



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IX

#### BANKRUPTCY

#### CHAPTER VI

#### BANKRUPTCY OFFENCES

##### *Preliminary*

#### **350 Scheme of this Chapter.**

- (1) Subject to section 360(3) below, this Chapter applies where the court has made a bankruptcy order on a bankruptcy petition.
- (2) This Chapter applies whether or not the bankruptcy order is annulled, but proceedings for an offence under this Chapter shall not be instituted after the annulment.
- (3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his discharge; but nothing in this Group of Parts prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.
- (4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside England and Wales.
- (5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Secretary of State or by or with the consent of the Director of Public Prosecutions.
- (6) A person guilty of any offence under this Chapter is liable to imprisonment or a fine, or both.

*Status: Point in time view as at 31/01/1997.*

*Changes to legislation: Insolvency Act 1986, Chapter VI is up to date with all changes known to be in force on or before 08 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. (See end of Document for details)*

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

C1 Ss. 349, 350(1)(2)(4)–(6) applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**351 Definitions.**

In the following provisions of this Chapter—

- (a) references to property comprised in the bankrupt’s estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt’s estate include any property which would be such property if a notice in respect of it were given under section 307 (after-acquired property) [<sup>F1</sup>, section 308] (personal property and effects of bankrupt having more than replacement value) [<sup>F2</sup> or section 308A (vesting in trustee of certain tenancies)];
- (b) “the initial period” means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy; and
- (c) a reference to a number of months or years before petition is to that period ending with the presentation of the bankruptcy petition.

**Textual Amendments**

F1 Words substituted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140(1), Sch. 17 Pt. I para. 75

F2 Words inserted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140(1), Sch. 17 Pt. I para. 75

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

C2 S. 351 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**352 Defence of innocent intention.**

Where in the case of an offence under any provision of this Chapter it is stated that this section applies, a person is not guilty of the offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

*Wrongdoing by the bankrupt before and after bankruptcy*

**353 Non-disclosure.**

- (1) The bankrupt is guilty of an offence if—
  - (a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or
  - (b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.
- (2) Subsection (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.
- (3) Section 352 applies to this offence.

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### **354 Concealment of property.**

- (1) The bankrupt is guilty of an offence if—
- (a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,
  - (b) he conceals any debt due to or from him or conceals any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or trustee, or
  - (c) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (b) above if the bankruptcy order had been made immediately before he did it.

Section 352 applies to this offence.

- (2) The bankrupt is guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the prescribed amount and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

Section 352 applies to this offence.

- (3) The bankrupt is guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver or the court—
- (a) to account for the loss of any substantial part of his property incurred in the 12 months before petition or in the initial period, or
  - (b) to give a satisfactory explanation of the manner in which such a loss was incurred.

### **355 Concealment of books and papers; falsification.**

- (1) The bankrupt is guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

Section 352 applies to this offence.

- (2) The bankrupt is guilty of an offence if—
- (a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;
  - (b) he conceals destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;
  - (c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or
  - (d) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (b) or (c) above if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

- (3) The bankrupt is guilty of an offence if—

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- (a) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs, or
- (b) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

### 356 False statements.

- (1) The bankrupt is guilty of an offence if he makes or has made any material omission in any statement made under any provision in this Group of Parts and relating to his affairs.

Section 352 applies to this offence.

- (2) The bankrupt is guilty of an offence if—
- (a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or
  - (b) he attempts to account for any part of his property by fictitious losses or expenses; or
  - (c) at any meeting of his creditors in the 12 months before petition or (whether or not such a meeting) at any time in the initial period, he did anything which would have been an offence under paragraph (b) if the bankruptcy order had been made before he did it; or
  - (d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

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

- C3** S. 356(2)(d) applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), arts. 8(3)(9), 10(6), [Sch. 4 Pt. II para. 25](#)

### 357 Fraudulent disposal of property.

- (1) The bankrupt is guilty of an offence if he makes or causes to be made, or has in the period of 5 years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property.

Section 352 applies to this offence.

- (2) The reference to making a transfer of or charge on any property includes causing or conniving at the levying of any execution against that property.
- (3) The bankrupt is guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within 2 months before, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

Section 352 applies to this offence.

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### **358 Absconding.**

The bankrupt is guilty of an offence if—

- (a) he leaves, or attempts or makes preparations to leave, England and Wales with any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or the trustee, or
- (b) in the 6 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made immediately before he did it.

Section 352 applies to this offence.

### **359 Fraudulent dealing with property obtained on credit.**

- (1) The bankrupt is guilty of an offence if, in the 12 months before petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

Section 352 applies to this offence.

- (2) A person is guilty of an offence if, in the 12 months before petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—
  - (a) that the bankrupt owed money in respect of the property, and
  - (b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.
- (3) A person is not guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.
- (4) In determining for the purposes of this section whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.
- (5) In this section references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

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

C4 S. 359(1)(2) applied (with modifications) by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

### **360 Obtaining credit; engaging in business.**

- (1) The bankrupt is guilty of an offence if—
  - (a) either alone or jointly with any other person, he obtains credit to the extent of the prescribed amount or more without giving the person from whom he obtains it the relevant information about his status; or
  - (b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

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- (2) The reference to the bankrupt obtaining credit includes the following cases—
  - (a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement, and
  - (b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in Northern Ireland, is guilty of an offence if, before his discharge, he does anything in England and Wales which would be an offence under subsection (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in Northern Ireland were an adjudication under this Part.
- (4) For the purposes of subsection (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

### **361 Failure to keep proper accounts of business.**

- (1) Where the bankrupt has been engaged in any business for any of the period of 2 years before petition, he is guilty of an offence if he—
  - (a) has not kept proper accounting records throughout that period and throughout any part of the initial period in which he was so engaged, or
  - (b) has not preserved all the accounting records which he has kept.
- (2) The bankrupt is not guilty of an offence under subsection (1)—
  - (a) if his unsecured liabilities at the commencement of the bankruptcy did not exceed the prescribed amount, or
  - (b) if he proves that in the circumstances in which he carried on business the omission was honest and excusable.
- (3) For the purposes of this section a person is deemed not to have kept proper accounting records if he has not kept such records as are necessary to show or explain his transactions and financial position in his business, including—
  - (a) records containing entries from day to day, in sufficient detail, of all cash paid and received,
  - (b) where the business involved dealings in goods, statements of annual stock-takings, and
  - (c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.
- (4) In relation to any such records as are mentioned in subsection (3), subsection (2)(d) and (3)(b) of section 355 apply with the substitution of 2 years for 12 months.

### **362 Gambling.**

- (1) The bankrupt is guilty of an offence if he has—
  - (a) in the 2 years before petition, materially contributed to, or increased the extent of, his insolvency by gambling or by rash and hazardous speculations, or
  - (b) in the initial period, loss any part of his property by gambling or by rash and hazardous speculations.

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- (2) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the bankrupt at the time when he entered into them shall be taken into consideration.

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