
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART IX

BANKRUPTCY

CHAPTER V

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS, ETC.

Rights of occupation

Rights of occupation, etc., of bankrupt's spouse [^{F1}or civil partner]

309.—(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting of the bankrupt's estate in a trustee) is to be taken as having given rise to any [^{F2} [^{F3} home rights] under the Family Homes and Domestic Violence (Northern Ireland) Order 1998] in relation to a dwelling house comprised in the bankrupt's estate.

(2) Where [^{F3} a spouse's or civil partner's home rights] [^{F2} under the Order of 1998] are a charge on the estate or interest of the other spouse [^{F3} or civil partner], or of trustees for the other spouse [^{F3} or civil partner], and the other spouse [^{F3} or civil partner] is adjudged bankrupt—

- (a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Order, binds the trustee of the bankrupt's estate and persons deriving title under that trustee, and
- (b) any application for an order under [^{F2} Article 11] of that Order shall be made to the High Court.

(3) Notwithstanding any provision of the Partition Act 1868^{F4}, where a person and his spouse or former spouse [^{F3} or civil partner or former civil partner] have a legal or equitable estate in a dwelling house vested in them jointly or as tenants in common and that person is adjudged bankrupt, in a suit for partition maintained by the trustee of the bankrupt's estate the High Court may make such order as it thinks fit.

(4) On an application such as is mentioned in paragraph (2) or in a suit such as is mentioned in paragraph (3) the High Court shall make such order under paragraph (3) or [^{F2} Article 11 of the Order of 1998] as it thinks just and reasonable having regard to—

- (a) the interests of the bankrupt's creditors,
- (b) the conduct of the spouse or former spouse [^{F5} or civil partner or former civil partner], so far as contributing to the bankruptcy,
- (c) the needs and financial resources of the spouse or former spouse [^{F5} or civil partner or former civil partner],

Changes to legislation: *The Insolvency (Northern Ireland) Order 1989, Section 309 is up to date with all changes known to be in force on or before 24 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) View outstanding changes*

(d) the needs of any children, and

(e) all the circumstances of the case other than the needs of the bankrupt.

(5) Where such an application is made or such a suit is maintained after the expiration of one year from the first vesting under Chapter IV of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

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| F1 | Words in art. 309 heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) , arts. 1(3), 18(4)(b) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7) |
| F2 | 1998 NI 6 |
| F3 | 2004 c. 33 |
| F4 | 1868 c. 40 |
| F5 | Words in art. 309(4)(b)(c) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) , arts. 1(3), 18(4)(a) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7) |

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Changes and effects yet to be applied to :

- Instrument amended by [1998 c. 11 s. 23 Sch. 5 Pt.1 Ch. 3 para. 40](#)
- Instrument amended (prosp) by [S.I. 1994/279 \(N.I.\) art. 26\(1\)Sch. 2 para. 15](#)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 9 Pt. 2 para. 66 revoked by [1996 c. 23 s. 107\(2\)Sch. 4](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov.uk](#))
- art. 2B inserted by [2016 c. 2 \(N.I.\) s. 2\(1\)](#)
- art. 208ZA applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZA is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 208ZA-208ZB inserted by [2016 c. 2 \(N.I.\) s. 1\(1\)](#)
- art. 208ZB applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZB is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 345A-345B inserted by [2016 c. 2 \(N.I.\) s. 1\(2\)](#)