STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PARTS VIII TO XINSOLVENCY OF INDIVIDUALS; BANKRUPTCY

PART IX

BANKRUPTCY

CHAPTER IV

ADMINISTRATION BY TRUSTEE

Disclaimer of onerous property

Disclaimer (general power)

288.—(1) Subject to paragraph (4) and Articles 289 to 291, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this Article, that is to say—

(a) any unprofitable contract, and

(b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this Article—

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and

(b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this Article in respect of any property that has been claimed for the estate under Article 280 (after-acquired property) or 281 (personal property of bankrupt exceeding reasonable replacement value), except with the leave of the High Court.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

Notice requiring trustee's decision

289.—(1) Notice of disclaimer shall not be given under Article 288 in respect of any property if—

(a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee or that predecessor to decide whether he will disclaim or not, and

(b) the period of 28 days from the day on which that application was made has expired without a notice of disclaimer having been given under Article 288 in respect of that property.

(2) The trustee is deemed to have adopted any contract which by virtue of this Article he is not entitled to disclaim.

Disclaimer of leaseholds

290.—(1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee of mortgagee and either—

(a) no application under Article 293 is made with respect to the property before the expiration of 14 days from the day on which the last notice served under this paragraph was served, or

(b) where such an application has been made, the High Court directs that the disclaimer is to take effect.

(2) Where the High Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 293, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

(3) For the purposes of this Article, property held under a fee farm grant creating the relation of landlord and tenant is property of a leasehold nature and a reference to an underlessee includes a person who holds a lease from the fee farm grantee.

Disclaimer of dwelling house

291. Without prejudice to Article 290, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

(a) no application under Article 293 is made with respect to the property before the expiration of 14 days from the day on which the last notice served under this Article was served, or

(b) where such an application has been made, the High Court directs that the disclaimer is to take effect.

Disclaimer of land subject to rentcharge

292.—(1) The following applies where, in consequence of the disclaimer under Article 288 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in paragraph (2) as "the proprietor").

(2) The proprietor, and the successors in title of the proprietor, are not subject to any personal liability in respect of any sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

High Court order vesting disclaimed property

293.—(1) This Article and Article 294 apply where the trustee has disclaimed property under Article 288.

(2) An application may be made to the High Court under this Article by—

(a) any person who claims an interest in the disclaimed property,

(b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or

(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(3) Subject to the following provisions of this Article and to Article 294, the High Court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—

(a) a person entitled to it or a trustee for such a person,

(b) a person subject to such a liability as is mentioned in paragraph (2)(b) or a trustee for such a person, or

(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(4) The High Court shall not make an order by virtue of paragraph (3)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this Article shall be taken into account in assessing for the purposes of Article 288(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this Article vesting property in any person need not be completed by any conveyance, assignment or transfer.

Order under Article 293 in respect of leaseholds

294.—(1) The High Court shall not make an order under Article 293 vesting property of a leasehold nature in any person, except on terms making that person—

(a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented, or

(b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him on that day.

(2) For the purposes of an order under Article 293 relating to only part of any property comprised in a lease, the requirements of paragraph (1) apply as if the lease comprised only the property to which the order relates.

(3) Where paragraph (1) applies and no person is willing to accept an order under Article 293 on the terms required by that paragraph, the High Court may (by order under Article 293) vest the estate or interest of the bankrupt in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease.

(4) An order of the High Court under paragraph (3) may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.

(5) Where paragraph (1) applies and a person declines to accept any order under Article 293, that person shall be excluded from all interest in the property.

(6) Paragraph (3) of Article 290 shall apply for the purposes of this Article as it applies for the purposes of that Article.