

DRAFT STATUTORY INSTRUMENTS

**2005 No.**

**The Insolvency (Northern Ireland) Order 2005**

*Individuals*

**Duration of, and discharge from, bankruptcy**

**12.**—(1) The following shall be substituted for Article 253 of the 1989 Order (duration of bankruptcy)—

**“Duration**

**253.**—(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.

(2) If before the end of that period the official receiver files with the High Court a notice stating that investigation of the conduct and affairs of the bankrupt under Article 262 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.

(3) On the application of the official receiver or the trustee of a bankrupt’s estate, the High Court may order that the period specified in paragraph (1) shall cease to run until—

- (a) the end of a specified period, or
- (b) the fulfilment of a specified condition.

(4) The High Court may make an order under paragraph (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In paragraph (3)(b) “condition” includes a condition requiring that the High Court be satisfied of something.

(6) This Article is without prejudice to any power of the High Court to annul a bankruptcy order.

(7) Nothing in this Article applies to a bankrupt who is a solicitor.”.

(2) In Article 254 of the 1989 Order (discharge by order of the High Court)—

(a) the following shall be substituted for the heading of the Article—

**“Discharge where bankrupt is a solicitor”; and**

(b) the following shall be substituted for paragraph (1)—

“(1) A bankrupt who is a solicitor is discharged from bankruptcy by an order of the High Court under this Article.

(1A) An application for an order under this Article may be made at any time.”.

(3) Schedule 4 (which makes transitional provision in relation to this Article)—

- (a) shall have effect, and
- (b) is without prejudice to the generality of Article 250.

### **Post-discharge restrictions**

13.—(1) The following shall be inserted after Article 255 of the 1989 Order (bankruptcy: effect of discharge)—

#### **“Post-discharge restrictions**

255A. Schedule 2A (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.”.

(2) The Schedule 2A set out in Schedule 5 to this Order shall be inserted after Schedule 2 to the 1989 Order.

(3) The amendments set out in Schedule 6 (which specify the effect of a bankruptcy restrictions order or undertaking) shall have effect.

### **Investigation by official receiver**

14. The following shall be substituted for Article 262 of the 1989 Order (official receiver’s duty to investigate)—

#### **“Investigatory duties of official receiver**

262.—(1) The official receiver shall—

- (a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and
- (b) make such report (if any) to the High Court as the official receiver thinks fit.

(2) Paragraph (1) shall not apply to a case in which the official receiver thinks an investigation under that paragraph unnecessary.

(3) Where a bankrupt makes an application for discharge under Article 254—

- (a) the official receiver shall make a report to the Court about such matters as may be prescribed, and
- (b) the Court shall consider the report before determining the application.

(4) A report by the official receiver under this Article shall in any proceedings be prima facie evidence of the facts stated in it.”.

### **Income payments order**

15.—(1) Article 283 of the 1989 Order (income payments order) shall be amended as follows.

(2) In paragraph (1) omit “, on the application of the trustee,”.

(3) After paragraph (1) insert—

“(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.”.

(4) For paragraph (6) substitute—

“(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).”.

### **Income payments agreement**

16. The following shall be inserted after Article 283 of the 1989 Order (income payments order)

#### **“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).”.

**Bankrupt's home**

17.—(1) In Chapter II of Part IX of the 1989 Order (protection of bankrupt's estate and investigation of his affairs) the following shall be inserted before Article 257 (restrictions on dispositions of property)—

**“Bankrupt's home ceasing to form part of estate**

**256A.**—(1) This Article applies where 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—

- (a) the bankrupt,
- (b) the bankrupt's spouse, or
- (c) a former spouse of the bankrupt.

(2) At the end of the period of 3 years beginning with the date of the bankruptcy the interest mentioned in paragraph (1) shall—

- (a) cease to be comprised in the bankrupt's estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer).

(3) Paragraph (2) shall not apply if during the period mentioned in that paragraph—

- (a) the trustee realises the interest mentioned in paragraph (1),
- (b) the trustee applies for an order for sale in respect of the dwelling-house,
- (c) the trustee applies for an order for possession of the dwelling-house,
- (d) the trustee applies for an order under Article 286 in Chapter IV in respect of that interest, or
- (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in paragraph (1) shall cease to form part of the estate.

(4) Where an application of a kind described in paragraph (3)(b) to (d) is made during the period mentioned in paragraph (2) and is dismissed, unless the High Court orders otherwise the interest to which the application relates shall on the dismissal of the application—

- (a) cease to be comprised in the bankrupt's estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer).

(5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of 3 months beginning with the date of the bankruptcy, the period of 3 years mentioned in paragraph (2)—

- (a) shall not begin with the date of the bankruptcy, but
- (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.

(6) The High Court may substitute for the period of 3 years mentioned in paragraph (2) a longer period—

- (a) in prescribed circumstances, and
- (b) in such other circumstances as the Court thinks appropriate.

(7) The rules may make provision for this Article to have effect with the substitution of a shorter period for the period of 3 years mentioned in paragraph (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

- (8) The rules may also, in particular, make provision—
  - (a) requiring or enabling the trustee of a bankrupt’s estate to give notice that this Article applies or does not apply;
  - (b) about the effect of a notice under sub-paragraph (a);
  - (c) requiring the trustee of a bankrupt’s estate to make an application to the Land Registry or the Registry of Deeds.
- (9) Rules under paragraph (8)(b) may, in particular—
  - (a) disapply this Article;
  - (b) enable the High Court to disapply this Article;
  - (c) make provision in consequence of a disapplication of this Article;
  - (d) enable the Court to make provision in consequence of a disapplication of this Article;
  - (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”.
- (2) Article 286 of the 1989 Order (charge on bankrupt’s home) shall be amended as follows—
  - (a) in paragraph (2) for “, up to the value from time to time of the property secured,” substitute “, up to the charged value from time to time,”
  - (b) after paragraph (2) insert—
    - “(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.”, and
  - (c) at the end insert—
    - “(8) But an order under paragraph (6) may not vary a charged value.”.
- (3) The following shall be inserted after Article 286 of the 1989 Order—

**“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, or
    - (iii) a former spouse 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).
- (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).”.

(4) The following shall be inserted after Article 280(2)(a) of the 1989 Order (after-acquired property: exclusions)—

“(aa) any property vesting in the bankrupt by virtue of Article 256A in Chapter II.”.

(5) In Article 362(1)(b) of the 1989 Order (monetary limits in bankruptcy) after the entry for Article 247 there shall be inserted—

“Article 286A (value of property below which application for sale, possession or charge to be dismissed);”.

(6) In paragraph (7)—

- (a) “pre-commencement bankrupt” means an individual who is adjudged bankrupt before paragraph (1) comes into operation, and
- (b) “the transitional period” is the period of 3 years beginning with the date on which paragraph (1) comes into operation.

(7) If a pre-commencement bankrupt’s estate includes an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of him, his spouse or a former spouse of his, at the end of the transitional period that interest shall—

- (a) cease to be comprised in the estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer).

(8) But paragraph (7) shall not apply if before or during the transitional period—

- (a) any of the events mentioned in Article 256A(3) of the 1989 Order (inserted by paragraph (1) above) occurs in relation to the interest or the dwelling-house, or
- (b) the trustee obtains any order of a court, or makes any agreement with the bankrupt, in respect of the interest or the dwelling-house.

(9) Paragraphs (4) to (9) of Article 256A of the 1989 Order shall have effect, with any necessary modifications, in relation to the provision made by paragraphs (6) to (8); in particular—

- (a) a reference to the period mentioned in Article 256A(2) shall be construed as a reference to the transitional period; and
- (b) in the application of Article 256A(5) a reference to the date of the bankruptcy shall be construed as a reference to the date on which paragraph (1) comes into operation.

(10) In Article 11 of the 1989 Order (meaning of “bankrupt’s estate”), after paragraph (5) insert—

“(5A) This Article has effect subject to Article 256A.”.

### **Bankrupt’s home: civil partnership**

**18.**—(1) The 1989 Order shall be amended as follows.

(2) In Article 256A (as inserted by Article 17(1) of this Order), in paragraph (1)—

- (a) in sub-paragraph (b), after “spouse” insert “or civil partner”, and
- (b) in sub-paragraph (c), after “spouse” insert “or former civil partner”.

(3) In Article 286A (as inserted by Article 17(3) of this Order), in paragraph (1)—

- (a) in sub-paragraph (a)(ii), after “spouse” insert “or civil partner”, and
- (b) in sub-paragraph (a)(iii), after “spouse” insert “or former civil partner”.

(4) In Article 309 (rights of occupation, etc.)—

- (a) in paragraph (4)(b) and (c), after “spouse or former spouse” insert “or civil partner or former civil partner”, and
- (b) in the heading to the Article, after “spouse” insert “or civil partner”.

### **Powers of trustee in bankruptcy**

19. The following shall be inserted in Part I of Schedule 3 to the 1989 Order (powers of trustee in bankruptcy: powers exercisable only with sanction) after paragraph 2—

“2A. Power to bring legal proceedings under Article 312, 313 or 367.”.

### **Repeal of certain bankruptcy offences**

20. The following Articles of the 1989 Order shall cease to have effect—

- (a) Article 332 (offence of failure to keep proper accounting records), and
- (b) Article 333 (offence of gambling and speculation).

### **Individual voluntary arrangement**

21.—(1) Schedule 7 (which makes provision about individual voluntary arrangements) shall have effect.

(2) The Department may by order amend the 1989 Order so as to extend the provisions of Articles 237B to 237G (which are inserted by Schedule 7 and provide a fast-track procedure for making an individual voluntary arrangement) to some or all cases other than those specified in Article 237A as inserted by Schedule 7.

(3) An order under paragraph (2) shall be subject to affirmative resolution.

(4) An order under paragraph (2) may make—

- (a) consequential provision (which may include provision amending the 1989 Order or another statutory provision);
- (b) transitional provision.

### **Disqualification for office: the Assembly**

22. The following shall be substituted for Article 370 of the 1989 Order (Northern Ireland Assembly disqualification)—

#### **“Assembly disqualification**

370.—(1) If the High Court makes a bankruptcy restrictions order or interim order in respect of a member of the Assembly, the Court shall notify the presiding officer of the Assembly.

(2) If the Department accepts a bankruptcy restrictions undertaking made by a member of the Assembly, the Department shall notify the presiding officer of the Assembly.

#### **Irrelevance of privilege**

370A. A statutory provision about insolvency applies in relation to a member of the Assembly irrespective of any privilege of the Assembly.”.

### **Disqualification for office: district councils**

23.—(1) The following shall be substituted for section 4(1)(b) of the Local Government Act (Northern Ireland) 1972 (c. 9) (disqualification for membership of district council: bankrupt)—

“(b) is the subject of a bankruptcy restrictions order or interim order;”.

(2) Section 5 of that Act (which amplifies the provision substituted by paragraph (1)) shall cease to have effect.

### **Disqualification for office: general**

**24.**—(1) A Northern Ireland department may make, subject to affirmative resolution, an order under this Article in relation to a disqualification provision.

(2) A “disqualification provision” is a provision which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a bankrupt or a class of bankrupts from—

- (a) being elected or appointed to an office or position,
- (b) holding an office or position, or
- (c) becoming or remaining a member of a body or group.

(3) In paragraph (2) the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables him to be dismissed.

(4) An order under paragraph (1) may repeal or revoke the disqualification provision.

(5) An order under paragraph (1) may amend, or modify the effect of, the disqualification provision—

- (a) so as to reduce the class of bankrupts to whom the disqualification provision applies;
- (b) so as to extend the disqualification provision to some or all individuals who are subject to a bankruptcy restrictions regime;
- (c) so that the disqualification provision applies only to some or all individuals who are subject to a bankruptcy restrictions regime;
- (d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.

(6) An order by virtue of paragraph (5)(d) may provide for a discretion to be subject to—

- (a) the approval of a specified person or body;
- (b) appeal to a specified person or body.

(7) An order by virtue of paragraph (5)(d) made with the concurrence of the Lord Chancellor may provide for a discretion to be subject to appeal to a specified court or tribunal.

(8) The Northern Ireland department making the order may specify itself for the purposes of paragraph (5)(d) or (6)(a) or (b).

(9) In this Article “bankrupt” means an individual—

- (a) who has been adjudged bankrupt by the High Court in Northern Ireland or by a court in England and Wales,
- (b) whose estate has been sequestrated by a court in Scotland, or
- (c) who has made an agreement with creditors of his for a composition of debts, for a scheme of arrangement of affairs, for the grant of a trust deed or for some other kind of settlement or arrangement.

(10) In this Article “bankruptcy restrictions regime” means an order or undertaking—

- (a) under Schedule 2A to the 1989 Order (bankruptcy restrictions orders),
- (b) under Schedule 4A to the Insolvency Act 1986 (c. 45) (corresponding provision in England and Wales), or
- (c) under any system operating in Scotland which appears to the Northern Ireland department making the order to be equivalent to the system operating under Schedule 2A of the 1989 Order.



(11) In this Article—

“body” includes, except in paragraph (2)(c), the Assembly, and

“provision” means any statutory provision—

- (a) which deals with a transferred matter within the meaning of the Northern Ireland Act 1998 (c. 47), and
- (b) which was passed or made before the day appointed for the coming into operation of this Article.

(12) An order under this Article—

- (a) may make provision generally or for a specified purpose only,
- (b) may make different provision for different purposes, and
- (c) may make transitional, consequential or incidental provision.

### **Minor and consequential amendments relating to individual insolvency**

**25.** Schedule 8 (minor and consequential amendments relating to individual insolvency) shall have effect.