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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART IX

#### BANKRUPTCY

##### CHAPTER IV

##### ADMINISTRATION BY TRUSTEE

###### *Distribution of bankrupt's estate*

#### **Proof of debts**

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

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

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

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

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

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

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

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

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

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

**297.**—(1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare

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and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.

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

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

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

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

### Claims by unsatisfied creditors

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

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

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

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

### Distribution of property in specie

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

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

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

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

## Priority of debts

**300.**—(1) In the distribution of the bankrupt's estate, his preferential debts <sup>F1</sup>... shall be paid in priority to other debts.

[<sup>F2</sup>(1A) Ordinary preferential debts rank equally among themselves after the expenses of the bankruptcy and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions between themselves.]

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

<sup>F3</sup>(2) .....

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

[<sup>F4</sup>(3A) If the bankrupt is a relevant financial institution, paragraph (3) does not apply but—

- (a) the bankrupt's ordinary non-preferential debts are to be paid in priority to the bankrupt's secondary non-preferential debts,
- (b) the bankrupt's ordinary non-preferential debts rank equally among themselves after the secondary preferential debts and are to be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions,
- (c) the bankrupt's secondary non-preferential debts are to be paid in priority to the bankrupt's tertiary non-preferential debts, and
- (d) the bankrupt's secondary non-preferential debts rank equally among themselves after the ordinary non-preferential debts and are to be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions.

See Article 347A for definitions relevant to this paragraph.]

(4) Any surplus remaining after the payment of the debts [<sup>F5</sup>—

- (a) where paragraph (3) applies, that are preferential or rank equally under that paragraph, or
- (b) where paragraph (3A) applies, that are preferential or are referred to in that paragraph,]

shall be applied in paying interest on those debts in respect of the [<sup>F6</sup>periods] during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.

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

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

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

[<sup>F7</sup>(7) In this Article “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in Article 346.]

**F1** Words in art. 300(1) omitted (1.1.2015) by virtue of [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **19(2)** (with art. 3)

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- F2** Art. 300(1A)(1B) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **19(3)** (with art. 3)
- F3** Art. 300(2) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **19(4)** (with art. 3)
- F4** Art. 300(3A) inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **26(2)** (with art. 3)
- F5** Art. 300(4)(a)(b) substituted for words (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **26(3)(a)** (with art. 3)
- F6** Word in art. 300(4) substituted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **26(3)(b)** (with art. 3)
- F7** Art. 300(7) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **19(5)** (with art. 3)

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

- C1** Art. 300 applied (with modifications) by S.R. 1995/225, Sch. 7 para. 21 (as amended (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **38** (with art. 3))
- C2** Art. 300 modified by S.R. 1995/225, Sch. 7 para. 21 (as modified (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(4), **122(5)** (with reg. 108))
- C3** Art. 300 modified (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(4), **118** (with reg. 108)

### Preferential charge on goods distrained

**301.**—<sup>F8</sup>(1) Paragraph (1A) applies where—

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

(1A) Where this paragraph applies—

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

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

(2) Where by virtue of a charge under paragraph <sup>F9</sup>(1A)] any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or (as the case may be) the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

- F8** Art. 301(1)(1A) substituted for art. 301(1) (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 39(2)**
- F9** Word in art. 301(2) substituted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 39(3)**

### Debts to spouse<sup>F10</sup> or civil partner]

**302.**—(1) This Article applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse<sup>F10</sup> or civil partner] at the time the credit was provided) was the bankrupt's spouse<sup>F10</sup> or civil partner] at the commencement of the bankruptcy.

(2) Such debts—

(a) rank in priority after the <sup>F11</sup>... interest required to be paid in pursuance of Article [<sup>F12</sup>300(4)], and

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

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

**F10** 2004 c. 33

**F11** Words in art. 302(2)(a) omitted (19.12.2018) by virtue of [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **27(a)** (with art. 3)

**F12** Word in art. 302(2)(a) substituted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **27(b)** (with art. 3)

### Final distribution

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

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

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

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

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

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

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

(b) <sup>F13</sup> if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

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

[<sup>F14</sup>(6) Paragraph (5) is subject to [<sup>F15</sup>Article 49 of the Insolvency Regulation] (surplus in secondary proceedings to be transferred to main proceedings).]

**F13** mod. by SR 1991/365

**F14** SR 2002/334

**F15** Words in art. 303(6) substituted (26.6.2017) by [The Insolvency Amendment \(EU 2015/848\) Regulations 2017 \(S.I. 2017/702\)](#), reg. 1, **Sch. para. 113** (with reg. 3)

### Final meeting

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

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- (a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and
  - (b) the trustee is not the official receiver.
- (2) The trustee shall summon a final general meeting of the bankrupt's creditors which—
- (a) shall receive the trustee's report of his administration of the bankrupt's estate, and
  - (b) shall determine whether the trustee should have his release under Article 272.
- (3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under Article 303(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.
- (4) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this Article.

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

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

- (a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse<sup>F16</sup> or by his civil partner or former civil partner], and
  - (b) the trustee has been unable for any reason to realise that property.
- (2) The trustee shall not summon a meeting under Article 304 unless either—
- (a) the High Court has made an order under Article 286 imposing a charge on that property for the benefit of the bankrupt's estate, or
  - (b) the Court has declined, on an application under that Article, to make such an order, or
  - (c) the Department has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.

**F16** 2004 c. 33

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