
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART IX

BANKRUPTCY

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,
- [^{F1}(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,^{F2} . . .
- (d) ^{F3}

(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| F2 | Word before art. 238(1)(d) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) , arts. 1(3), 25, 31, Sch. 8 para. 3, Sch. 9 (with art. 4); S.R. 2006/21,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| F3 | Art. 238(1)(d) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) , arts. 1(3), 25, 31, Sch. 8 para. 3, Sch. 9 (with art. 4); S.R. 2006/21,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) |

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,

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- (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.
- [^{F4}(3) This Article is subject to Article 3 of the EC Regulation.]

F4 SR 2002/334

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.

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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^{F5} 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 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—

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- (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

[^{F6}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.]

F6 SR 1991/366

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).

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(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.

VALID FROM 30/06/2011

[^{F7} 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.

(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.]

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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. ^{F8}

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. ^{F9}

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.

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[^{F10}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)

C1 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**)

[^{F11}Discharge where bankrupt is a solicitor]

254.—[^{F12}(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 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**)

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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.

[^{F13}(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^{F14}, 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^[F15] 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^{F16};

[^{F17}“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

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F17 1995 NI 2

[^{F18}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) ^{F19}.....

(4) Where the High Court annuls a bankruptcy order (whether under this Article or under Article 235^{F20} 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) ^{F21}.....

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**)

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**)

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