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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART IX

### BANKRUPTCY

### CHAPTER V

### EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS, ETC.

#### *Adjustment of prior transactions, etc.*

#### **Transactions at an undervalue**

**312.**—(1) Subject to the following provisions of this Article and to Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) The High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this Article and Articles 314 and 315, an individual enters into a transaction with a person at an undervalue if—

- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration.
- (b) he enters into a transaction with that person in consideration of marriage<sup>F1</sup> or the formation of a civil partnership], or
- (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

**F1** 2004 c. 33

#### **Preferences**

**313.**—(1) Subject to the following provisions of this Article and Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) given a preference to any person, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) The High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.

(3) For the purposes of this Article and Articles 314 and 315, an individual gives a preference to a person if—

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- (a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and
- (b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The High Court shall not make an order under this Article in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in paragraph (3)(b).

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in paragraph (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

#### **“Relevant time” under Articles 312, 313**

**314.**—(1) Subject to the provisions of this Article, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—

- (a) in the case of a transaction at an undervalue, at a time within the 5 years immediately preceding the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt,
- (b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time within the 2 years immediately preceding that day, and
- (c) in any other case of a preference which is not a transaction at an undervalue, at a time within the 6 months immediately preceding that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in sub#paragraph (a), (b) or (c) of paragraph (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the expiration of the period of 5 years mentioned in sub#paragraph (a)), that time is not a relevant time for the purposes of Articles 312 and 313 unless the individual—

- (a) is insolvent at that time, or
- (b) becomes insolvent in consequence of the transaction or preference;

but the requirements of this paragraph are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

(3) For the purposes of paragraph (2), an individual is insolvent if—

- (a) he is unable to pay his debts as they fall due, or
- (b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

### Orders under Articles 312, 313

**315.**—(1) Without prejudice to the generality of Article 312(2) or 313(2), an order under either of those Articles with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject as follows)—

- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;
- (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the individual;
- (d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the High Court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the Court thinks appropriate;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and
- (g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under Article 312 or 313 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—

- (a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired<sup>[F2]</sup> in good faith and for value], or prejudice any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction or preference<sup>[F2]</sup> in good faith and for value] to pay a sum to the trustee of the bankrupt's estate, except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

<sup>[F3(2A)]</sup> Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or
- (b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub#paragraph (a) or (as the case may be) sub#paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.]

(3) Any sums required to be paid to the trustee in accordance with an order under Article 312 or 313 shall be comprised in the bankrupt's estate.

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[<sup>F4</sup>(4) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

- (a) the fact that the individual in question entered into the transaction at an undervalue; or
- (b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of paragraph (2A)(a), a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the individual in question is adjudged bankrupt has been presented; or
- (b) of the fact that the individual in question has been adjudged bankrupt.

(6) Article 7 shall apply for the purposes of paragraph (2A)(b) as it applies for the purposes of [<sup>F5</sup>Parts 1A to 7].]

<b>F2</b>	1994 c. 12
<b>F3</b>	1994 c. 12
<b>F4</b>	1994 c. 12
<b>F5</b>	Words in art. 315(6) substituted (26.6.2020) by <a href="#">Corporate Insolvency and Governance Act 2020</a> (c. 12), s. 49(1), <a href="#">Sch. 7 para. 2</a> (with ss. 2(2), 5(2))

#### [<sup>F6</sup>Recovery of excessive pension contributions

**315A** <sup>F7</sup>.—(1) Where an individual who is adjudged bankrupt—

- (a) has rights under an approved pension arrangement, or
- (b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) If the High Court is satisfied—

- (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and
- (b) that the making of any of the relevant contributions ( “the excessive contributions”) has unfairly prejudiced the individual's creditors,

the Court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) Paragraph (4) applies where the High Court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under Article 26(1)(a) of the Welfare Reform Order (debts giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this paragraph applies—

- (a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of paragraph (2), be taken to be contributions of which the rights under the arrangement are the fruits, and
- (b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of sub-paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of sub-paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that sub-paragraph.

(5) In paragraphs (2) to (4) “relevant contributions” means contributions to the arrangement or any other pension arrangement—

- (a) which the individual has at any time made on his own behalf, or
- (b) which have at any time been made on his behalf.

(6) The High Court shall, in determining whether it is satisfied under paragraph (2)(b), consider in particular—

- (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual's creditors or any of them, and
- (b) whether the total amount of any contributions—
  - (i) made by or on behalf of the individual to pension arrangements, and
  - (ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,is an amount which is excessive in view of the individual's circumstances when those contributions were made.

(7) For the purposes of this Article and Articles 315B and 315C ( “the recovery provisions”), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under Article 13 of the Welfare Reform Order.

(8) In the recovery provisions—

“approved pension arrangement” has the same meaning as in Article 12 of the Welfare Reform Order,

“unapproved pension arrangement” has the same meaning as in Article 13 of that Order.]

**F6** 1999 NI 11

**F7** functions transf. SR 1999/481

### Orders under Article 315A

**315B** <sup>F8</sup>.—(1) Without prejudice to the generality of Article 315A(2), an order under Article 315A may include provision—

- (a) requiring the person responsible for the arrangement to pay an amount to the individual's trustee in bankruptcy,
- (b) adjusting the liabilities of the arrangement in respect of the individual,
- (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,
- (d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the bankrupt's case with any requirement under Article 315C(1) or in giving effect to the order.

(2) In paragraph (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(3) In paragraph (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within Article 25(1) of the Welfare Reform Order (pension sharing orders and agreements).

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(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under Article 315A is the lesser of—

- (a) the amount of the excessive contributions, and
- (b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under Article 315A which requires the person responsible for an arrangement to pay an amount (“the restoration amount”) to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—

- (a) the amount of the liabilities immediately before the reduction, and
- (b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

(7) An order under Article 315A in respect of an arrangement—

- (a) shall be binding on the person responsible for the arrangement, and
- (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

<b>F8</b> functions transf. SR 1999/481
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### Orders under Article 315A: supplementary

<sup>F9</sup>**315C.**—(1) The person responsible for—

- (a) an approved pension arrangement under which a bankrupt has rights,
- (b) an unapproved pension arrangement under which a bankrupt has excluded rights, or
- (c) a pension arrangement under which a bankrupt has at any time had rights,

shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under Article 315A.

(2) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),
- (b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or
- (c) any provision of the arrangement in question corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 315A.

(3) Where any sum is required by an order under Article 315A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

- (a) any such value as is mentioned in Article 315B(4)(b);

- (b) any such amounts as are mentioned in Article 315B(6)(a) and (b).
- (5) The power conferred by paragraph (4) includes power to provide for calculation or verification—
- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
- [<sup>F10</sup>(b) in accordance with guidance from time to time prepared by a prescribed person.]
- (6) References in the recovery provisions to the person responsible for a pension arrangement are to—
- (a) the trustees, managers or provider of the arrangement, or
- (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (7) In this Article and Articles 315A and 315B—
- “the Department” means the Department of Health and Social Services;
- “prescribed” means prescribed by regulations;
- “the recovery provisions” means this Article and Articles 315A and 315B;
- “regulations” means regulations made by the Department;
- “the Welfare Reform Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999.
- (8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.
- (9) Regulations under the recovery provisions shall be subject to negative resolution.

**F9** functions transf. SR 1999/481

**F10** Art. 315C(5)(b) substituted (29.2.2008) by [Pensions Act \(Northern Ireland\) 2008 \(c. 1\), ss. 15, 21\(1\)\(c\), Sch. 5 para. 1; S.R. 2008/65, art. 2\(a\)\(b\)](#)

### [<sup>F11</sup>**Recovery of excessive contributions in pension-sharing cases**

**315D** <sup>F12</sup>.—(1) For the purposes of Articles 312, 314 and 315, a pension-sharing transaction shall be taken—

- (a) to be a transaction, entered into by the transferor with the transferee, by which the appropriate amount is transferred by the transferor to the transferee; and
- (b) to be capable of being a transaction entered into at an undervalue only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (2) For the purposes of Articles 313 to 315, a pension-sharing transaction shall be taken—
- (a) to be something (namely a transfer of the appropriate amount to the transferee) done by the transferor; and
- (b) to be capable of being a preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (3) If on an application under Article 312 or 313 any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question shall be determined in accordance with paragraphs (4) to (8).
- (4) The High Court shall first determine the extent (if any) to which the transferor's rights under the shared arrangement at the time of the transaction appear to have been (whether directly or indirectly) the fruits of contributions ( “personal contributions”)—

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- (a) which the transferor has at any time made on his own behalf, or
  - (b) which have at any time been made on the transferor's behalf,
- to the shared arrangement or any other pension arrangement.

(5) Where it appears that those rights were to any extent the fruits of personal contributions, the High Court shall then determine the extent (if any) to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced the transferor's creditors (“the unfair contributions”).

(6) If it appears to the High Court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.

(7) If it appears to the High Court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the Court that the transfer could not have been so made.

(8) In making the determination mentioned in paragraph (5) the High Court shall consider in particular—

- (a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of the transferor's creditors or any of them, and
- (b) whether the total amount of any personal contributions represented, at the time the pension-sharing transaction was made, by rights under pension arrangements is an amount which is excessive in view of the transferor's circumstances when those contributions were made.

(9) In this Article and Articles 315E and 315F—

“appropriate amount”, in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of Article 26(1) of the Welfare Reform Order (creation of pension credits and debits);

“pension-sharing transaction” means an order or provision falling within Article 25(1) of the Welfare Reform Order (orders and agreements which activate pension-sharing);

“shared arrangement”, in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates;

“transferee”, in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made;

“transferor”, in relation to a pension-sharing transaction, means the person to whose rights the transaction relates;

“the Welfare Reform Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999.]

**F11** 1999 NI 11

**F12** functions transf. SR 1999/481

### Orders under Article 312 or 313 in respect of pension-sharing transactions

**315E**<sup>F13</sup>.—(1) This Article and Article 315F apply if the High Court is making an order under Article 312 or 313 in a case where—

- (a) the transaction or preference is, or is any part of, a pension-sharing transaction, and



- (b) the transferee has rights under a pension arrangement ( “the destination arrangement”, which maybe the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.
- (2) Without prejudice to the generality of Article 312(2) or 313(2), or of Article 315, the order may include provision—
- (a) requiring the person responsible for the destination arrangement to pay an amount to the transferor's trustee in bankruptcy,
  - (b) adjusting the liabilities of the destination arrangement in respect of the transferee,
  - (c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,
  - (d) for the recovery by the person responsible for the destination arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the transferor's case with any requirement under Article 315F(1) or in giving effect to the order,
  - (e) for the recovery, from the transferor's trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor's case with any requirement under Article 315F(2) or (3).
- (3) In paragraph (2), references to adjusting the liabilities of the destination arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.
- (4) The maximum amount which the person responsible for the destination arrangement may be required to pay by the order is the smallest of—
- (a) so much of the appropriate amount as, in accordance with Article 315D is recoverable,
  - (b) so much (if any) of the amount of the unfair contributions (within the meaning given by Article 315D(5)) as is not recoverable by way of an order under Article 315A containing provision such as is mentioned in Article 315B(1)(a), and
  - (c) the value of the transferee's rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.
- (5) If the order requires the person responsible for the destination arrangement to pay an amount ( “the restoration amount”) to the transferor's trustee in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.
- (6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—
- (a) the amount of the liabilities immediately before the reduction, and
  - (b) the amount of the liabilities immediately after the reduction,
- is equal to the restoration amount.
- (7) The order—
- (a) shall be binding on the person responsible for the destination arrangement, and
  - (b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

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### Orders under Article 312 or 313 in pension-sharing cases: supplementary

<sup>F14</sup>**315F.**—(1) On the transferor's trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—

- (a) the arrangement,
- (b) the transferee's rights under it, and
- (c) where the destination arrangement is the shared arrangement, the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor's trustee in bankruptcy making a written request to that person, provide the trustee with such information about—

- (a) the arrangement, and
- (b) the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(3) On the transferor's trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—

- (a) the arrangement, and
- (b) the transferee's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(4) In paragraph (3) “intermediate arrangement” means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—

- (a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and
- (b) the transferee's rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in sub-paragraph (a).

(5) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders which restrain a person from receiving anything which he is prevented from assigning),
- (b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or
- (c) any provision of the destination arrangement corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 312 or 313.

(6) Regulations may, for the purposes of Articles 312 to 315, Articles 315D and 315E and this Article, make provision about the calculation and verification of—

- (a) any such value as is mentioned in Article 315E(4)(c);
- (b) any such amounts as are mentioned in Article 315E(6)(a) and (b).

(7) The power conferred by paragraph (6) includes power to provide for calculation or verification—

- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
- <sup>F15</sup>(b) in accordance with guidance from time to time prepared by a prescribed person.]

(8) In Article 315E and this Article, references to the person responsible for a pension arrangement are to—

- (a) the trustees, managers or provider of the arrangement, or
- (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(9) In this Article—

“the Department” means the Department of Health and Social Services;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department.

(10) Regulations under this Article may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.

(11) Regulations under this Article shall be subject to negative resolution.

**F14** functions transf. SR 1999/481

**F15** [Art. 315F\(7\)\(b\)](#) substituted (29.2.2008) by [Pensions Act \(Northern Ireland\) 2008 \(c. 1\), ss. 15, 21\(1\)\(c\), Sch. 5 para. 2; S.R. 2008/65, art. 2\(a\)\(b\)](#)

### **Extortionate credit transactions**

**316.**—(1) This Article applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.

(2) The High Court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than the 3 years immediately preceding the commencement of the bankruptcy.

(3) For the purposes of this Article a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
- (b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(4) An order under this Article with respect to any transaction may contain such one or more of the following as the High Court thinks fit, that is to say—

- (a) provision setting aside the whole or part of any obligation created by the transaction;
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
- (c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;
- (d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;

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(e) provision directing accounts to be taken between any persons.

(5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this Article shall be comprised in the bankrupt's estate.

(6) <sup>F16</sup> .....

(7) The powers conferred by this Article are exercisable in relation to any transaction concurrently with any powers exercisable under this Order in relation to that transaction as a transaction at an undervalue.

**F16** Art. 316(6) repealed (6.4.2007) by Consumer Credit Act 2006 (c. 14), ss. 70, 71(2), Sch. 4 (with Sch. 3 para. 15(5)); S.I. 2007/123, art. 3(2), Sch. 2 (as amended by S.I. 2007/387, art. 2(3)(e)(iii))

**Avoidance of general assignment of book debts**

**317.**—(1) This Article applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.

(2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the Bills of Sale (Ireland) Acts 1879<sup>F17</sup> and 1883<sup>F18</sup>.

(3) For the purposes of paragraphs (1) and (2)—

- (a) “assignment” includes an assignment by way of security or charge on book debts, and
- (b) “general assignment” does not include—
  - (i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or
  - (ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Acts of 1879 and 1883 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of those Acts with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under those Acts.

**F17** 1879 c. 50  
**F18** 1883 c. 7

**Contracts to which bankrupt is a party**

**318.**—(1) This Article applies where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The High Court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the Court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the High Court under this Article are provable as a bankruptcy debt.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

### **Apprenticeships, etc.**

**319.**—(1) This Article applies where—

- (a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articled clerk at the time when the petition on which the order was made was presented, and
- (b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

(2) Subject to paragraph (6), the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.

(3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as the trustee thinks reasonable, having regard to—

- (a) the amount of the fee,
- (b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and
- (c) the other circumstances of the case.

(4) The power of the trustee to make a payment under paragraph (3) has priority over his obligation to distribute the bankrupt's estate.

(5) Instead of making a payment under paragraph (3), the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.

(6) Where a transfer is made under paragraph (5), paragraph (2) has effect only as between the apprentice or clerk and the bankrupt.

### **Unenforceability of liens on books, etc.**

**320.**—(1) Subject to paragraph (2), a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.

(2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.

### **[<sup>F19</sup> Arbitration agreements to which bankrupt is party.**

**320A.**—(1) This Article applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the trustee in bankruptcy adopts the contract, the arbitration agreement is enforceable by or against the trustee in relation to matters arising from or connected with the contract.

(3) If the trustee in bankruptcy does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings—

- (a) the trustee with the consent of the creditors' committee, or
- (b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

(4) In this Article—

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“arbitration agreement” has the same meaning as in Part I of the Arbitration Act 1996; and  
“the court” means the court which has jurisdiction in the bankruptcy proceedings.]

**F19** 1996 c. 23

**Changes to legislation:**

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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\(2\)](#)