any person has in his possession any property comprised in the bankrupt's estate, the Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or the trustee at such time, in such manner and on such terms as the Court thinks fit.

(2) If it appears to the High Court, on consideration of any evidence obtained under Article 337 or this Article, that any person is indebted to the bankrupt, the Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the Court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the Court thinks fit.

(3) The High Court may, if it thinks fit, order that any person liable to be summoned to appear before it under Article 337 or this Article shall be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

### **Provision corresponding to Article 337, where interim receiver appointed**

**339.** Articles 337 and 338 apply where an interim receiver has been appointed under Article 259 as they apply where a bankruptcy order has been made, as if—

- (a) references to the official receiver or the trustee were to the interim receiver, and
- (b) references to the bankrupt and to his estate were (respectively) to the debtor and his property.

### **Order for production of documents by Inland Revenue**

**340.**—(1) For the purposes of an examination under Article 263 (public examination of bankrupt) or proceedings under Articles 337 to 339, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order an inland revenue official to produce to the Court—

- (a) any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official,
- (b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official, or
- (c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.

(2) Where the High Court has made an order under paragraph (1) for the purposes of any examination or proceedings, the Court may, at any time after the document to which the order relates is produced to it, by order authorise the disclosure of the document, or of any part of its contents, to the official receiver, the trustee of the bankrupt's estate or the bankrupt's creditors.

(3) The High Court shall not address an order under paragraph (1) to an inland revenue official unless it is satisfied that that office is dealing, or has dealt, with the affairs of the bankrupt.

(4) Where any document to which an order under paragraph (1) relates is not in the possession of the official to whom the order is addressed, it is the duty of that official to take all reasonable steps to secure possession of it and, if he fails to do so, to report the reasons for his failure to the High Court.

(5) Where any document to which an order under paragraph (1) relates is in the possession of an inland revenue official other than the one to whom the order is addressed, it is the duty of the official in possession of the document, at the request of the official to whom the order is addressed, to deliver it to the official making the request.

(6) In this Article “inland revenue official” means any inspector or collector of taxes appointed by the Commissioners of Inland Revenue or any person appointed by the Commissioners to serve in any other capacity.

(7) This Article does not apply for the purposes of an examination under Articles 337 and 338 which takes place by virtue of Article 339 (interim receiver).

### **Power to appoint special manager**

**341.**—(1) The High Court may, on an application under this Article, appoint any person to be the special manager—

- (a) of a bankrupt's estate, or
- (b) of the business of an undischarged bankrupt, or
- (c) of the property or business of a debtor in whose case the official receiver has been appointed interim receiver under Article 259.

(2) An application under this Article may be made by the official receiver or the trustee of the bankrupt's estate in any case where it appears to the official receiver or trustee that the nature of the

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estate, property or business, or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.

(3) A special manager appointed under this Article has such powers as may be entrusted to him by the High Court.

(4) The power of the High Court under paragraph (3) to entrust powers to a special manager includes power to direct that any provision in Parts VIII to X that has effect in relation to the official receiver, interim receiver or trustee shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the official receiver, interim receiver or trustee.

(5) A special manager appointed under this Article shall—

- (a) give such security as may be prescribed,
- (b) prepare and keep such accounts as may be prescribed, and
- (c) produce those accounts in accordance with the rules to the Department or to such other persons as may be prescribed.

#### **Re#direction of bankrupt's letters, etc.**

**342.**—(1) Where a bankruptcy order has been made, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order<sup>F110</sup> a postal operator (within the meaning of<sup>F111</sup> Part 3 of the Postal Services Act 2011)] to re#direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of<sup>F112</sup> Part 3 of the Postal Services Act 2011]) which would otherwise be sent or delivered by them to the bankrupt at such place or places as may be specified in the order.

(2) An order under this Article has effect for such period, not exceeding 3 months, as may be specified in the order.

**F110** SI 2001/1149

**F111** Words in art. 342(1) substituted (1.10.2011) by [Postal Services Act 2011 \(Consequential Modifications and Amendments\) Order 2011 \(S.I. 2011/2085\)](#), art. 5(1), **Sch. 1 para. 23(2)(a)**

**F112** Words in art. 342(1) substituted (1.10.2011) by [Postal Services Act 2011 \(Consequential Modifications and Amendments\) Order 2011 \(S.I. 2011/2085\)](#), art. 5(1), **Sch. 1 para. 23(2)(b)**



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