



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IX

#### BANKRUPTCY

#### CHAPTER V

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

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

#### **346 Enforcement procedures.**

(1) Subject to section 285 in Chapter II (restriction on proceedings and remedies) and to the following provisions of this section, where the creditor of any person who is [<sup>F1</sup>made] bankrupt has, before the commencement of the bankruptcy—

- (a) issued execution against the goods or land of that person, or
- (b) attached a debt due to that person from another person,

that creditor is not entitled, as against the official receiver or trustee of the bankrupt's estate, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.

[<sup>F2</sup>(1A) For the purposes of this section, Her Majesty's Revenue and Customs is to be regarded as having attached a debt due to a person if it has taken action under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) as a result of which an amount standing to the credit of an account held by that person is—

- (a) subject to arrangements made under paragraph 6(3) of that Schedule, or
- (b) the subject of a deduction notice under paragraph 13 of that Schedule.]

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**Changes to legislation:** *Insolvency Act 1986, Section 346 is up to date with all changes known to be in force on or before 16 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*

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- (2) Subject as follows, where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the [<sup>F3</sup>enforcement officer] or other officer charged with the execution that that person has been [<sup>F1</sup>made] bankrupt—
- (a) the [<sup>F3</sup>enforcement officer] or other officer shall on request deliver to the official receiver or trustee of the bankrupt's estate the goods and any money seized or recovered in part satisfaction of the execution, but
  - (b) the costs of the execution are a first charge on the goods or money so delivered and the official receiver or trustee may sell the goods or a sufficient part of them for the purpose of satisfying the charge.
- (3) Subject to subsection (6) below, where—
- (a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale, and
  - (b) before the end of the period of 14 days beginning with the day of the sale or payment the [<sup>F3</sup>enforcement officer] or other officer charged with the execution is given notice that a [<sup>F4</sup>bankruptcy application has been made or a] bankruptcy petition has been presented in relation to that person, and
  - (c) a bankruptcy order is or has been made [<sup>F5</sup>as a result of that application or] on that petition,
- the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.
- (4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3), the [<sup>F3</sup>enforcement officer] or other officer charged with the execution—
- (a) shall not dispose of the balance mentioned in subsection (3) at any time within the period of 14 days so mentioned or while [<sup>F6</sup>proceedings on a bankruptcy application are ongoing or (as the case may be)] there is pending a bankruptcy petition of which he has been given notice under that subsection, and
  - (b) shall pay that balance, where by virtue of that subsection it is comprised, in the bankrupt's estate, to the official receiver or (if there is one) to the trustee or that estate.
- (5) For the purposes of this section—
- (a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 1 of the <sup>M1</sup>Charging Orders Act 1979;
  - (b) an execution against land is completed by seizure, by the appointment of a receiver or by the making of a charging order under that section;
  - (c) an attachment of a debt is completed by the receipt of the debt.
- (6) The rights conferred by subsections (1) to (3) on the official receiver or the trustee may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt.
- (7) Nothing in this section entitles the trustee of a bankrupt's estate to claim goods from a person who has acquired them in good faith under a sale by [<sup>F7</sup>an enforcement officer] or other officer charged with an execution.
- (8) Neither subsection (2) nor subsection (3) applies in relation to any execution against property which has been acquired by or has devolved upon the bankrupt since the

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commencement of the bankruptcy, unless, at the time the execution is issued or before it is completed—

- (a) the property has been or is claimed for the bankrupt's estate under section 307 (after-acquired property), and
- (b) a copy of the notice given under that section has been or is served on the [<sup>F3</sup>enforcement officer] or other officer charged with the execution.

[<sup>F8</sup>(9) In this section “enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.]

#### Textual Amendments

- F1** Word in s. 346(1)(2) substituted (6.4.2016) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 19 para. 39\(2\)](#); S.I. 2016/191, art. 2 (with art. 3)
- F2** S. 346(1A) inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 8 para. 32](#)
- F3** Words in s. 346(2)(3)(b)(4)(8)(b) substituted (15.3.2004) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1), 110, [Sch. 8 para. 297\(2\)](#); S.I. 2004/401, art. 2 (with art. 3)
- F4** Words in s. 346(3)(b) inserted (6.4.2016) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 19 para. 39\(3\)\(a\)](#); S.I. 2016/191, art. 2 (with art. 3)
- F5** Words in s. 346(3)(c) inserted (6.4.2016) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 19 para. 39\(3\)\(b\)](#); S.I. 2016/191, art. 2 (with art. 3)
- F6** Words in s. 346(4)(a) inserted (6.4.2016) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 19 para. 39\(4\)](#); S.I. 2016/191, art. 2 (with art. 3)
- F7** Words in s. 346(7) substituted (15.3.2004) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1), 110, [Sch. 8 para. 297\(3\)](#); S.I. 2004/401, art. 2 (with art. 3)
- F8** S. 346(9) inserted (15.3.2004) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1), 110, [Sch. 8 para. 297\(4\)](#); S.I. 2004/401, art. 2 (with art. 3)

#### Marginal Citations

- M1** 1979 c. 53.

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

- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by [S.I. 2017/1119 Sch. 3 para. 1](#)
- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

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

- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)