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STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART IX

BANKRUPTCY

CHAPTER IV

ADMINISTRATION BY TRUSTEE

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.

[^{F1} 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 section 50, ^{F2} . . . 128 [^{F3} or 198] of that Act has not been made in respect of the property, and
- (c) the restraint order is discharged.

(2) On the discharge of the restraint order 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).

F1 2002 c. 29

F2 Word in art. 279A(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), ss. 74(2), 92, 94(1), Sch. 8 para. 154(a), Sch. 14; S.I. 2008/755, art. 2(1)(a)(d)(vii) (subject to arts. 3-14)

F3 Words in art. 279A(1)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), ss. 74(2)(g), 94(1), Sch. 8 para. 154(b); S.I. 2008/755, art. 2(1)(a) (subject to arts. 3-14)

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VALID FROM 01/06/2015

[^{F1}[^{F4}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.]

F1 2002 c. 29

F4 Art. 279AA inserted (prosp.) by Policing and Crime Act 2009 (c. 26), ss. 112(1), 116(1), Sch. 7 para. 61

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 section 423(2)(b), (c) or (d) 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.

F1 2002 c. 29

VALID FROM 01/06/2015

[^{F5}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.]]

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F1 2002 c. 29

F5 Art. 279BA inserted (prosp.) by Policing and Crime Act 2009 (c. 26), ss. 112(1), 116(1), **Sch. 7 para. 63**

Property subject to certain orders where confiscation order discharged or quashed

279C.—(1) This Article applies where—

- (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 in respect of which a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),
- (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.

(2) Any such property in the hands of a receiver appointed under Part 2 or 4 of that Act or an administrator appointed under Part 3 of that Act 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).]

F1 2002 c. 29

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,
- [^{F6}(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.

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F6 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^{F7} . . . 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.

[^{F8}(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.]

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(2) The High Court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt^{F9} 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.

^{F10}(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^{F11} and^{F12} (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.]

^{F11}(8) This paragraph applies to—

- (a) payments by way of guaranteed minimum pension; and
- (b) payments giving effect to the bankrupt's protected rights as a member of a pension scheme.

(9) In this Article, “guaranteed minimum pension” and “protected rights” have the same meaning as in the Pension Schemes (Northern Ireland) Act 1993.]

F7 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](#))

F8 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](#))

F9 1995 NI 22

F10 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](#))

F11 1995 NI 22

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F12 1999 NI 11

[^{F13}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).]

F13 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.

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(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^{F14} or by his civil partner or former civil partner] 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^{F15}, 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.

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[^{F16}(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^{F17} or the Registration of Deeds Acts, an order under paragraph (6) discharging that order may direct that the entry be vacated.

[^{F18}(8) But an order under paragraph (6) may not vary a charged value.]

F14 2004 c. 33

F15 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)

F16 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)

F17 1970 c. 18 (NI)

F18 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)

[^{F19}**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 [^{F20}or civil partner] , or
 - (iii) a former spouse [^{F21}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).

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(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).]

- F19** 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](#))
- F20** 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](#))
- F21** 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—

- (a) with the permission of the creditors' committee or the High Court, exercise any of the powers specified in Part I of Schedule 3, and
- (b) 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—

- (a) to superintend the management of his estate or any part of it,
- (b) to carry on his business (if any) for the benefit of his creditors, or
- (c) 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—

- (a) disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt, or
- (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.

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(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.

Status:

Point in time view as at 12/05/2011. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:

The Insolvency (Northern Ireland) Order 1989, Cross Heading: Acquisition, control and realisation of bankrupt's estate is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.