



Insolvency Act 1986

1986 CHAPTER 45

The Second Group of Parts Insolvency of Individuals ; Bankruptcy

PART IX

BANKRUPTCY

CHAPTER IV

ADMINISTRATION BY TRUSTEE

Acquisition, control and realisation of bankrupt's estate

306 Vesting of bankrupt's estate in trustee

- (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 section or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

307 After-acquired property

- (1) Subject to this section and section 309, 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 section shall not be served in respect of—
 - (a) any property falling within subsection (2) or (3) of section 283 in Chapter II,
 - (b) any property which by virtue of any other enactment is excluded from the bankrupt's estate, or

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- (c) without prejudice to section 280(2) (c) (order of court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.
- (3) Subject to the next subsection, upon the service on the bankrupt of a notice under this section 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 section—
 - (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 section 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 section 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 section 310.

308 Vesting in trustee of certain items of excess value

- (1) Subject to the next section, where—
 - (a) property is excluded by virtue of section 283(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 section, 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 section; and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.
- (4) For the purposes of this section property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

309 Time-limit for notice under s. 307 or 308

- (1) Except with the leave of the court, a notice shall not be served—
 - (a) under section 307, after the end of the period of 42 days beginning with 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 section 308, after the end of the period of 42 days beginning with the day on which the property in question first came to the knowledge of the trustee.

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- (2) For the purposes of this section—
- (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 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.

310 Income payments orders

- (1) The 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 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 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 section 279(1)(a) (order of court), by virtue of a condition imposed by the court under section 280(2)(c) (income, etc. after discharge), or
 - (b) in the case of a discharge under section 279(1)(b) (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 section 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.

311 Acquisition by trustee of control

- (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

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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 subsection (5) of section 285 (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 subsection or that subsection, 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 subsection (5) has the same effect as a notice served by the official receiver under section 285(5).

312 Obligation to surrender control to trustee

- (1) 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.

This is without prejudice to the general duties of the bankrupt under section 333 in this Chapter.

- (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 section, 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).

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313 Charge on bankrupt's home

- (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 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 section the 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 section 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) Subsections (1) and (2) and (4) to (6) of section 3 of the Charging Orders Act 1979 (supplemental provisions with respect to charging orders) have effect in relation to orders under this section as in relation to charging orders under that Act.

314 Powers of trustee

- (1) The trustee may—
 - (a) with the permission of the creditors' committee or the court, exercise any of the powers specified in Part I of Schedule 5 to this Act, and
 - (b) without that permission, exercise any of the general powers specified in Part II of that Schedule.
- (2) With the permission of the creditors' committee or the 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 subsection (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) Where the trustee has done anything without the permission required by subsection (1) (a) or (2), the 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.

But the committee shall not do so unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay.
- (5) Part III of Schedule 5 to this Act 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 any of this Group of Parts.

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- (6) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by any provision in this Group of Parts—
- (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.
- (7) Without prejudice to the generality of subsection (5) and Part III of Schedule 5, the trustee may, if he thinks fit, at any time summon a general meeting of the bankrupt's creditors.
- Subject to the preceding provisions in this Group of Parts, 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).
- (8) Nothing in this Act is to be construed as restricting the capacity of the trustee to exercise any of his powers outside England and Wales.