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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART IX

### BANKRUPTCY

### CHAPTER VI

### BANKRUPTCY OFFENCES

#### *Wrongdoing by the bankrupt before and after bankruptcy*

#### **Non#disclosure**

**324.**—(1) The bankrupt shall be guilty of an offence if—

- (a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or
- (b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Paragraph (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

(3) Article 323 applies to an offence under this Article.

#### **Concealment of property**

**325.**—(1) The bankrupt shall be guilty of an offence if—

- (a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,
- (b) he conceals any debt due to or from him or conceals any property the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or trustee, or
- (c) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (b) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under paragraph (1).

(3) The bankrupt shall be guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the amount specified by order under Article 362(1)(b) and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

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(4) Article 323 applies to an offence under paragraph (3).

(5) The bankrupt shall be guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver [<sup>F1</sup>, the trustee] or the High Court—

- (a) to account for the loss of any substantial part of his property incurred in the 12 months immediately preceding petition or in the initial period, or
- (b) to give a satisfactory explanation of the manner in which such a loss was incurred.

**F1** Words in art. 325(5) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 14 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

### Concealment of books and papers; falsification

**326.**—(1) The bankrupt shall be guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

(2) The bankrupt shall be guilty of an offence if—

- (a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;
- (b) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;
- (c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or
- (d) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (b) or (c) if the bankruptcy order had been made before he did it.

(3) The bankrupt shall be guilty of an offence if—

- (a) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs, or
- (b) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (a) if the bankruptcy order had been made before he did it.

(4) Article 323 applies to an offence under this Article.

[<sup>F2</sup>(5) In their application to a trading record paragraphs (2)(d) and (3)(b) shall have effect as if the reference to 12 months were a reference to two years.

(6) In paragraph (5) “trading record” means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

- (a) a periodic record of cash paid and received,
- (b) a statement of periodic stock-taking, and
- (c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.]

**F2** Art. 326(5)(6) added (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 15 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

### **False statements**

**327.**—(1) The bankrupt shall be guilty of an offence if he makes or has made any material omission in any statement made under any provision in Parts VIII to X and relating to his affairs.

(2) Article 323 applies to an offence under paragraph (1).

(3) The bankrupt shall be guilty of an offence if—

- (a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or
- (b) he attempts to account for any part of his property by fictitious losses or expenses; or
- (c) at any meeting of his creditors in the 12 months immediately preceding petition or (whether or not at such a meeting) at any time in the initial period, he did anything which would have been an offence under sub#paragraph (b) if the bankruptcy order had been made before he did it; or
- (d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

### **Fraudulent disposal of property**

**328.**—(1) The bankrupt shall be guilty of an offence if he makes or causes to be made, or has in the 5 years immediately preceding the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property.

(2) The reference to making a transfer of or charge on any property includes causing or conniving at the enforcement of a judgment, or the levying of any execution, against that property.

(3) The bankrupt shall be guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within the 2 months immediately preceding, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

(4) Article 323 applies to an offence under this Article.

### **Absconding**

**329.**—(1) The bankrupt shall be guilty of an offence if—

- (a) he leaves, or attempts or makes preparations to leave, Northern Ireland with any property the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or the trustee, or
- (b) in the 6 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (a) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under this Article.

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### **Fraudulent dealing with property obtained on credit**

**330.**—(1) The bankrupt shall be guilty of an offence if, in the 12 months immediately preceding petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

(2) Article 323 applies to an offence under paragraph (1).

(3) A person shall be guilty of an offence if, in the 12 months immediately preceding petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—

(a) that the bankrupt owed money in respect of the property, and

(b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.

(4) In the case of an offence under paragraph (1) or (3) it shall be a defence for the person charged to prove that the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of this Article whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(6) In this Article references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

### **Obtaining credit; engaging in business**

**331.**—(1) The bankrupt shall be guilty of an offence if—

(a) either alone or jointly with any other person, he obtains credit to the extent of the amount specified by order under Article 362(1)(b) or more without giving the person from whom he obtains it the relevant information about his status; or

(b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

(2) The reference to the bankrupt obtaining credit includes the following cases—

(a) where goods are bailed to him under a hire#purchase agreement, or agreed to be sold to him under a conditional sale agreement, and

(b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in England and Wales, shall be guilty of an offence if, before his discharge, he does anything in Northern Ireland which would be an offence under paragraph (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in England and Wales were an adjudication under this Part.

(4) For the purposes of paragraph (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

[<sup>F3</sup>(5) This Article applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him.

(6) For the purposes of paragraph (1)(a) as it applies by virtue of paragraph (5), the relevant information about the status of the person in question is the information that a bankruptcy restrictions order is in force in respect of him.]

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**F3** Art. 331(5)(6) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(3), Sch. 6 para. 3 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

### Failure to keep proper accounts of business

**332.** <sup>F4</sup> .....

**F4** Art. 332 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 20(a), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

### Gambling

**333.** <sup>F5</sup> .....

**F5** Art. 333 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 20(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

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