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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART IX

### BANKRUPTCY

### 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>F1</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.

**F1** Words in art. 265(1)(a) repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, 31, Sch. 8 para. 8, Sch. 9 (with art. 4); S.R.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>F2</sup>. . . the official receiver shall, as soon as practicable within the 12 weeks from the day on which the order

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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.

**F2** 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>F3</sup> . . .
- (b) <sup>F4</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).

**F3** 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)

**F4** 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
- (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>F5</sup> .....

(2) <sup>F5</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>F6</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.

**F5** 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)

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**F6** 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>F7</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.

**F7** 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.

(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—

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- (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>F8</sup>.....
  - (6) On a reference to the Department under paragraph (4)<sup>F9</sup>. . . the Department shall either make an appointment or decline to make one.
  - (7) If on a reference under paragraph (4)<sup>F9</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).

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- F8** 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**)
- F9** 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>F10</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.

(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.]

**F10** 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.

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