STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART IX

BANKRUPTCY

CHAPTER VI

BANKRUPTCY OFFENCES

Preliminary

Scheme of this Chapter

321.—(1) Subject to Article 331(3), this Chapter applies where the High Court has made a bankruptcy order on a bankruptcy petition.

(2) This Chapter applies whether or not the bankruptcy order is annulled under Article 256, but proceedings for an offence under this Chapter shall not be instituted after the annulment.

(3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his discharge; but nothing in Parts VIII to X prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.

[[F1](3A) Paragraph (3) is without prejudice to any provision of this Chapter which applies to a person in respect of whom a bankruptcy restrictions order is in force.**]**

(4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside Northern Ireland.

(5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Department or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

F1 Art. 321(3A) 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. 2 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2** - 7)

Definitions for the purposes of this Chapter

322. In this Chapter—

(a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt's estate include any property which would be such property if a notice in respect of it were given under Article 280 (after#acquired property) or 281 (personal property and effects of bankrupt having more than replacement value);

(b) "the initial period" means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy; and

(c) a reference to a number of months or years immediately preceding petition is to that period ending with the presentation of the bankruptcy petition.

Defence of innocent intention

323. Where in the case of an offence under any provision of this Chapter it is stated that this Article applies, it shall be a defence for the person charged to prove that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

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.

(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 **[**[F2], 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.

F2 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.

[[F3](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.**]**

F3 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 by 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.

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.

[[F4](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.**]**

F4 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. [F5]. . . . . .

F5 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. [F6] . . . . . .

F6 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)

Changes to legislation:
The Insolvency (Northern Ireland) Order 1989, CHAPTER VI is up to date with all changes known to be in force on or before 26 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.
View outstanding changes

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)