
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART IX

BANKRUPTCY

CHAPTER II

PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS

[^{F1}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 [^{F2}or civil partner] , or
- (c) a former spouse [^{F3}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)—

Status: Point in time view as at 12/05/2011.

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- (a) shall not begin with the date of the bankruptcy, but
 - (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.
- (6) The High Court may substitute for the period of 3 years mentioned in paragraph (2) a longer period—
- (a) in prescribed circumstances, and
 - (b) in such other circumstances as the Court thinks appropriate.
- (7) The rules may make provision for this Article to have effect with the substitution of a shorter period for the period of 3 years mentioned in paragraph (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).
- (8) The rules may also, in particular, make provision—
- (a) requiring or enabling the trustee of a bankrupt's estate to give notice that this Article applies or does not apply;
 - (b) about the effect of a notice under sub-paragraph (a);
 - (c) requiring the trustee of a bankrupt's estate to make an application to the Land Registry or the Registry of Deeds.
- (9) Rules under paragraph (8)(b) may, in particular—
- (a) disapply this Article;
 - (b) enable the High Court to disapply this Article;
 - (c) make provision in consequence of a disapplication of this Article;
 - (d) enable the Court to make provision in consequence of a disapplication of this Article;
 - (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.]

- F1** 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](#))
- F2** 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](#))
- F3** 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)

- C1** 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](#))
- C2** 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.

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(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—

- (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)

- C3** 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^{F4} 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.

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(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.

F4 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

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- (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—
 - (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^{F5}—(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).

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[^{F6}Investigatory duties of official receiver

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

F6 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.

(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.

[^{F7}(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).

F7 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)

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