
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

Preliminary

General functions of trustee

278.—(1) This Chapter applies in relation to any bankruptcy where either—

- (a) the appointment of a person as trustee of a bankrupt's estate takes effect, or
- (b) the official receiver becomes trustee of a bankrupt's estate.

(2) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion.

(3) It is the duty of the trustee, if he is not the official receiver—

- (a) to furnish the official receiver with such information,
- (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
- (c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.

(4) The official name of the trustee shall be “the trustee of the estate of a . . . bankrupt” (inserting the name of the bankrupt); but he may be referred to as “the trustee in bankruptcy” of the particular bankrupt.

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.

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,
- (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.

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, on the application of the trustee, 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.
- (2) The High Court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt 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.
- (6) An income payments order shall not be made after the discharge of the bankrupt, and if made before, shall not have effect after his discharge except—
- (a) in the case of a discharge under Article 253(1)(a) or (b) (order of High Court), by virtue of a condition imposed by the Court under Article 254(2)(c) (income, etc., after discharge), or
 - (b) in the case of a discharge under Article 253(1)(c) (expiration of relevant period), by virtue of a provision of the order requiring it to continue in force for a period ending after the discharge but no later than 3 years after the making of the order.
- (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.

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.

(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 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, up to the value from time to time of the property secured, 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.

(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(1) or the Registration of Deeds Acts, an order under paragraph (6) discharging that order may direct that the entry be vacated.

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.

(1) 1970 c. 18 (N.I.)

(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.

(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.

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.

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 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 (within the meaning of Article 346) shall be paid in priority to other debts.

(2) Preferential debts rank equally between themselves after the expenses of the bankruptcy and 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.

(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.

(4) Any surplus remaining after the payment of the debts that are preferential or rank equally under paragraph (3) shall be applied in paying interest on those debts in respect of the period 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.

Preferential charge on goods distrained

301.—(1) Where any person has distrained upon the goods or effects of an individual who is adjudged bankrupt within 3 months from the distraint, those goods or effects, or the proceeds of their sale, shall be 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 (1) 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.

Debts to spouse

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 at the time the credit was provided) was the bankrupt's spouse at the commencement of the bankruptcy.

(2) Such debts—

- (a) rank in priority after the debts and interest required to be paid in pursuance of Article 300(3) and (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.

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) 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.

Final meeting

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

- (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, 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.

Supplemental

Duties of bankrupt in relation to trustee

306.—(1) The bankrupt shall—

- (a) give to the trustee such information as to his affairs,
- (b) attend on the trustee at such times, and
- (c) do all such other things,

as the trustee may for the purposes of carrying out his functions under Parts VIII to X reasonably require.

(2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.

(3) Paragraph (1) applies to a bankrupt after his discharge.

(4) If the bankrupt 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).

Stay of distribution in case of second bankruptcy

307.—(1) This Article and Article 308 apply where a bankruptcy order is made against an undischarged bankrupt; and in both Articles—

- (a) “the later bankruptcy” means the bankruptcy arising from that order,
- (b) “the earlier bankruptcy” means the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy, and
- (c) “the existing trustee” means the trustee (if any) of the bankrupt’s estate for the purposes of the earlier bankruptcy.

(2) Without prejudice to Article 257 (restrictions on dispositions of property following bankruptcy order), where the existing trustee has been given the prescribed notice of the presentation of the petition for the later bankruptcy, any distribution or other disposition by him of anything to which paragraph (3) applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the High Court or is or was subsequently ratified by the Court.

(3) This paragraph applies to—

- (a) any property which is vested in the existing trustee under Article 280(3) (after-acquired property);
- (b) any money paid to the existing trustee in pursuance of an income payments order under Article 283; and
- (c) any property or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within sub-paragraph (a) or (b).

Adjustment between earlier and later bankruptcy estates

308.—(1) With effect from the commencement of the later bankruptcy anything to which Article 307(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt’s estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt’s estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, is to be dealt with by the existing trustee in accordance with the rules.

(2) Any sums which in pursuance of an income payments order under Article 283 are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt’s estate for the purposes of the later bankruptcy; and the High Court may give such consequential directions for the modification of the order as it thinks fit.

(3) Anything comprised in a bankrupt’s estate by virtue of paragraph (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided by paragraphs (1) and (2) and in Article 307, property which is, or by virtue of Article 281 (personal property of bankrupt exceeding reasonable replacement value) is capable of being, comprised in the bankrupt’s estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, shall not be comprised in his estate for the purposes of the later bankruptcy.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of his in the later bankruptcy in respect of the same debts; but the existing trustee may prove in the later bankruptcy for—

- (a) the unsatisfied balance of the debts (including any debt under this paragraph) provable against the bankrupt's estate in the earlier bankruptcy;
- (b) any interest payable on that balance; and
- (c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount provable under paragraph (5) ranks in priority after all the other debts provable in the later bankruptcy and after interest on those debts and, accordingly, shall not be paid unless those debts and that interest have first been paid in full.