

---

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

---



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IX

#### BANKRUPTCY

#### CHAPTER IV

##### ADMINISTRATION BY TRUSTEE

##### *Preliminary*

#### **305 General functions of trustee.**

- (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.

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (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.

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

- C1** S. 305 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13, **Sch. 1 para. 1(b)**
- C2** Ss. 298–307 applied with modifications by [S.I. 1986/1999](#), art. 3, **Sch. 1 Pt. II**
- C3** S. 305 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), **Sch. 4 Pt. II para. 17**
- C4** S. 305 modified (1.12.1994) by [S.I. 1994/2421](#), art. 11(2)(3), **Sch. 7 para. 19**

*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.

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

- C5** Ss. 298–307 applied with modifications by [S.I. 1986/1999](#), art. 3, **Sch. 1 Pt. II**

**[<sup>F1</sup>306A Property subject to restraint order**

- (1) This section applies where—
- (a) property is excluded from the bankrupt’s estate by virtue of section 417(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
  - (b) an order under section 50, <sup>F2</sup> . . . 128 [<sup>F3</sup>or 198] of that Act has not been made in respect of the property, and
  - (c) the restraint order is discharged.
- (2) On the discharge of the restraint order the property vests in the trustee as part of the bankrupt’s estate.
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver’s remuneration and expenses).]

**Textual Amendments**

- F1** Ss. 306A-306C inserted (24.3.2003) by [2002 c. 29, ss. 456, 458\(1\)\(3\), Sch. 11 para. 16\(3\)](#); [S.I. 2003/333, art. 2, Sch.](#) (subject to [arts. 3-13](#) (as amended by [S.I. 2003/531, arts. 3, 4](#))); [S.S.I. 2003/210, art. 2, Sch.](#) (subject to [arts. 3-7](#))
- F2** Words in s. 306A(1)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), ss. 74\(2\), 92, 94, Sch. 8 para. 151\(a\), Sch. 14](#); [S.I. 2007/755, art. 2\(1\)\(d\)\(vi\)](#) (subject to [arts. 3-14](#))

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

**Changes to legislation:** Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)

**F3** Words in s. 306A(1)(b) substituted (1.4.2008) by **Serious Crime Act 2007 (c. 27)**, ss. 74(2), 94, **Sch. 8 para. 151(b)**; **S.I. 2007/755, art. 2(1)(d)(vi)** (subject to arts. 3-14)

VALID FROM 01/06/2015

**[<sup>F4</sup>306A] Property released from detention**

- (1) This section applies where—
- (a) property is excluded from the bankrupt's estate by virtue of section 417(2) (b) of the Proceeds of Crime Act 2002 (property detained under certain provisions),
  - (b) no order is in force in respect of the property under section 41, 50, 120, 128, 190 or 198 of that Act, and
  - (c) the property is released.
- (2) The property vests in the trustee as part of the bankrupt's estate.]

**Textual Amendments**

**F4** S. 306AA inserted (prosp.) by **Policing and Crime Act 2009 (c. 26)**, ss. 112, 116(1), **Sch. 7 para. 55**

**[<sup>F5</sup>306B] Property in respect of which receivership or administration order made**

- (1) This section applies where—
- (a) property is excluded from the bankrupt's estate by virtue of section 417(2) (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the receiver or administrator (as the case may be).
- (2) The property vests in the trustee as part of the bankrupt's estate.

**Textual Amendments**

**F5** Ss. 306A-306C inserted (24.3.2003) by **2002 c. 29**, ss. 456, 458(1)(3), **Sch. 11 para. 16(3)**; **S.I. 2003/333, art. 2, Sch.** (subject to **arts. 3-13** (as amended by **S.I. 2003/531, arts. 3, 4**)); **S.S.I. 2003/210, art. 2, Sch.** (subject to **arts. 3-7**)

VALID FROM 01/06/2015

**[<sup>F6</sup>306BA] Property in respect of which realisation order made**

- (1) This section applies where—

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (a) property is excluded from the bankrupt's estate by virtue of section 417(2)(d) of the Proceeds of Crime Act 2002 (property in respect of which an order has been made authorising realisation of the property by an appropriate officer),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the appropriate officer.
- (2) The property vests in the trustee as part of the bankrupt's estate.]

#### Textual Amendments

F6 S. 306BA inserted (prosp.) by Policing and Crime Act 2009 (c. 26), ss. 112, 116(1), Sch. 7 para. 57

### F7 306C Property subject to certain orders where confiscation order discharged or quashed

- (1) This section applies where—
- (a) property is excluded from the bankrupt's estate by virtue of section 417(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act, and
  - (c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.
- (2) Any such property in the hands of a receiver appointed under Part 2 or 4 of that Act or an administrator appointed under Part 3 of that Act vests in the trustee as part of the bankrupt's estate.
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

#### Textual Amendments

F7 Ss. 306A-306C inserted (24.3.2003) by 2002 c. 29, ss. 456, 458(1)(3), Sch. 11 para. 16(3); S.I. 2003/333, art. 2, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4)); S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)

### 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,
  - [F8(aa) any property vesting in the bankrupt by virtue of section 283A in Chapter II,]

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (b) any property which by virtue of any other enactment is excluded from the bankrupt's estate, or
  - (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.

#### Textual Amendments

**F8** S. 307(2)(aa) inserted (1.4.2004) by 2002 c. 40, ss. 261(4), 279 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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

**C6** Ss. 298-307 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**C7** S. 307 amended by Education (Student Loans) Act 1990 (c. 6, SIF 41:1, 2), s. 1(5), Sch. 2 para. 5(1)

**C8** S. 307 restricted (12.8.1998) by S.I. 1998/2003, reg. 13(1)

S. 307 restricted (25.2.2002) by S.I. 2002/195, reg. 40(1)

S. 307 restricted (1.3.2005) by The Education (Student Support) Regulations 2005 (S.I. 2005/52), reg. 28(1) (with reg. 3(6)-(9))

### 308 Vesting in trustee of certain items of excess value.

- (1) Subject to [F<sup>9</sup>section 309], 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.

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (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.

**Textual Amendments**

**F9** Words substituted by [Housing Act 1988 \(c. 50, SIF 61, 75:1\)](#), s. 140, **Sch. 17 Pt. I para. 73**

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

**C9** S. 308 applied with modifications by [S.I. 1986/1999, art. 3](#), **Sch. 1 Pt. II**

**[<sup>F10</sup>308A Vesting in trustee of certain tenancies.**

Upon the service on the bankrupt by the trustee of a notice in writing under this section, any tenancy—

- (a) which is excluded by virtue of section 283(3A) from the bankrupt's estate, and
- (b) 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 tenancy has relation back to the commencement of the bankruptcy.]

**Textual Amendments**

**F10** S. 308A inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. **117(2)**

**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 property in question had been acquired by, or had devolved upon, the bankrupt;
  - (b) under section 308 [<sup>F11</sup>or section 308A], after the end of the period of 42 days beginning with the day on which the property [<sup>F12</sup>or tenancy] in question first came to the knowledge of the trustee.
- (2) For the purposes of this section—
- (a) any thing 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) any thing 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.

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

#### Textual Amendments

**F11** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), [s. 117\(3\)\(a\)](#)

**F12** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), [s. 117\(3\)\(b\)](#)

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

**C10** S. 309 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

### 310 Income payments orders.

- (1) The court may <sup>F13</sup> . . . 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.
- [<sup>F14</sup>(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.]
- (2) The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt [<sup>F15</sup>when taken together with any payments to which subsection (8) applies] 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.
- [<sup>F16</sup>(6) An income payments order 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 three years beginning with the date on which the order is made.
- (6A) An income payments order may (subject to subsection (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).]
- (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 [<sup>F17</sup>and [<sup>F18</sup> (despite anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999)] any payment under a pension scheme but excluding any payment to which subsection (8) applies..

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (8) This subsection applies to—
- (a) payments by way of guaranteed minimum pension; <sup>F19</sup> ...
  - <sup>F19</sup>(b) .....
- (9) In this section, “guaranteed minimum pension” [<sup>F20</sup>has] the same meaning as in the Pension Schemes Act 1993.]

#### Textual Amendments

- F13** Words in s. 310(1) repealed (1.4.2004) by 2002 c. 40, ss. 259(2), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F14** S. 310(1A) inserted (1.4.2004) by 2002 c. 40, ss. 259(3), 279 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F15** Words in s. 310(2) inserted (6.4.1997) by 1995 c. 26, s. 122, Sch. 3 para. 15(a) (with s. 121(5)); S.I. 1997/664, art. 2(3), Sch. Pt. II (with transitional adaptations, modifications and savings in arts. 3-14)
- F16** S. 310(6)(6A) substituted (1.4.2004) for s. 310(6) by 2002 c. 40, ss. 259(4), 279, (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F17** S. 310(8)(9) and words preceding them added (6.4.1997) by 1995 c. 26, s. 122, Sch. 3 para. 15(b) (with s. 121(5)); S.I. 1997/664, art. 2(3), Sch. Pt. II (with transitional adaptations, modifications and savings in arts. 3-14)
- F18** Words in s. 310(7) inserted (11.11.1999 for the purpose only of any exercise of power to make regulations, otherwise 29.5.2000) by 1999 c. 30, ss. 18, 89(5), Sch. 2 para. 2; S.I. 2000/1382, art. 2(e)
- F19** S. 310(8)(b) and word omitted (6.4.2012) by S.I. 2011/1730, art. 3(2) (as substituted) by virtue of The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) (Amendment) Order 2012 (S.I. 2012/709), arts. 1(2), 2(2)
- F20** Word in s. 310(9) substituted (6.4.2012) by S.I. 2011/1730, art. 3(3) (as substituted) by The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) (Amendment) Order 2012 (S.I. 2012/709), arts. 1(2), 2(2)

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

- C11** S. 310 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
- C12** S. 310 amended by Education (Student Loans) Act 1990 (c. 6, SIF 41:1, 2), s. 1(5), Sch. 2 para. 5(1)
- C13** S. 310 restricted (12.8.1998) by S.I. 1998/2003, reg. 13(1)
- S. 310 restricted (25.2.2002) by S.I. 2002/195, reg. 40(1)
- S. 310 restricted (1.3.2005) by The Education (Student Support) Regulations 2005 (S.I. 2005/52), reg. 28(1) (with reg. 3(6)-(9))

#### [<sup>F21</sup>310A] Income payments agreement

- (1) In this section “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 subsection (1)(a) or (b) may be enforced as if it were a provision of an income payments order.



*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (3) While an income payments agreement is in force the 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 section 310 shall apply to an income payments agreement as they apply to an income payments order—
  - (a) subsection (5) (receipts to form part of estate), and
  - (b) subsections (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 three years beginning with the date on which the agreement is made.
- (6) An income payments agreement may (subject to subsection (5)(b)) be varied—
  - (a) by written agreement between the parties, or
  - (b) by the court on an application made by the bankrupt, the trustee or the official receiver.
- (7) The 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 section 310(2).]

#### Textual Amendments

**F21** S. 310A inserted (1.4.2004) by 2002 c. 40, ss. 260, 279 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

### 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 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

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

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).

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

**C14** S. 311 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**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).

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

**C15** S. 312 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**C16** S. 312 modified (1.12.1994) by [S.I. 1994/2421, art. 11\(2\)\(3\), Sch. 7 para. 20](#)

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

### 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 [<sup>F22</sup>or by his civil partner or former civil partner] 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 [<sup>F23</sup>, up to the charged value from time to time.] 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.

[<sup>F24</sup>(2A) In subsection (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 section the court shall disregard any matter which it is required to disregard by the rules.]

(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) [<sup>F25</sup>Subsection (1), (2), (4), (5) and (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.

[<sup>F26</sup>(5) But an order under section 3(5) of that Act may not vary a charged value.]

#### Textual Amendments

**F22** Words in s. 313(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 114](#); [S.I. 2005/3175](#), [art. 2\(2\)](#) (subject to [art. 2\(3\)-\(5\)](#))

**F23** Words in s. 313(2) substituted (1.4.2004) by [2002 c. 40](#), ss. 261(2)(a), 279 (with s. 249(6)); [S.I. 2003/2093](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to [arts. 3-8](#) (as amended by [S.I. 2003/2332](#), [art. 2](#)))

**F24** S. 313(2A)(2B) inserted (1.4.2004) by [2002 c. 40](#), ss. 261(2)(b), 279 (with s. 249(6)); [S.I. 2003/2093](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to [arts. 3-8](#) (as amended by [S.I. 2003/2332](#), [art. 2](#)))

**F25** Words in s. 313(4) substituted (1.10.2012) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), [s. 93\(5\)\(6\)](#); [S.I. 2012/1312](#), [art. 3](#)

**F26** S. 313(5) inserted (1.4.2004) by [2002 c. 40](#), ss. 261(2)(c), 279 (with s. 249(6)); [S.I. 2003/2093](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to [arts. 3-8](#) (as amended by [S.I. 2003/2332](#), [art. 2](#)))

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

**C17** S. 313 applied (with modifications) by [S.I. 1986/1999](#), [art. 3](#), [Sch. 1 Pt. II](#)

### [<sup>F27</sup>313A Low value home: application for sale, possession or charge

(1) This section applies where—

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (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 [<sup>F28</sup>or civil partner], or
    - (iii) a former spouse [<sup>F29</sup>or former civil partner] 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 section 313 in respect of the property.
- (2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.
  - (3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2).]

#### Textual Amendments

- F27** S. 313A inserted (1.4.2004) by 2002 c. 40, ss. 261(3), 279 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F28** Words in s. 313A(1)(a)(ii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, Sch. 27 para. 115(a); S.I. 2005/3175, art. 2(2) (subject to art. 2(3)-(5))
- F29** Words in s. 313A(1)(a)(iii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, Sch. 27 para. 115(b); S.I. 2005/3175, art. 2(2) (subject to art. 2(3)-(5))

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

- C18** S. 313A modified (1.7.2005) by S.I. 1994/2421, Sch. 4 Pt. II para. 29A (as inserted (1.7.2005) by S.I. 2005/1516, art. 9(5))
- S. 313A modified (1.7.2005) by S.I. 1994/2421, Sch. 7 para. 20A (as inserted (1.7.2005) by S.I. 2005/1516, art. 10(5))

### 314 Powers of trustee.

- (1) The trustee may—
  - (a) with the permission of the creditor's 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 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.

---

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

---

- (4) Where the trustee has done anything without the permission required by subsection (1) (a) or (2), the court or the creditor's 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 his Group of Parts.

- (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 creditor's 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.

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

**C19** S. 314 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**C20** S. 314(7) applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 8\(3\)\(9\), Sch. 4 Pt. II para. 20](#)

*Disclaimer of onerous property*

**315 Disclaimer (general power).**

- (1) Subject as follows, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and may 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 section, 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 section—

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

**Changes to legislation:** *Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (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 section in respect of any property that has been claimed for the estate under section 307 (after-acquired property) or 308 (personal property of bankrupt exceeding reasonable replacement value) [<sup>F30</sup>or 308A], except with the leave of the court.
- (5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section 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.

#### Textual Amendments

**F30** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), **s. 117(4)**

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

**C21** S.315, applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**C22** S. 315 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), ss. 154, 155, 164(1), 182(4), **Sch. 22 para. 7(1)**; [S.I. 1991/878, art. 2, Sch. .](#)

**C23** S. 315 restricted (1.1.1996) by [1995 c. 30, s. 21\(2\)\(b\)](#) (with ss. 1(1), 2(2), 26(1)); [S.I. 1995/2963, art. 2](#)  
 S. 315 excluded (11.12.1999) by [S.I. 1999/2979, reg. 16\(1\)](#)

### 316 Notice requiring trustee's decision.

- (1) Notice of disclaimer shall not be given under section 315 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 beginning with the day on which that application was made has expired without a notice of disclaimer having been given under section 315 in respect of that property.
- (2) The trustee is deemed to have adopted any contract which by virtue of this section he is not entitled to disclaim.

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

**C24** S. 316 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

### 317 Disclaimer of leaseholds.

- (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 or mortgagee and either—
  - (a) no application under section 320 below is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served, or
  - (b) where such an application has been made, the court directs that the disclaimer is to take effect.
- (2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 320, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

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

**C25** S.317 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**C26** S. 317 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\), art. 13, Sch. 1 para. 1\(c\)](#)

### 318 Disclaimer of dwelling house.

Without prejudice to section 317, 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 section 320 is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this section was served, or
- (b) where such an application has been made, the court directs that the disclaimer is to take effect.

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

**C27** S.318 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

### 319 Disclaimer of land subject to rentcharge.

- (1) The following applies where, in consequence of the disclaimer under section 315 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection 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.

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)**

**C28** s. 319 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**320 Court order vesting disclaimed property.**

- (1) This section and the next apply where the trustee has disclaimed property under section 315.
- (2) An application may be made to the court under this section 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 as follows in this section and the next, the court may, on an application under this section, 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 subsection (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 court shall not make an order by virtue of subsection (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 section shall be taken into account in assessing for the purposes of section 315(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.
- (6) An order under this section vesting property in any person need not be completed by any conveyance, assignment or transfer.

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

**C29** S. 320 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**321 Order under s. 320 in respect of leaseholds.**

- (1) The court shall not make an order under section 320 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.



*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

**Changes to legislation:** *Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (2) For the purposes of an order under section 320 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.
- (3) Where subsection (1) applies and no person is willing to accept an order under section 320 on the terms required by that subsection, the court may (by order under section 320) vest the estate or interest in 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.

The court may by virtue of this subsection vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.

- (4) Where subsection (1) applies and a person declines to accept any order under section 320, that person shall be excluded from all interest in the property.

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

**C30** S. 321 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

*Distribution of bankrupt's estate*

**322 Proof of debts.**

- (1) Subject to this section and the next, 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 subsection (3) or, by virtue of section 303 in Chapter III, by the court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

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

**C31** S.322 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**323 Mutual credit and set-off.**

- (1) This section applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankruptcy and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (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 subsection (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 subsection (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.

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

**C32** S.323 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**C33** S. 323 modified (25.4.1991) by [Companies Act 1989 \(c. 40\), ss. 154, 155, 163\(2\)\(b\), 182\(4\), Sch. 22 para. 6\(2\)\(b\); S.I. 1991/878, art. 2, Sch.](#)

**324 Distribution by means of dividend.**

- (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 subsection 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.

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

**C34** S. 324 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**325 Claims by unsatisfied creditors.**

- (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

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (b) any dividend or dividends payable under 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 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 for the time being specified in section 17 of the <sup>M1</sup>Judgments Act 1838, from the time it was withheld, and
  - (b) the costs of the proceedings in which the order to pay is made.

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

**C35** s. 325 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**Marginal Citations**

**M1** 1838 c. 110.

**326 Distribution of property in specie.**

- (1) Without prejudice to sections 315 to 319 (disclaimer), the trustee may, with the permission of the creditors' committee, divide in its existing form amongst 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 subsection (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 subsection (1) has been given.
- (3) Where the trustee has done anything without the permission required by subsection (1), 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 acted in a case of urgency and has sought its ratification without undue delay.

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

**C36** S. 326 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**[<sup>F31</sup>327 Distribution in criminal bankruptcy.**

Where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy), no distribution shall be made under sections 324 to 326 so long as an appeal is pending (within the meaning of section 277) against the bankrupt's conviction of any offence by virtue of which the criminal bankruptcy order on which the petition was based was made.]

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

#### Textual Amendments

**F31** S. 327 repealed (*prosp.*) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 123, 170, 171, [Sch. 8 para. 16, Sch. 16](#)

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

**C37** S.327 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

### 328 Priority of debts.

- (1) In the distribution of the bankrupt's estate, his preferential debts (within the meaning given by section 386 in Part XII) 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 the next section 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 subsection (3) shall be applied in paying interest on those debts in respect of the periods 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 subsection (4) in respect of any debt is whichever is the greater of the following—
  - (a) the rate specified in section 17 of the <sup>M2</sup>Judgments Act 1838 at the commencement of the bankruptcy, and
  - (b) the rate applicable to that debt apart from the bankruptcy.
- (6) This section and the next are without prejudice to any provision of this Act or any other Act 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.

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

**C38** S. 328 applied (with modifications) by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**C39** S. 328 modified (1.12.1994) by [S.I. 1994/2421, art. 11\(2\)\(3\), Sch. 7 para. 21](#)

**C40** S. 328 excluded (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004 \(S.I. 2004/353\)](#), [reg. 20](#) (as amended (10.8.2005) by [S.I. 2005/1998, regs. 2\(3\), 40\(1\)-\(5\)](#))

**C41** S. 328(1)-(3)(6) modified (1.12.1994) by [S.I. 1994/2421, art. 8, Sch. 4 Pt. II para. 23](#)

**C42** S. 328(1)(2) applied (11.12.1999) by [S.I. 1999/2979, reg. 14\(5\)](#)

**C43** S. 328(4)(5) applied (with modifications) (1.12.1994) by [S.I. 1994/2421, arts. 8\(3\)\(9\), 10\(6\), Sch. 4 Pt. II para. 24](#)

#### Marginal Citations

**M2** 1838 c. 110.

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

### 329 Debts to spouse.

- (1) This section applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse <sup>F32</sup>or civil partner] at the time the credit was provided) was the bankrupt's spouse <sup>F32</sup>[or civil partner] 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 section 328(3) and (4), and
  - (b) are payable with interest at the rate specified in section 328(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy;and the interest payable under paragraph (b) has the same priority as the debts on which it is payable.

#### Textual Amendments

**F32** Words in s. 329(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 116](#); [S.I. 2005/3175](#), [art. 2\(2\)](#) (subject to [art. 2\(3\)-\(5\)](#))

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

**C44** S. 329 applied (with modifications) by [S.I. 1986/1999](#), [art. 3](#), [Sch. 1 Pt. II](#)

### 330 Final distribution.

- (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 subsection (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 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.
- <sup>F33</sup>(6) Subsection (5) is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).]

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

#### Textual Amendments

**F33** S. 330(6) inserted (31.5.2002) by [S.I. 2002/1240, reg. 15](#)

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

**C45** S. 330 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#) (as amended (31.5.2002) by [S.I. 2002/1309, art. 3\(3\)\(4\)](#))

**C46** S. 330(4)(b) modified by [S.I. 1986/1999, art. 5, Sch. 2](#)

### 331 Final meeting.

- (1) Subject as follows in this section and the next, this section 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 section 299 in Chapter III.
- (3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under section 330(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 section.

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

**C47** S. 331 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

S. 331 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 10\(6\), Sch. 4 Pt. II para. 18](#)

**C48** S. 331 modified (1.12.1994) by [S.I. 1994/2421, art. 11\(2\)\(3\), Sch. 7 para. 22](#)

### 332 Saving for bankrupt's home.

- (1) This section 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 [<sup>F34</sup>or by his civil partner or former civil partner], and
  - (b) the trustee has been unable for any reason to realise that property.
- (2) The trustee shall not summon a meeting under section 331 unless either—
  - (a) the court has made an order under section 313 imposing a charge on that property for the benefit of the bankrupt's estate, or

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (b) the court has declined, on an application under that section, to make such an order, or
- (c) the Secretary of State 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.

#### Textual Amendments

**F34** Words in s. 332(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 117](#); [S.I. 2005/3175](#), [art. 2\(2\)](#) (subject to [art. 2\(3\)-\(5\)](#))

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

**C49** S. 332 applied (with modifications) by [S.I. 1986/1999](#), [art. 3](#), [Sch. 1 Pt. II](#)

### *Supplemental*

#### **333 Duties of bankrupt in relation to trustee.**

- (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 any of this Group of Parts 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) Subsection (1) applies to a bankrupt after his discharge.
- (4) If the bankrupt 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).

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

**C50** S. 333 applied with modifications by [S.I. 1986/1999](#), [art. 3](#), [Sch. 1 Pt. II](#)

#### **334 Stay of distribution in case of second bankruptcy.**

- (1) This section and the next apply where a bankruptcy order is made against an undischarged bankrupt; and in both sections—
  - (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.

*Status: Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)*

- (2) Where the existing trustee has been given the prescribed notice of the presentation of the petition of the later bankruptcy, any distribution or other disposition by him of anything to which the next subsection applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the court or is or was subsequently ratified by the court.

This is without prejudice to section 284 (restrictions on dispositions of property following bankruptcy order).

- (3) This subsection applies to—
- (a) any property which is vested in the existing trustee under section 307(3) (after-acquired property);
  - (b) any money paid to the existing trustee in pursuance of an income payments order under section 310; 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 paragraph (a) or (b) of this subsection.

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

C51 S. 334 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

### 335 Adjustment between earlier and later bankruptcy estates.

- (1) With effect from the commencement of the later bankruptcy anything to which section 334(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 section 310 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 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 subsection (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 above and in section 334, property which is, or by virtue of section 308 (personal property of bankrupt exceeding reasonable replacement value) [<sup>F35</sup>or section 308A (vesting in trustee of certain tenancies)] 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.
- (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—



---

*Status:* Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.

*Changes to legislation:* Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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)

---

- (a) the unsatisfied balance of the debts (including any debt under this subsection) 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 subsection (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.

---

**Textual Amendments**

**F35** Words inserted by [Housing Act 1988 \(c. 50, SIF 61, 75:1\)](#), s. 140(1), [Sch. 17 Pt. I para. 74](#)

---

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

**C52** S. 335 applied with modifications by [S.I. 1986/1999, art. 3](#), [Sch. 1 Pt. II](#)

**Status:**

Point in time view as at 01/10/2012. This version of this chapter contains provisions that are not valid for this point in time.

**Changes to legislation:**

Insolvency Act 1986, Chapter IV is up to date with all changes known to be in force on or before 15 April 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.