Changes to Legislation: as of 11 November 2026, this Act is up to date with all changes known to be in force.

Number 27 *of* 1988

BANKRUPTCY ACT 1988

REVISED

Updated to 1 February 2026

This Revised Act is an administrative consolidation of the *Bankruptcy Act 1988*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Credit Review Act 2026* (1/2026), enacted 3 February 2026, and all statutory instruments up to and including the *Courts and Civil Law (Miscellaneous Provisions) Act 2023 (Sections 35 and 37) (Commencement) Order 2026* (S.I. No. 15 of 2026), made 23 January 2026, were considered in the preparation of this Revised Act.

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Number 27 *of* 1988

BANKRUPTCY ACT 1988

REVISED

Updated to 1 February 2026

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Judgment Mortgage (Ireland) Act, 1850	1850, c. 29
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Statute of Limitations, 1957	1957, No. 6
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MARGINAL ABBREVIATIONS

1857—Irish Bankrupt and Insolvent Act, 1857

1872, c. 57—Debtors Act (Ireland), 1872

1872—Bankruptcy (Ireland) Amendment Act, 1872

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33/1963—Companies Act, 1963

16/1964—Registration of Title Act, 1964

27/1965—Succession Act, 1965

36/1971—Courts Act, 1971

RSC—The Rules of the Superior Courts, 1962

LCR—Local Court Rules, 1888



Number 27 *of* 1988

BANKRUPTCY ACT 1988

REVISED

Updated to 1 February 2026

AN ACT TO CONSOLIDATE WITH AMENDMENTS THE LAW RELATING TO BANKRUPTCY AND TO PROVIDE FOR RELATED MATTERS. [13*th July*, 1988]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

C1 Application of Act extended (3.01.2018) by *European Union (Markets in Financial Instruments) Regulations 2017* (S.I. No. 375 of 2017), reg. 148(11), in effect as per reg. 1(2).

Winding up of investment firm or market operator by the Court

148. ...

(2) Notwithstanding section 569 of the Companies Act 2014, the Bank, by presenting a petition, may apply to the Court to have an investment firm, data reporting service provider or the market operator of a regulated market wound up, under Chapter 2 of Part 11 of that Act, on any of the following grounds:

(*a*) the investment firm or market operator is unable or, in the opinion of the Bank, may be unable to meet its obligations to its clients or creditors;

(*b*) the authorisation of the investment firm or market operator has been withdrawn or revoked and the firm or operator has ceased to carry on business as an investment firm or to operate a regulated market;

(*c*) the Bank considers that it is in the interest of the proper and orderly regulation and supervision of investment firms or regulated markets or is necessary for the protection of investors that the investment firm or the market operator of the regulated market be wound up;

(*d*) the investment firm or market operator has failed to comply with any direction given by the Bank under these Regulations.

...

(11) In the case of an individual that is an authorised investment firm or is the market operator of a regulated market, the Bank may apply by petition to the Court for an adjudication of bankruptcy within the meaning of

the Bankruptcy Act 1988 (No. 27 of 1988) and the Bankruptcy Act 1988 shall apply as if the grounds specified in paragraph (2) (a) to (d) were acts of bankruptcy (within the meaning of the Bankruptcy Act 1988).

C2 Function to be performed by Official Assignee in Bankruptcy in the Insolvency Service of Ireland specified (23.07.2014) by *Protected Disclosures Act 2014 (Section 7(2)) Order 2014* (S.I. No. 339 of 2014), reg. 2 and sch. ref. no. 33.

2. Each person specified in column (2) of the Schedule is hereby prescribed to be the recipient of disclosures of relevant wrongdoings falling within the description of matters specified in column (3) of the Schedule in relation to the person.

Schedule

Reference Number (1)	Prescribed Person (2)	Description of matters in respect of which the person is prescribed(3)
...	...	...
33	Director of the Insolvency Service of Ireland (in respect of the matters specified in paragraph (a) of column (3)) Official Assignee in Bankruptcy in the Insolvency Service of Ireland (in respect of the matters specified in paragraph (b) of column (3).	(a) ... (b) All matters relating to the administration of bankruptcy estates under the Bankruptcy Act 1988 (No.27 of 1988).
...	...	...

C3 Application of Act restricted (1.09.2008) by *Criminal Justice (Mutual Assistance) Act 2008* (7/2008), s. 40(1), S.I. No. 338 of 2008.

Bankruptcy of defendant, etc.

40.— (1) Where a person who holds realisable property is adjudicated bankrupt—

(*a*) property for the time being subject to a freezing co-operation order made before the order adjudicating the person bankrupt, and

(*b*) any proceeds of property realised by virtue of *section 36*, for the time being in the hands of a receiver,

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act 1988.

(2) Where a person has been adjudicated bankrupt, the powers of the High Court under *section 36* or of a receiver appointed under that section shall not be exercised in relation to property of the bankrupt for the purposes of the said Act of 1988.

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift—

(*a*) no decision as to whether the gift is void shall be made under section 57, 58 or 59 of the said Act of 1988 in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a freezing co-operation order, and

(*b*) any decision as to whether it is void made under any of those sections after the discharge of the freezing co-operation order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(4) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before 1 January 1989, this section has effect with the modification that for references to the property of the bankrupt for the purposes of the said Act of 1988 there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy existing before that date.

C4 Limit of liability of official assignee and payment of expenses in circumstances of a freezing co-operation order provided (1.09.2008) by *Criminal Justice (Mutual Assistance) Act 2008* (7/2008), s. 41, S.I. No. 338 of 2008.

Property subject to freezing co-operation order dealt with by Official Assignee.

41.— (1) Without prejudice to the generality of any provision of any other enactment, where—

(*a*) the Official Assignee or a trustee appointed under Part V of the Bankruptcy Act 1988 seizes or disposes of any property in relation to which his or her functions are not exercisable because it is for the time being subject to a freezing co-operation order, and

(*b*) at the time of the seizure or disposal he or she believes, and has reasonable grounds for believing, that he or she is entitled (whether under an order of the court or otherwise) to seize or dispose of the property,

he or she is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his or her negligence in so acting, and he or she has a lien on the property, or the proceeds of its sale, for such of his or her expenses as were incurred in connection with the bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his or her remuneration as may reasonably be assigned for his or her acting in connection with those proceedings.

(2) Where the Official Assignee or a trustee appointed as aforesaid incurs expenses in respect of any property mentioned in *subsection (1)(a)* and, when doing so, does not know and has no reasonable grounds for believing that the property is subject to a freezing co-operation order, he or she is entitled (whether or not he or she has seized or disposed of that property so as to have a lien) to payment of those expenses under *section 42*.

C5 Application of Act restricted (31.10.2006) by *International Criminal Court Act 2006* (30/2006), s. 44, commenced on enactment.

Bankruptcy of defendant, etc.

44.— (1) Where a person who holds realisable property is adjudicated bankrupt, the following property is excluded from the property of the bankrupt for the purposes of the Act of 1988:

(*a*) any property for the time being subject to—

(i) a freezing order made before the order of adjudication, or

(ii) an ICC order which is the subject of an enforcement order made before the order of adjudication;

(*b*) any property realised by virtue of *section 38 (11)* or *41 (2)* and for the time being in the hands of a receiver.

(2) Where a person was adjudicated bankrupt before the passing of this Act, the powers of the High Court or a receiver under either of those sections shall not be exercised in relation to property of the bankrupt for the purposes of the Act of 1988.

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift caught by this Part—

(*a*) any decision as to whether the gift is void shall not be made under section 57, 58 or 59 of the Act of 1988 in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a freezing order or an enforceable ICC order, and

(*b*) any such decision made after the discharge of the freezing order or enforceable ICC order shall take into account any realisation under this Part of property held by the person to whom the gift was made.

(4) Where a petition in bankruptcy was presented, or an adjudication in bankruptcy made, before 1 January 1989, this section shall have effect with the modification that for references to the property of the bankrupt for the purposes of the Act of 1988 there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy in force before that date.

C6 Application of Act restricted (26.11.1996) by *Criminal Justice Act 1994 (Section 46(6)) Regulations 1996* (S.I. No. 343 of 1996), reg. 28.

Bankruptcy of defendant, etc.

28.—(1) Where a person who holds realisable property is adjudicated bankrupt—

(*a*) property for the time being subject to a restraint order made before the order adjudicating him bankrupt, and

(*b*) any proceeds of property realised by virtue of section 20(5) or (6) or 24 (7) of this Act, for the time being in the hands of a receiver,

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act, 1988 .

(2) Where a person has been adjudicated bankrupt, the powers conferred on the High Court or on a receiver by section 20 or 24 of this Act shall not be exercised in relation to property of the bankrupt for the purposes of the said Act of 1988.

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift caught by this Act—

(*a*) no decision as to whether the gift is void shall be made under section 57, 58 or 59 of the said Act of 1988 in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a restraint order, and

(*b*) any decision as to whether it is void made under any of those sections after the discharge of the restraint order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(4) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before 1st January, 1989, this section shall have effect with the modification that for references to the property of the bankrupt for the purposes of the said Act of 1988 there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy existing before that date.

C7 Application of Act restricted (4.08.1996) by *Proceeds of Crime Act 1996* (30/1996), s. 11, commenced on enactment.

Bankruptcy of respondent, etc.

11.—(1) Where a person who is in possession or control of property is adjudicated bankrupt, property subject to an interim order, an interlocutory order, or a disposal order, made before the order adjudicating the person bankrupt, is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act, 1988.

(2) Where a person has been adjudicated bankrupt, the powers conferred on the Court by *section 2* or *3* shall not be exercised in relation to property of the bankrupt for the purposes of the said Act of 1988.

(3) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before the 1st day of January, 1989, this section shall have effect with the modification that, for the references in *subsections (1)* and *(2)* to the property of the bankrupt for the purposes of the Act aforesaid, there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy existing before that date.

C8 Application of Act restricted (1.08.1995) by *Netting of Financial Contracts Act 1995* (25/1995), s. 4, commenced on enactment.

Enforceability of netting, set off, guarantees and collateral in relation to netting and master netting agreements.

4.—(1) Notwithstanding anything contained in any rule of law relating to bankruptcy, insolvency or receivership, or in the Companies Acts or the Bankruptcy Act, 1988, the provisions—

(*a*) relating to netting, the set off of money provided by way of security, the enforcement of a guarantee and the enforcement and realisation of collateral and the set off of the proceeds thereof, as contained within a netting agreement or a guarantee provided for in such an agreement shall be legally enforceable against a party to the agreement and, where applicable, against a guarantor or other person providing security, and

(*b*) relating to set off of the net amounts due under netting agreements, the set off of money provided by way of security, the enforcement of a guarantee and the enforcement and realisation of collateral and the set off of the proceeds thereof, as contained within a master netting agreement or a guarantee provided for in such an agreement shall be legally enforceable against a party to the agreement and, where applicable, against a guarantor or other person providing security.

(2) Nothing in *subsection (1)* shall—

(*a*) prevent the application of any enactment or rule of law which would prevent the legal enforceability of netting, set off, enforcement and realisation within the meaning of *subsection (1)* in any particular case, on the grounds of fraud or misrepresentation or on any similar ground and, in particular, by reason of the application of—

(i) sections 57, 58 and 59 of the Bankruptcy Act, 1988,

(ii) section 286 of the Companies Act, 1963, and

(iii) section 139 of the Companies Act, 1990,

or

(*b*) permit the enforceability of netting, set off, enforcement and realisation under *subsection (1)* if any provision of an agreement between the two parties concerned would make netting, set off, enforcement and realisation void whether because of fraud or misrepresentation or any similar ground.

(3) Section II of the Statute of Frauds, 1695, shall not apply in relation to financial contracts.

(4) For the avoidance of doubt a financial contract shall not be and shall be deemed never to have been void or unenforceable by reason of the Gaming and Lotteries Acts, 1956 to 1986.

C9 Application of Act extended (1.08.1995) by *Investment Intermediaries Act 1995* (11/1995), s. 22(1)(a)-(d) and (9), S.I. No. 207 of 1995.

Winding-up on application to Court.

22.—(1) Notwithstanding section 215 of the Companies Act, 1963, a supervisory authority may, by presenting a petition, apply to the Court to have an authorised investment business firm or former authorised investment business firm wound up on any of the following grounds, namely that—

(*a*) an authorised investment business firm or former authorised investment business firm is or, in the opinion of the supervisory authority, may be unable to meet its obligations to its clients or creditors,

(*b*) the authorisation of the investment business firm has been revoked and the former authorised investment business firm has ceased to operate as an investment business firm,

(*c*) the supervisory authority considers that it is in the interest of the proper and orderly regulation and supervision of investment business firms or is necessary for the protection of investors that the authorised investment business firm or former authorised investment business firm be wound up,

(*d*) an authorised investment business firm or a former authorised investment business firm has failed to comply with any direction given by the supervisory authority under this Act.

...

(9) In the case of an authorised investment business firm or a former authorised investment business firm which is constituted as an individual person, the supervisory authority may apply by petition to the Court for an adjudication of bankruptcy within the meaning of the Bankruptcy Act, 1988, and the Bankruptcy Act, 1988 shall apply as if the grounds specified in *subsection (1) (a)* to *(d)* of this section were acts of bankruptcy (within the meaning of the Bankruptcy Act, 1988).

C10 Application of Act restricted (14.11.1994) by *Criminal Justice Act 1994* (15/1994), s. 28(2), S.I. No. 324 of 1994.

Bankruptcy of defendant, etc.

28.—(1) Where a person who holds realisable property is adjudicated bankrupt—

(*a*) property for the time being subject to a restraint order made before the order adjudicating him bankrupt, and

(*b*) any proceeds of property realised by virtue of *section 20 (5)* or *(6)* or *24 (7)* of this Act, for the time being in the hands of a receiver,

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act, 1988.

(2) Where a person has been adjudicated bankrupt, the powers conferred on the High Court or on a receiver by *section 20* or *24* of this Act shall not be exercised in relation to property of the bankrupt for the purposes of the said Act of 1988.

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift caught by this Act—

(*a*) no decision as to whether the gift is void shall be made under section 57, 58 or 59 of the said Act of 1988 in respect of the making of the gift at any time when—

(i) proceedings for an offence in respect of which a confiscation order might be made have been instituted against him and have not been concluded, or

(ii) an application has been made in respect of the defendant under *section 7*, *8*, *13*, or *18* of this Act and has not been concluded, or

(iii) property of the person to whom the gift was made is subject to a restraint order,

and

(*b*) any decision as to whether it is void made under any of those sections after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(4) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before 1st January, 1989, this section shall have effect with the modification that for references to the property of the bankrupt for the purposes of the said Act of 1988 there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy existing before that date.

Editorial Notes:

E1 Prospective affecting provision: aquaculture licence regarded as property forming part of bankrupt's estate for purposes of Act if the holder of the licence is adjudicated bankrupt by *Foyle Fisheries Act 1952* (5/1952), s. 53K, as inserted by *Foyle and Carlingford Fisheries Act 2007* (17/2007), s. 4, not commenced as of date of revision.

E2 Office of the Official Assignee in Bankruptcy prescribed for purposes of access to the National Vehicle and Driver file records established under *Finance Act 1993* (13/1993), s. 60(3) and *Road Traffic Act 1961* (24/1961), s. 22(4) (9.07.2015) by *National Vehicle and Driver File (Access) (No. 2) Regulations 2015* (S.I. No. 287 of 2015), reg. 2 and sch. ref. 15.

E3 Insolvency Service required to keep accounts relating to functions of the Official Assignee under Act by *Personal Insolvency Act 2012* (44/2012), s. 17(2)(b) as substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 39, S.I. No. 463 of 2013.

E4 Fees in Bankruptcy matters prescribed (3.12.2013) by *Personal Insolvency Act 2012 (Prescribed Fees in Bankruptcy Matters) Regulations 2013* (S.I. No. 465 of 2013).

E5 Obligation imposed on a person who holds a specified position with an operator to inform the operator in writing in the event that he or she is or has been convicted of an offence under Act (4.12.2011) by *European Union (Occupation of Road Transport Operator) Regulations 2011* (S.I. No. 697 of 2011), reg. 8 and sch.

E6 Power granted to Minister for Transport, Tourism and Sport, in determining whether an operator has satisfied or continues to satisfy the requirement of good repute, to consider whether or not the operator or a person who holds a specified position with the operator has, within the previous 10 years, been convicted of an offence under Act (4.12.2011) by *European Union (Occupation of Road Transport Operator) Regulations 2011* (S.I. No. 697 of 2011), reg. 6 and sch.

E7 Obligation imposed on prison officers to inform Governor in the event of proceedings under Act being brought in relation to the officer (1.10.2007) by *Prison Rules 2007* (S.I. No. 252 of 2007), rl. 96(c), in effect as per rl. 1(2).

E8 Previous affecting provision: Office of the Official Assignee in Bankruptcy prescribed for purposes of access to the National Vehicle and Driver file records established under *Finance Act 1993* (13/1993), s. 60 (19.02.2015) by *National Vehicle and Driver File (Access) Regulations 2015* (S.I. No. 64 of 2015); revoked (9.07.2015) by *National Vehicle and Driver File (Access) (No. 2) Regulations 2015* (S.I. No. 287 of 2015), reg. 3.

E9 Previous affecting provision: application of Act extended (1.11.2007) by *European Communities (Markets in Financial Instruments) Regulations 2007* (S.I. No. 60 of 2007), reg. 150(2)(a)-(d) and (11), in effect as per reg. 1(2); revoked (3.01.2018) by *European Union (Markets in Financial Instruments) Regulations 2017* (S.I. No. 375 of 2017), reg. 145(1), in effect as per reg. 1(2).

PART I

PRELIMINARY AND GENERAL

Short title.

1.—This Act may be cited as the Bankruptcy Act, 1988.

Commencement.

2.—This Act shall come into operation on such day not later than 1 January, 1989 as the Minister by order appoints.

Annotations

Editorial Notes:

E10 Power pursuant to section exercised (1.01.1989) by *Bankruptcy Act 1988 (Commencement) Order 1988* (S.I. No. 348 of 1988).

2. The 1st day of January, 1989, is hereby appointed as the day on which the Bankruptcy Act, 1988, shall come into operation.

Interpretation.

3.—F1**[**(1)**]** In this Act, unless the context otherwise requires,—

F2**[**"Act of 2010" means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;**]**

"adjudication" means adjudication in bankruptcy;

"after-acquired property" has the meaning assigned to it by *section 44 (5)*;

"arrangement" means an arrangement in pursuance of an order for protection under *Part IV*;

"arranging debtor" means a debtor who has been granted an order for protection under *Part IV*;

"assignees" means the Official Assignee and the creditors' assignee, if any;

F3**[**"Bankruptcy Inspector" means a person standing appointed for the time being—

(i) to the position of Bankruptcy Inspector in the Office of the Official Assignee in Bankruptcy on the day before the coming into operation of section 29 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013, or

(ii) to F4**[**a position**]** of Bankruptcy Inspector pursuant to section 12 of the Personal Insolvency Act 2012;**]**

"bankruptcy summons" has the meaning assigned to it by *section 8 (1)*;

"conveyance", in relation to land, includes assignment and transfer;

"the Court" means the High Court;

"creditors' assignee" means a person chosen and appointed as such under *section 18 (1)*;

F5**[**"Debt Settlement Arrangement" has the same meaning as in the Personal Insolvency Act 2012;**]**

F6**[**"Director" means the Director of the Insolvency Service;**]**

F7**[**"insolvency proceedings" means insolvency proceedings opened in a member state under Article 3 of the Insolvency Regulation where the debtor or each debtor is an individual or deceased;

"Insolvency Regulation" means Council Regulation (EC) No. 1346/2000 of 29 May 2000[1] on insolvency proceedings;**]**

"land" includes any estate or interest in or charge over land;

F7**[**"liquidator" means a liquidator appointed in insolvency proceedings;**]**

F7**[**"member state" means a member state of the European Communities other than the State and Denmark;**]**

"the Minister" means the Minister for Justice;

F3**[**"Official Assignee" means a person standing appointed for the time being—

(i) to the position of Official Assignee in Bankruptcy in the Office of the Official Assignee in Bankruptcy on the day before the coming into operation of section 29 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013, or

[1] OJ L160 of 30.6.2000

(ii) to the position of Official Assignee pursuant to section 12 of the Personal Insolvency Act 2012;**]**

F2**[**"periodic payments order" has the same meaning as it has in Part IVB of the Civil Liability Act 1961;**]**

F5**[**"Personal Insolvency Arrangement" has the same meaning as it has in the Personal Insolvency Act 2012;**]**

"prescribed", except in relation to court fees, means prescribed by rules of court;

F8**[**"principal private residence" has the same meaning as it has in section 2 of the Personal Insolvency Act 2012 subject to the modification that a reference to the debtor shall be taken to be a reference to the bankrupt;**]**

F9**[**"property" —

(*a*) includes money, goods, things in action, land and every description of property, whether real or personal,

(*b*) includes obligations, easements and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property,

(*c*) in relation to proceedings opened in the State under Article 3(1) of the Insolvency Regulation, includes property situated outside the State, and

(*d*) in relation to proceedings so opened under Article 3(2) of the Regulation, does not include property so situated;**]**

"registered", in relation to land, means registered in the Registry of Deeds or the Land Registry, as may be appropriate;

"secured creditor" means any creditor holding any mortgage, charge or lien on the debtor's estate or any part thereof as security for a debt due to him;

F5**[**"statement of affairs" means a statement of the debtor's or bankrupt's affairs in the form specified in rules of court;**]**

F5**[**"trustee" means a person appointed as trustee under *Part V*;**]**

"vesting arrangement" has the meaning assigned to it by *section 93 (2)*.

F10**[**(2) *Parts II*, *III*, *IV* (in so far as it relates to vesting arrangements), *V*, *VI* and *VIII* and the *First Schedule* are subject to Chapters I (general provisions) and III (secondary insolvency proceedings) of the Insolvency Regulation.**]**

Annotations

Amendments:

F1 Inserted by implication (2.07.2002) by *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002), reg. 3(a)(iii).

F2 Inserted (1.10.2018) by *Civil Liability (Amendment) Act 2017* (30/2017), s. 4(a), S.I. No. 377 of 2018.

F3 Substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 27, S.I. No. 463 of 2013.

F4 Substituted (31.07.2023) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 31, S.I. No. 389 of 2023, art. 3(e).

F5 Inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 142, S.I. No. 462 of 2013.

F6 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 27, S.I. No. 463 of 2013.

F7 Inserted (2.07.2002) by *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002), reg. 3(a)(i).

F8 Inserted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 2, S.I. No. 34 of 2016.

F9 Substituted (2.07.2002) by *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002), reg. 3(a)(ii).

F10 Inserted (2.07.2002) by *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002), reg. 3(a)(iii).

Application of Act to subsisting bankruptcies and arrangements.

4.—(1) Save where otherwise provided in this Act, a bankruptcy or arrangement subsisting at the commencement of this Act shall thereafter be administered according to the provisions of this Act and the rules thereunder, without prejudice to the validity of anything duly done or suffered before such commencement.

(2) The provisions of this Act and the rules shall apply accordingly, so far as they are capable of application and subject to such modifications and adaptations as may be appropriate, as if the bankrupt had been adjudicated or the arranging debtor had been granted an order for protection under this Act.

Expenses.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Repeals.

6.—(1) The enactments mentioned in the *Second Schedule* are hereby repealed to the extent mentioned in the *third column* of that Schedule.

(2) Any petition, summons, *subpoena*, order, direction, notice or other instrument presented, served, made or issued under a repealed enactment and in force at the commencement of this Act shall continue in force and be treated thereafter as if it had been presented, served, made or issued under this Act.

PART II

PROCEDURE IN BANKRUPTCY

Acts of bankruptcy. (1872, s. 21 in pt.)

7.—(1) An individual (in this Act called a "debtor") commits an act of bankruptcy in each of the following cases—

(*a*) if in the State or elsewhere he makes a conveyance or assignment of all or substantially all of his property to a trustee or trustees for the benefit of his creditors generally;

(*b*) if in the State or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property or any part thereof;

(*c*) if in the State or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudicated bankrupt;

F11**[**(*ca*) the individual has been subject as a debtor to a Debt Settlement Arrangement which has been terminated under section 83 of the Personal Insolvency Act 2012;

(*cb*) the individual has been subject as a debtor to a Debt Settlement Arrangement which under section 84 of the Personal Insolvency Act 2012 is deemed to have failed;

(*cc*) the individual has been subject as a debtor to a Personal Insolvency Arrangement which has been terminated under section 122 of the Personal Insolvency Act 2012;

(*cd*) the individual has been subject as a debtor to a Personal Insolvency Arrangement which under section 123 of the Personal Insolvency Act 2012 is deemed to have failed;**]**

(*d*) if with intent to defeat or delay his creditors he leaves the State or being out of the State remains out of the State or departs from his dwelling-house or otherwise absents himself or evades his creditors;

(*e*) if he files in the Court a declaration of insolvency;

(*f*) if execution against him has been levied by the seizure of his goods under an order of any court or if a return of no goods has been made by the sheriff or county registrar whether by endorsement on the order or otherwise;

(*g*) if the creditor presenting a petition has served upon the debtor in the prescribed manner a bankruptcy summons, and he does not within fourteen days after service of the summons pay the sum referred to in the summons or secure or compound for it to the satisfaction of the creditor.

(2) A debtor also commits an act of bankruptcy if he fails to comply with a debtor's summons served pursuant to section 21 (6) of the Bankruptcy (Ireland) Amendment Act, 1872, within the appropriate time thereunder, and *section 8 (6)* of this Act shall apply to such debtor's summons.

(3) This section applies, so far as it is capable of application, in relation to acts and things and omissions and failures to do acts and things whether occurring before, or partly before and partly after or wholly after, the commencement of this Act.

Annotations

Amendments:

F11 Inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 143, S.I. No. 462 of 2013.

Bankruptcy summons.

(New: *cf*. 1872, s. 30 in pt.)

8.—F12**[**(1) A summons (in this Act referred to as a "bankruptcy summons") may be granted by the court to a person (in this section referred to as "the creditor") who proves that—

(*a*) a debt of more than €20,000 is due to the creditor concerned by the person against whom the summons is sought,

(*b*) the debt is a liquidated sum, and

(*c*) the creditor concerned has given not less than 14 days' F13**[**notice in the prescribed form to the debtor**]** of the creditor's intention to apply for a bankruptcy summons and the debt remains unpaid. **]**

(2) A bankruptcy summons may be granted to two or more creditors who are not partners and whose debts amount together to F14**[**more than €20,000**]** or more. In such a case, to comply with the requisitions contained in the summons a debtor must pay or compound for the debts or give security for them to all the creditors who are parties to the summons, unless they otherwise agree.

(3) The notice requiring payment of the debt shall set out the particulars of the debt due and shall require payment F13**[**within 14 days**]** after service thereof on the debtor.

(4) The bankruptcy summons shall be in the prescribed form.

(5) A debtor served with a bankruptcy summons may apply to the Court in the prescribed manner and within the prescribed time to dismiss the summons.

(6) The Court—

(*a*) may dismiss the summons with or without costs, and

(*b*) shall dismiss the summons if satisfied that an issue would arise for trial.

Annotations

Amendments:

F12 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 144(a), S.I. No. 462 of 2013.

F13 Substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 28(a), (b), S.I. No. 463 of 2013.

F14 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 144(b), S.I. No. 462 of 2013.

Modifications (not altering text):

C11 Application of section restricted (31.07.2013) by *Personal Insolvency Act 2012* (44/2012), s. 35(2)(b), s. 79(4), (5) and s. 116(4), (5), S.I. No. 285 of 2013.

Effect of issue of Debt Relief Notice.

35.—...

(2) A specified creditor shall not, during the supervision period concerned, in respect of a specified qualifying debt, present, apply for or proceed with— ...

(*b*) a summons under section 8 of the Bankruptcy Act 1988.

...

Effect of Debt Settlement Arrangement.

79.— ...

(4) Where a Debt Settlement Arrangement is in effect, a creditor of that debtor shall not apply for the issue of a summons under section 8 of the Bankruptcy Act 1988 or present a petition to have the debtor concerned adjudicated a bankrupt in respect of a debt covered by the Debt Settlement Arrangement.

(5) Where a Debt Settlement Arrangement is in effect, and a creditor of that debtor has applied for the issue of a summons under section 8 of the Bankruptcy Act 1988 or has presented a petition to have the debtor

concerned adjudicated a bankrupt in respect of a debt covered by the Debt Settlement Arrangement, the creditor shall not proceed with the summons or the petition.

...

Effect of Personal Insolvency Arrangement.

116.— ...

(4) Where a Personal Insolvency Arrangement is in effect, a creditor of that debtor shall not apply for the issue of a summons under section 8 of the Bankruptcy Act 1988 or present a petition to have the debtor concerned adjudicated a bankrupt in respect of a debt covered by the Personal Insolvency Arrangement.

(5) Where a Personal Insolvency Arrangement is in effect, and a creditor of that debtor has applied for the issue of a summons under section 8 of the Bankruptcy Act 1988 or has presented a petition to have the debtor concerned adjudicated a bankrupt in respect of a debt covered by the Personal Insolvency Arrangement, the creditor shall not proceed with the summons or the petition.

...

C12 Application of Act extended by *Taxes Consolidation Act* (39/1997), s. 960M, as inserted (1.03.2009) by *Finance (No. 2) Act 2008* (25/2008), s. 97 and sch. 4 para. 1, commenced as per s. 97 and sch. 4 para. 6

Taking by Collector-General of proceedings in bankruptcy.

960M.— (1) The Collector-General may in his or her own name apply for the grant of a bankruptcy summons under section 8 of the Bankruptcy Act 1988 or present a petition for adjudication under section 11 of that Act in respect of tax (except corporation tax) due and payable or any balance of such tax.

(2) Subject to this section, the rules of court for the time being applicable and the enactments relating to bankruptcy shall apply to proceedings under this section.

Editorial Notes:

E11 Application of section restricted (31.07.2013) by *Personal Insolvency Act 2012* (44/2012), s. 35(2)(b), s. 79(4), (5) and s. 116(4), (5), S.I. No. 285 of 2013.

E12 Previous affecting provision: subs. (1) amended (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch.; substituted as per F-note above.

E13 Previous affecting provision: subs. (2) amended (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch.; further amended as per F-note above.

Arrest of absconding debtor.

(1872, ss. 78, 79 and 80)

9.—(1) Where, after a bankruptcy summons has been granted against a debtor and before a petition to adjudicate him bankrupt can be presented against him, it appears to the Court that there is probable cause for believing that he is about to leave the State or to otherwise abscond with a view to avoiding payment of the debt for which the bankruptcy summons was issued or avoiding examination in respect of his affairs or otherwise avoiding or delaying proceedings in bankruptcy, the Court may cause such debtor to be arrested and brought before the Court.

(2) No arrest under this section shall be lawful unless the debtor, before or at the time of his arrest, is served with the bankruptcy summons.

(3) On the debtor offering such security, or making such payment or composition as the Court thinks reasonable, he shall be discharged from custody unless the Court otherwise orders.

(4) Any such security, payment or composition shall not be exempt from the provisions of this Act relating to fraudulent preferences.

Petition.
(1857, s. 116 in pt.)

10.—An application for adjudication shall be by petition verified by the affidavit of the petitioner.

Presenting petition.
(1872, s. 20)

11.—(1) A creditor shall be entitled to present a petition for adjudication against a debtor if—

(*a*) the debt owing by the debtor to the petitioning creditor (or, if two or more creditors join in presenting the petition, the aggregate amount of debts owing to them) F15**[**amounts to more than €20,000**]**,

(1872, s. 21 in pt.)

(*b*) the debt is a liquidated sum,

(*cf*. 1857, s. 115)

(*c*) the act of bankruptcy on which the petition is founded has occurred within three months before the presentation of the petition, and

(New: *cf*. 1857, s. 409)

F17**[**(*d*) (i) the debtor's centre of main interests is situated in the State,

(ii) the debtor's centre of main interests is situated in another member state and the debtor has an establishment within the State, or

(iii) the Insolvency Regulation[1] does not apply to the proceedings, and the debtor (whether an Irish citizen or not)—

(I) is domiciled in the State, or

(II) within 3 years before the date of the presentation of the petition—

(A) has ordinarily resided or had a dwelling-house or place of business in the State,

(B) has carried on business in the State personally or by means of an agent or manager, or

(C) is, or within the said period has been, a member of a partnership which has carried on business in the State by means of a partner, agent or manager. **]**

(1872, s. 21 in pt.)

(2) If a creditor who presents or joins in presenting the petition is a secured creditor, he shall in his petition set out particulars of his security and shall either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudicated bankrupt or give an estimate of the value of his security. Where a secured creditor gives an estimate of the value of his security, he may be admitted as a petitioning creditor or joint petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same manner as if he were an unsecured creditor but he shall on application being made by the Official Assignee after the date of adjudication give up his security to the Official Assignee for the benefit of the creditors upon payment of such estimated value.

(1857, s. 120)

F18**[**(3) Subject to *subsections (4)* and *(5)* a debtor may petition for adjudication against himself.

(4) A debtor may not present a petition for adjudication unless the petition is accompanied by an affidavit sworn by the debtor that he has, prior to presenting the petition, made reasonable efforts to reach an appropriate arrangement with his creditors relating to his debts by making a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement to the extent that the circumstances of the debtor would permit him to enter into such an arrangement.

[1] OJ No. L 141, 5.6.2015, p. 19

(5) A debtor may not present a petition for adjudication unless the petition is accompanied by a statement of affairs and such statement of affairs discloses that the debts of the debtor exceed the assets of the debtor by any amount greater than €20,000. **]**

F19**[**(6) For the purposes of this section, "centre of main interests" shall be construed in accordance with the Insolvency Regulation.**]**

Annotations

Amendments:

F15 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 145(a), S.I. No. 462 of 2013.

F16 Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 30(a), commenced on enactment.

F17 Substituted (31.07.2023) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 32(a), S.I. No. 389 of 2023, art. 3(e).

F18 Substituted and inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 145(b), S.I. No. 462 of 2013.

F19 Inserted (31.07.2023) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 32(b), S.I. No. 389 of 2023, art. 3(e).

Modifications (not altering text):

C13 Application of Act extended (1.03.2009) by *Taxes Consolidation Act* (39/1997), s. 960M, as inserted by *Finance (No. 2) Act 2008* (25/2008), s. 97 and sch. 4 para. 1, commenced as per s. 97 and sch. 4 para. 6.

Taking by Collector-General of proceedings in bankruptcy.

960M.— (1) The Collector-General may in his or her own name apply for the grant of a bankruptcy summons under section 8 of the Bankruptcy Act 1988 or present a petition for adjudication under section 11 of that Act in respect of tax (except corporation tax) due and payable or any balance of such tax.

(2) Subject to this section, the rules of court for the time being applicable and the enactments relating to bankruptcy shall apply to proceedings under this section.

Editorial Notes:

E14 Previous affecting provision: subs. (1)(d) amended (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 30(a), commenced on enactment; paragraph substituted (31.07.2023) as per F-note above.

E15 Previous affecting provision: subs. (1) amended (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch., in effect as per art. 2; further amended as per F-note above.

F20**[**Petitioning creditor's costs.

12.—F21**[**(1) The petitioning creditor shall at his own cost present his petition and prosecute it and, subject to *subsection (2)*, the Court shall, at or after the hearing of the creditors' petition under section 14, make an order for the payment of such costs out of the estate of the bankrupt in course of priority to be settled by rules of court.**]**

(2) In considering whether it is appropriate to make an order under subsection (1) the Court shall have regard to whether or not the petitioning creditor had unreasonably refused to accept proposals made in connection with a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement pursuant to the Personal Insolvency Act 2012.**]**

Annotations

Amendments:

F20 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 146, S.I. No. 462 of 2013.

F21 Substituted (1.06.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 3, S.I. No. 253 of 2016.

Petition or act of bankruptcy agreed between bankrupt and creditor.

(1857, s. 136)

13.—No petition for adjudication shall be dismissed or adjudication annulled by reason only that the petition or act of bankruptcy has been concerted or agreed upon between the bankrupt or his solicitor and any creditor or other person.

F22**[**Adjudication: creditor's petition.

14.— (1) Subject to *subsection (2)*, where the petition is presented by a creditor, the Court shall, if satisfied that the requirements of *section 11(1)* have been complied with, by order adjudicate the debtor bankrupt.

(2) Before making an order under *subsection (1)*, the Court shall consider the nature and value of the assets available to the debtor, the extent of his liabilities, and whether the debtor's inability to meet his engagements could, having regard to those matters and the contents of any statement of affairs of the debtor filed with the Court, be more appropriately dealt with by means of—

(*a*) a Debt Settlement Arrangement, or

(*b*) a Personal Insolvency Arrangement,

and where the Court forms such an opinion the Court may adjourn the hearing of the petition to allow the debtor an opportunity to enter into such of those arrangements as is specified by the Court in adjourning the hearing.

(3) A copy of the order shall be served on the debtor, either personally or by leaving it at his residence or place of business in the State.

(4) For the purposes of *subsection (2)*, the Court may order the bankrupt to attend and make full disclosure of his assets and liabilities to the Court by way of a statement of affairs filed with the Court. **]**

Annotations

Amendments:

F22 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 147, S.I. No. 462 of 2013.

F23**[**Adjudication on debtor's petition.

15.— (1) Subject to *subsection (2)*, where the petition for adjudication is presented by the debtor the Court may, where it considers it appropriate to do so, and where it is satisfied that the debtor is unable to meet his engagements with his creditors and that the requirements of *section 11(4)* and *(5)* have been complied with, by order adjudicate the debtor a bankrupt.

(2) Before making an order under *subsection (1)*, the Court shall consider the nature and value of the assets available to the debtor, the extent of his liabilities, and whether the debtor's inability to meet his engagements could, having regard to those matters and the contents of

the debtor's statement of affairs filed with the Court, be more appropriately dealt with by means of—

(*a*) a Debt Settlement Arrangement, or

(*b*) a Personal Insolvency Arrangement,

and where the Court forms such an opinion the court may adjourn the hearing of the petition to allow the debtor an opportunity to enter into such of those arrangements as is specified by the Court in adjourning the hearing.**]**

Annotations

Amendments:

F23 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 148, S.I. No. 462 of 2013.

Editorial Notes:

E16 Previous affecting provision: section amended (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch., in effect as per art. 2; substituted as per F-note above.

Cause shown against adjudication.

(*cf*. 1857, s. 129)

16.—(1) The bankrupt may, within three days or such extended time not exceeding fourteen days as the Court thinks fit from the service of the copy of the order of adjudication on him, show cause to the Court against the validity of the adjudication.

(2) On an application to show cause under *subsection (1)* the Court shall, if within such time the bankrupt shows to its satisfaction that any of the requirements of *section 11 (1)* have not been complied with, annul the adjudication and may, in any other case, dismiss the application or adjourn it on such conditions as the Court thinks fit, having regard to the interests of the bankrupt, his creditors and any persons who might advance further credit to him.

(3) Nothing in this section shall be construed to prevent the immediate seizure of the goods of the bankrupt on his adjudication.

Notice of adjudication and statutory sitting.

(1857, ss. 129, 130 in pt., *cf*. s. 353)

17.—(1) This section shall have effect—

(*a*) in the case of a creditor's petition where cause has not been shown to the satisfaction of the Court for annulling the adjudication within the time for showing cause, on the expiration of that time;

(*b*) in the case of a debtor's petition under *section 15* or the adjudication of an arranging debtor under *section 105*, on adjudication.

F24**[**(2) The Court shall cause notice of the adjudication to be given as soon as may be by the publication of the notice on the website of the Insolvency Service of Ireland.**]**

(3) F25**[**...**]**

(4) The Court, on adjourning an application to show cause under *section 16 (1)*, may stay publication of notice of the adjudication on security being given by the bankrupt or on such other conditions as the Court thinks fit.

Annotations

Amendments:

F24 Substituted (31.07.2023) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 33, S.I. No. 389 of 2023, art. 3(e).

F25 Deleted (1.06.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 4(1), S.I. No. 253 of 2016, subject to transitional provision in subs. (2).

Editorial Notes:

E17 Previous affecting provision: subs. (2) substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013) s. 10(a), commenced as per s. 11(4); substituted (31.07.2023) as per F-note above.

Creditors' assignee.

(1857, ss. 64, 265)

F26**[18.**—(1) The creditors of a bankrupt may—

(*a*) choose and appoint a person (in this Act referred to as the "creditors' assignee") to represent them in the administration of the bankrupt's estate, and

(*b*) not later than 90 days after the date of the making of the adjudication order in respect of that bankruptcy apply to Court for confirmation of that appointment.**]**

(2) All creditors shall be entitled to vote in such choice in person or by an agent authorised in writing in that behalf, and the choice and appointment shall be made by the major part in value of the creditors.

(3) The Court may reject any person so chosen who appears to the Court unfit to be a creditors' assignee or may remove a creditors' assignee and in the event of a vacancy, however arising, a new choice and appointment may be made in like manner.

(4) For the purposes of appointing a creditors' assignee a creditor may prove his debt.

Annotations

Amendments:

F26 Substituted (1.06.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 5, S.I. No. 253 of 2016.

F27**[**Revenue Commissioners to furnish certain information to Official Assignee.

18A.— (1) Where a person has been adjudicated bankrupt the Revenue Commissioners shall, where requested to do so by the Official Assignee, furnish to the Official Assignee such information as has been requested held by them in relation to the carrying on of any trade or profession or relating to any matter in respect of which a return is required to be made to the Revenue Commissioners and to which the bankrupt is or was a party.

(2) The information to be provided under *subsection (1)* shall also be provided to a trustee in bankruptcy other than the Official Assignee appointed under *Part V*.**]**

Annotations

Amendments:

F27 Inserted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 30(b), commenced on enactment.

Duties of bankrupt.
(1857, s. 132 in pt.)

19.—The bankrupt shall—

(*a*) unless the Court otherwise directs, forthwith deliver up to the Official Assignee F28**[**such books of account, other papers or records (including copies of such books of account, other papers or records held in electronic form)**]** relating to his estate in his possession or control as the Official Assignee may from time to time request and disclose to him such of them as are in the possession or control of any other person;

(*b*) deliver up possession of any part of his property which is divisible among his creditors under this Act, and which is for the time being in his possession or control, to the Official Assignee or any person authorised by the Court or otherwise under the provisions of this Act to take possession of it;

(*c*) unless the Court otherwise directs, within the prescribed time file in the Central Office a statement of affairs in the prescribed form and deliver a copy thereof to the Official Assignee;

(*d*) give every reasonable assistance to the Official Assignee in the administration of the estate;

(*e*) disclose to the Official Assignee any after-acquired property.

Annotations

Amendments:

F28 Substituted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 6, S.I. No. 34 of 2016.

Change of name or address, etc.
(New)

20.—(1) A bankrupt shall forthwith notify the Official Assignee in writing of any change in his name or address which occurs during his bankruptcy.

(2) For the purposes of *subsection (1)* a change in the name of a bankrupt shall be deemed to occur if the bankrupt in fact assumes the use of a different name or an additional name.

(3) A bankrupt shall, whenever required by the Official Assignee to do so, forthwith notify the Official Assignee in writing of the nature of any profession, vocation, business or employment in which he is engaged.

(4) A bankrupt who fails to comply with any of the provisions of this section shall be guilty of an offence.

Examination of bankrupt and other persons.
(1857, ss. 305 in pt., 306, 307, 308, 310; *cf*. 33/1963, s. 245)

21.—(1) The Court may summon before it a bankrupt or any person who is known or suspected to have in his possession or control any property of the bankrupt or to have disposed of any property of the bankrupt or who is supposed to be indebted to the bankrupt, or any

person whom the Court deems capable of giving information relating to the trade, dealings, affairs or property of the bankrupt.

(2) The Court may examine him on oath concerning the matters aforesaid, either orally or on written interrogatories, and may reduce his answers to writing and require him to sign them.

F29**[**(3) The Court may require him to produce any books of account, other papers or records (including copies of such books of account, other papers or records held in electronic form) in his possession or control relating to the matters aforesaid but, where he claims any lien on books, papers or records produced by him, the production shall be without prejudice to that lien and the Court may determine all questions in relation to the lien.**]**

(4) A bankrupt or other person who is examined under this section shall not be entitled to refuse to answer any question put to him on the ground that his answer might incriminate him but none of his answers shall be admissible in evidence against him in any other proceedings, civil or criminal, except in the case of any criminal proceedings for perjury in respect of any such answer.

Annotations

Amendments:

F29 Substituted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 7, S.I. No. 34 of 2016.

Modifications (not altering text):

C14 Reference to perjury construed (28.07.2021) by *Criminal Justice (Perjury and Related Offences) Act 2021* (13/2021), s. 4(2) and sch. 2, S.I. No. 378 of 2021.

References to perjury or subornation of perjury

4. ...

(2) A reference in an enactment specified in Schedule 2 to perjury or to subornation of perjury, howsoever described, in relation to an act committed on or after the coming into operation of this subsection, shall be construed as a reference to perjury or to subornation of perjury, as the case may be, within the meaning of this Act.

...

SCHEDULE 2

Section 4(2)

...

33. Bankruptcy Act 1988, section 21(4)

...

Admission of debt due to bankrupt.

(*cf*. 1857, s. 311)

22.—If any person on examination appears to be indebted to the bankrupt or to have in his possession or control any property of the bankrupt, the Court, on the application of the Official Assignee, may order him to pay to the Official Assignee, at such time and in such manner as the Court thinks fit, the amount or any part thereof or to deliver to the Official Assignee such property or any part thereof at such time and in such manner and on such terms as the Court may direct.

Arrest of bankrupt, etc.

(*cf*. 1857, ss. 124, 125)

23.—(1) Where it appears to the Court, at any time after making an adjudication order, on proof of probable cause for believing that a bankrupt is about to leave the State or otherwise to abscond or has removed or concealed or is about to remove or conceal any of his property with a view to avoiding payment of his debts or avoiding examination in respect of his affairs, or is keeping out of the way and cannot be served with a summons, the Court may cause him to be arrested and brought before it for examination.

(*cf*. 1857, s. 305 in pt.)

(2) Where a bankrupt has been summoned before the Court pursuant to *section 21* and he does not come at the time appointed, not having an excuse (made known to the Court at the time of its sitting and allowed by it) the Court may cause him to be arrested and brought before it for examination.

(*cf*. 1857, s. 308 in pt.)

(3) Where any person summoned before the Court pursuant to *section 21* after being tendered a reasonable sum for his expenses, does not come at the time appointed, not having an excuse (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be arrested and brought before it for examination.

(4) The provisions of *subsections (2)* and *(3)* are without prejudice to the powers of the Court in relation to contempt or enforcement of the attendance of witnesses.

Committal to prison.

(1857, s. 385)

24.—Where the bankrupt or any person summoned or brought before the Court refuses to be sworn or refuses or fails to answer any lawful question put by the Court or does not fully answer any such question or refuses to sign and subscribe his examination when reduced to writing (not having any lawful excuse allowed by the Court) or to comply with any order of the Court under this Act, the Court may order that such person be committed to prison to await the further order of the Court.

Examination of persons in custody.

(1872, s. 73)

25.—Where the bankrupt or any person is in prison pursuant to an order of the Court under *section 24*, the Court may by warrant directed to the governor of the prison order that he be brought before the Court. Where such person satisfies the Court that he has complied with its lawful requirements the Court shall order his release from custody. In any other case he may be taken back to prison without any further order.

Release of bankrupt from prison.

(New)

26.—If a bankrupt is in prison by virtue of section 6 of the Enforcement of Court Orders Act, 1940, in respect of a debt incurred before adjudication, the Court may order his release.

Warrant of seizure.

(1857, s. 72 in pt.)

27.—(1) The Court may by warrant direct the Bankruptcy Inspector or any of his assistants to seize any property of the bankrupt.

(2) An official acting under the warrant may seize any part of the bankrupt's property in the possession or control of the bankrupt and, for the purpose of seizing any such property, may enter and if necessary break open any house, building, room or other place belonging to the bankrupt where any part of his property is believed to be.

Search warrant.

(*cf*. 1857, s. 326)

28.—Where it appears to the Court that there is reason to believe that any property of the bankrupt is concealed in any house, building, room or other place not belonging to the bankrupt, the Court may grant a search warrant to the Bankruptcy Inspector or any of his assistants, or other person appointed by the Court, who may execute the warrant according to the tenor thereof.

Indemnity for persons acting under warrant.

(1857, s. 327)

29.—The Bankruptcy Inspector or his assistants or other person appointed by the Court shall not be liable for anything done *bona fide* pursuant to any warrant of the Court.

Actions by Official Assignee and bankrupt's partners.

(*cf*. 1857, s. 278)

30.—Where a member of a partnership is adjudicated bankrupt the Court may authorise the Official Assignee to commence and prosecute any action in the names of the Official Assignee and of the bankrupt's partner to recover any debt due to or any property of the partners, and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to the bankrupt's partner and he may show cause against it and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action. If the partner does not claim any benefit from the action he shall be indemnified against costs in respect thereof as the Court directs.

Annotations

Modifications (not altering text):

C15 Application of section restricted (25.07.1994) by *Investment Limited Partnerships Act 1994* (24/1994), s. 23, S.I. No. 213 of 1994.

Bankruptcy Act, 1988.

23.— For the purposes of the application of sections 30, 31, 32 and 36 of the Bankruptcy Act, 1988, a limited partner shall not be regarded as a partner of an investment limited partnership.

Petition against one or more partners.

(*cf*. 1857, s. 122)

31.—(1) Any creditor whose debt is sufficient to entitle him to present a petition for adjudication against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

(2) Where a petition for adjudication is presented against more than one person the Court may make an order of adjudication against one or more of them and dismiss the petition as to the remainder.

Annotations

Modifications (not altering text):

C16 Application of section restricted (25.07.1994) by *Investment Limited Partnerships Act 1994* (24/1994), s. 23, S.I. No. 213 of 1994.

Bankruptcy Act, 1988.

23.— For the purposes of the application of sections 30, 31, 32 and 36 of the Bankruptcy Act, 1988, a limited partner shall not be regarded as a partner of an investment limited partnership.

Furnishing of partnership accounts to Official Assignee.

(New)

32.—Where a member of a partnership is adjudicated bankrupt the Official Assignee may require the other partner or partners to deliver to the Official Assignee such accounts and information relating to the partnership estate and the bankrupt's interest therein (duly verified by affidavit if necessary) as the Official Assignee may deem necessary.

Annotations

Modifications (not altering text):

C17 Application of section restricted (25.07.1994) by *Investment Limited Partnerships Act 1994* (24/1994), s. 23, S.I. No. 213 of 1994.

Bankruptcy Act, 1988.

23.— For the purposes of the application of sections 30, 31, 32 and 36 of the Bankruptcy Act, 1988, a limited partner shall not be regarded as a partner of an investment limited partnership.

Duty of bankrupt partner.

(New)

33.—Where a member of a partnership is adjudicated bankrupt he shall deliver to the Official Assignee within the prescribed time a separate statement of affairs in respect of the partnership in the prescribed form.

Joint and separate properties.

(New)

34.—(1) In the case of partners the joint property shall be applicable in the first instance in payment of their joint debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

(2) Where there is a surplus of the joint property, it shall be dealt with as part of the respective separate properties in proportion to the right and interest of each partner in the joint property.

(3) Where there is a surplus of any separate property it shall be dealt with as part of the joint property so far as necessary to meet any deficiency in the joint property.

Actions on joint contracts.

(New)

35.—Where a bankrupt is a party to a contract jointly with any other person, that other person may sue or be sued in respect of the contract without joining the bankrupt.

Proceedings in partnership name.

(New)

36.—(1) Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the persons to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

(2) Notwithstanding anything contained in *subsection (1)* no order of adjudication shall be made against a firm in the firm name but it shall be made against the partners individually with the addition of the firm name.

Annotations

Modifications (not altering text):

C18 Application of section restricted (25.07.1994) by *Investment Limited Partnerships Act 1994* (24/1994), s. 23, S.I. No. 213 of 1994.

Bankruptcy Act, 1988.

23.— For the purposes of the application of sections 30, 31, 32 and 36 of the Bankruptcy Act, 1988, a limited partner shall not be regarded as a partner of an investment limited partnership.

Limited partnerships.

(33/1963, s. 345 (8))

37.—Subject to such modifications as may be made by rules of court, the provisions of this Act shall apply to limited partnerships in like manner as if limited partnerships were ordinary partnerships and, on all the general partners of a limited partnership being adjudicated bankrupt, the assets of the limited partnership shall vest in the Official Assignee.

Composition after Bankruptcy

Stay on realisation of estate.

(New)

38.—The Court may, on the application of a bankrupt, grant a stay on the realisation of his estate, for such time and under such conditions as it thinks fit, to enable him or any persons acting on his behalf to make an offer of composition to his creditors under *section 39*.

Offer of composition.

(*cf*. 1857, ss. 149, 150 in pt.; 1872, s. 61)

39.—F30**[**(1) Where a stay on the realisation of the estate of the bankrupt has been granted under *section 38* or where the Official Assignee has otherwise consented in writing to suspend the realisation of the bankrupt's estate on such terms as he may specify in such consent, the bankrupt shall call a meeting of his creditors before the Court for the purpose of making an offer of composition to them. **]**

(2) At least ten days before the meeting a notice of the meeting specifying the precise offer of composition to be made shall be inserted in *Iris Oifigiúil* and shall also be sent by post to each creditor at his last known address.

(3) If an offer of composition is made by or on behalf of the bankrupt and three-fifths in number and value of the creditors voting at the meeting, either in person or by an agent authorised in writing in that behalf, accept the offer or any modification of it, it shall be deemed to be accepted, and when approved by the Court shall be binding on all creditors of the bankrupt.

F30**[**(4) A creditor whose debt is less than €500 shall not be entitled to vote.**]**

(5) If for any reason the bankrupt has not filed a statement of his affairs as required by *section 19 (c)*, he shall do so at or before the meeting.

(6) Debts may be proved at the meeting.

Annotations

Amendments:

F30 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 149, S.I. No. 462 of 2013.

Editorial Notes:

E18 Previous affecting provision: subs. (4) amended (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch., in effect as per art. 2; substituted as per F-note above.

Payment of composition.

(New)

40.—(1) Any composition shall be payable—

(*a*) in cash, within one month from the approval by the Court of the offer of composition or within such further time as the Court may allow, or

(*b*) by instalments, all of which shall be secured to the satisfaction of the creditors, or

(*c*) partly in cash and partly by instalments payable or secured as aforesaid.

(2) In no case shall any instalment be secured by a bill, note or other security signed by or enforceable against the bankrupt alone.

(3) The Court shall have discretion to refuse to approve of an offer payable wholly or partly by instalments if the final instalment is not payable within two years.

Discharge of adjudication order.

(New)

41.—The Court, on the application of the bankrupt or his personal representatives, shall, on the report of the Official Assignee and in the absence of fraud, discharge the adjudication order—

(*a*) in the case of a composition payable in cash, upon lodgment with the Official Assignee of the necessary amount to pay the composition, expenses, fees, costs, such further sums as the Court may direct and the preferential payments;

(*b*) in the case of a composition payable by instalments which are secured to the satisfaction of the creditors, upon lodgment with the Official Assignee of the completed bills, notes or other securities, the necessary amount to pay expenses, fees, costs, such further sums as the Court may direct and the preferential payments;

(*c*) in the case of a composition payable partly in cash and partly by instalments which are secured to the satisfaction of the creditors, upon lodgment with the Official Assignee of the completed bills, notes or other securities, the necessary amount to pay the cash composition, expenses, fees, costs, such further sums as the Court may direct and the preferential payments.

Bankrupt Dying after Adjudication

Bankrupt dying after adjudication.

(1857, s. 137)

42.—If a bankrupt dies the Court may proceed in the bankruptcy as if he were living.

Subsequent Bankruptcy

Subsequent bankruptcy.

(New)

43.—(1) Where a bankrupt is again adjudicated, all after-acquired property unclaimed by the Official Assignee at the date of the subsequent bankruptcy shall, if claimed by the Official Assignee, vest in him for the credit of the subsequent bankruptcy.

(2) Any after-acquired property or the proceeds thereof in the possession of the Official Assignee at the date of the subsequent bankruptcy shall be transferred by the Official Assignee (after deducting his costs and expenses) to the credit of the subsequent bankruptcy.

(3) Any surplus arising on the subsequent bankruptcy shall be transferred to the credit of the former bankruptcy.

PART III

ADMINISTRATION OF PROPERTY

Effect of Adjudication on Bankrupt's Property

Vesting of property in Official Assignee.

(1857, ss. 267, 268, 273)

44.—(1) Where a person is adjudicated bankrupt, then, subject to the provisions of this Act, all property belonging to that person shall on the date of adjudication vest in the Official Assignee for the benefit of the creditors of the bankrupt.

(2) Subject to the provisions of this Act, the title of the Official Assignee to any property which vests in him by virtue of *subsection (1)* shall not commence at any date earlier than the date of adjudication.

(3) The property to which *subsection (1)* applies includes—

(*a*) all powers vested in the bankrupt which he might legally exercise in relation to any property immediately before the date of adjudication;

(*b*) all property which was the subject of any conveyance or transfer which *sections 57*, *58* and *59* declare void as against the Official Assignee, subject to the rights of any persons which are preserved F31**[**by those sections; and**]**

F32**[**(c) any sum paid to the bankrupt under a periodic payments order, which relates to damages in respect of future loss of earnings.**]**

(4) The property to which *subsection (1)* applies does not include—

(*a*) property held by the bankrupt in trust for any other person, F33**[**...**]**

(*b*) any sum which vests in the Official Assignee under F34**[**section 52(1) of the Property Services (Regulation) Act 2011**]**, or section 30 (i) of the F35**[**Central Bank Act 1971, and**]**

F32**[**(c) any sum paid to the bankrupt under a periodic payments order, other than a sum referred to in *subsection (3)(c)*.**]**

(5) Without prejudice to any existing principle or rule of law or equity, established practice or procedure in relation to damages or compensation recovered or recoverable by a bankrupt for personal injury or loss suffered by him, property which is acquired by or devolves on a bankrupt before the discharge or annulment of the adjudication order (in this Act called "after-acquired property") shall vest in the Official Assignee if and when he claims it.

F32**[**(6) *Subsection (5)* shall not apply to any sum paid to a bankrupt under a periodic payments order before the discharge or annulment of the adjudication order, other than any part of such sum which relates to damages in respect of future loss of earnings.**]**

Annotations

Amendments:

F31 Substituted (1.10.2018) by *Civil Liability (Amendment) Act 2017* (30/2017), s. 4(b)(i)(I), S.I. No. 377 of 2018.

F32 Inserted (1.10.2018) by *Civil Liability (Amendment) Act 2017* (30/2017), s. 4(b)(i)(II), (ii)(III) and (iii), S.I. No. 377 of 2018.

F33 Deleted (1.10.2018) by *Civil Liability (Amendment) Act 2017* (30/2017), s. 4(b)(ii)(I), S.I. No. 377 of 2018.

F34 Substituted (6.07.2012) by *Property Services (Regulation) Act 2011* (40/2011), s. 101 and sch. 8, S.I. No. 198 of 2012.

F35 Substituted (1.10.2018) by *Civil Liability (Amendment) Act 2017* (30/2017), s. 4(b)(ii)(II), S.I. No. 377 of 2018.

F36**[**Pensions in Bankruptcy.

44A.— (1) Subject to *subsection (2)*, where a person is adjudicated bankrupt, and he or she is, or may become entitled to, payments under a relevant pension arrangement, assets relating to the arrangement (other than payments already received by the bankrupt, or that the bankrupt

was entitled to receive, under the arrangement) shall not vest in the Official Assignee for the benefit of the creditors of the bankrupt.

(2) Where a bankrupt has an interest in or entitlement under a relevant pension arrangement which would, if the bankrupt performed an act or exercised an option, cause that debtor to receive from or at the request of the person administering that relevant pension arrangement—

(*a*) an income, or

(*b*) an amount of money other than income,

in accordance with the relevant provisions of the Taxes Consolidation Act 1997, that bankrupt shall be considered as being in receipt of such income, and such amount of money shall vest in the Official Assignee or the trustee in bankruptcy.

(3) *Subsection (2)* applies where—

(*a*) the bankrupt is entitled at the date of being adjudicated a bankrupt to perform the act or exercise the option referred to in *subsection (2)*,

(*b*) was entitled at any time before the date of the adjudication, to perform the act or exercise the option referred to in *subsection (2)*, but had not performed the act or exercised the option, or

(*c*) will become entitled within 5 years of the date of the adjudication to perform the act or exercise the option referred to in *subsection (2)*.

(4) Where *subsection (2)* applies, the Official Assignee or the trustee in bankruptcy may where he or she considers that it would be beneficial to the creditors of the bankrupt to do so, perform an act or exercise an option referred to in *subsection (2)* in place of the bankrupt.

(5) In this section and in *sections 44B* and *85D* a reference to a relevant pension arrangement means:

(*a*) a retirement benefits scheme, within the meaning of section 771 of the Taxes Consolidation Act 1997, for the time being approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 30 of that Act;

(*b*) an annuity contract or a trust scheme or part of a trust scheme for the time being approved by the Revenue Commissioners under section 784 of the Taxes Consolidation Act 1997;

(*c*) a PRSA contract, within the meaning of section 787A of the Taxes Consolidation Act 1997, in respect of a PRSA product, within the meaning of that section;

(*d*) a qualifying overseas pension plan within the meaning of section 787M of the Taxes Consolidation Act 1997;

(*e*) a public service pension scheme within the meaning of section 1 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004;

(*f*) a statutory scheme, within the meaning of section 770(1) of the Taxes Consolidation Act 1997, other than a public service pension scheme referred to in paragraph (*e*);

(*g*) such other pension arrangement as may be prescribed by the Minister, following consultation with the Ministers for Finance, Social Protection and Public Expenditure and Reform.**]**

Annotations

Amendments:

F36 Inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 150, S.I. No. 462 of 2013.

F37**[**Excessive pension contributions by bankrupt.

44B.— (1) Where, on application by the Official Assignee or the trustee in bankruptcy, the Court is satisfied that the bankrupt, or a person on his or her behalf, has within the 3 years prior to the adjudication made contributions to a relevant pension arrangement under which the bankrupt is, or may become entitled to, payments and which contributions—

(*a*) were excessive in view of the bankrupt's financial circumstances when those contributions were made, and

(*b*) had the effect of—

(i) materially contributing to the bankrupt's inability to pay his or her debts, or

(ii) substantially reducing the sum available for distribution to the creditors,

the Court may make such order in relation to the relevant pension arrangement as it considers appropriate for the purpose of ensuring that the contributions which the Court considers to be excessive or any part of such contributions can be vested in the Official Assignee or the trustee in bankruptcy to be made available for distribution to the creditors.

(2) In considering an application under *subsection (1)* and in determining whether or not the contributions made by the bankrupt to a relevant pension arrangement were excessive the Court may have regard to all the financial circumstances of the bankrupt and in particular:

(*a*) whether the bankrupt made payments to his or her creditors in respect of debts due to those creditors on a timely basis at or about the time when the bankrupt made the contribution concerned;

(*b*) whether the bankrupt was obliged to make contributions of the amount or percentage of income as the payments actually made under his or her terms and conditions of employment and if so obliged, whether the bankrupt or a person who as respects the bankrupt is a relative could have materially influenced the creation of such obligation;

(*c*) the amount of the contributions paid, including the percentage of total income of the bankrupt in each tax year concerned which such contributions represent;

(*d*) the amount of the contributions paid, in each of the 6 years prior to the making of the adjudication including the percentage of total income of the bankrupt which such contributions represent in each of those years;

(*e*) the age of the bankrupt at the relevant times;

(*f*) the percentage limits which applied to the bankrupt in relation to relief from income tax for the purposes of making contributions to a relevant pension arrangement in each of the 6 years prior to the adjudication; and

(*g*) the extent of provision made by the bankrupt in relation to any relevant pension arrangement prior to the making of the contributions concerned.

(3) In this section "relative" as respects a person, means a brother, sister, parent, spouse or civil partner of the person or a child of the person or of the spouse or civil partner.**]**

Annotations

Amendments:

F37 Inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 150, S.I. No. 462 of 2013.

Excepted articles. (1857, ss. 298, 299)

45.—F38**[**(1) (*a*) Subject to *paragraph (b)*, a bankrupt shall be entitled to retain as excepted articles—

(i) any assistive technology or other aids and appliances associated with the medical treatment and care of the bankrupt, his or her spouse or civil partner within the meaning of the Act of 2010, his or her children and any dependent relative residing with him or her, and

(ii) such articles of clothing, household furniture, bedding, tools or equipment of the bankrupt's trade or occupation or other like necessaries for the bankrupt, his or her spouse or civil partner within the meaning of the Act of 2010, his or her children and any dependent relatives residing with him or her, as the bankrupt may select.

(*b*) The total value of articles selected by a bankrupt under *paragraph (a)(ii)* shall not exceed €6,000 or such further amount as the Court may, on an application by the bankrupt, allow.**]**

(2) Where a bankrupt, after selecting the items constituting the excepted articles, requests the Official Assignee, in writing, not to dispose of the remainder of any such articles as are referred to in F38**[***subsection (1)(a)(ii)***]** the Official Assignee shall not dispose thereof except in accordance with an order of the Court.

(3) The Court may, on the application of the bankrupt or the Official Assignee, in relation to the remainder of such articles—

(*a*) postpone the removal and sale thereof;

(*b*) permit them to remain in the use of the bankrupt;

(*c*) at any time, order them to be taken by or on behalf of the Official Assignee and to be sold for the benefit of the creditors.

Annotations

Amendments:

F38 Substituted (1.10.2018) by *Civil Liability (Amendment) Act 2017* (30/2017), s. 4(c), S.I. No. 377 of 2018.

Editorial Notes:

E19 Previous affecting provision: subs. (1) amended (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 151, S.I. No. 462 of 2013; subsection substituted as per F-note above.

E20 Previous affecting provision: subs. (1) amended (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 170 and sch. part 5 item 8, S.I. No. 648 of 2010; subsection substituted as per F-note above.

E21 Previous affecting provision: subs. (1) amended (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch., in effect as per art. 2; amended as per F-note above.

Certificate of vesting of property in Official Assignee.

(*cf*. 1857, s. 269)

46.—(1) Where, according to law, any conveyance of land is required to be registered and such land vests in the Official Assignee under this Part, a certificate under the seal of the Court shall be issued to him as evidence of the vesting and he shall cause the certificate to be registered as soon as may be as if it were a conveyance, and registration of the certificate shall have the like effect to all intents and purposes as registration of a conveyance would have had.

(2) The title of any purchaser of any such land for valuable consideration, in good faith and without notice of the adjudication, who had duly registered the conveyance before the registration of the certificate shall not be invalidated by reason of the adjudication unless the certificate is registered within two months after the date of the adjudication.

Vesting in Official Assignee of certain money and securities.

(New)

47.—F39**[**(1)**]** F40**[**Subject to *subsection (2)*, notwithstanding**]** any provision in any other enactment—

(*a*) money in the Post Office Savings Bank or in a trustee savings bank to which a bankrupt is entitled, or

(*b*) securities issued through An Post by the Minister for Finance under his statutory borrowing powers and to which a bankrupt is entitled,

shall, on the adjudication of the bankrupt, vest in the Official Assignee in the same manner as any other property.

F39**[**(2) Money or securities referred to in *subsection (1)*, which derive from—

(*a*) payments to a bankrupt, before or after adjudication, made under a periodic payments order, other than any part of such payments which relates to damages in respect of future loss of earnings, or

(*b*) damages or compensation otherwise paid to a bankrupt, before or after adjudication, for a personal injury or loss suffered by him or her, other than any part of such damages or compensation which relates to damages in respect of future loss of earnings,

shall not vest in the Official Assignee.**]**

Annotations

Amendments:

F39 Inserted (1.10.2018) by *Civil Liability (Amendment) Act 2017* (30/2017), s. 4(d)(ii), (iii), S.I. No. 377 of 2018.

F40 Substituted (1.10.2018) by *Civil Liability (Amendment) Act 2017* (30/2017), s. 4(d)(i), S.I. No. 377 of 2018.

Limitation of Official Assignee's powers in relation to copyright.

(New)

48.—Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright and he is liable to pay to the author royalties or a share of the profits in respect thereof—

(*a*) the Official Assignee shall not be entitled to sell or authorise the sale of any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, and

(*b*) he shall not be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except with the consent of the author or of the Court and upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

Restrictive clause in agreement or lease.

(New)

49.—(1) Every covenant or provision for forfeiture of a lease on the bankruptcy of the lessee shall be void as against the Official Assignee.

(2) A clause in a hire purchase agreement which purports to terminate the agreement on the bankruptcy of the hirer shall be void as against the Official Assignee.

Execution against debtor's property before adjudication.

(*cf*. 1872, s. 54)

50.—(1) Where goods F41**[**...**]** belonging to a debtor have been seized under an execution order and sold, or where money has been paid in part or full satisfaction of the execution either to the sheriff or county registrar or to the execution creditor in order to avoid seizure or sale under such execution, the sheriff, county registrar or execution creditor shall retain the proceeds of sale or the money so paid, for a period of twenty-one days.

(2) If within that period the sheriff, county registrar or execution creditor receives notice of the adjudication of the debtor, he shall surrender the property, or pay over the proceeds of sale thereof or any money paid in satisfaction of the execution, to the Official Assignee who shall be entitled to retain the property, proceeds or money, as the case may be, as against the execution creditor.

(3) An execution levied by seizure of any such property belonging to the debtor shall not be invalid by reason only of its being an act of bankruptcy and a person who purchases the property in good faith under a sale by the sheriff or county registrar shall, as against the Official Assignee, acquire a good title thereto.

(4) Where a sheriff or county registrar, without notice of the adjudication of the debtor, pays the proceeds of sale or other money retained by him pursuant to *subsection (1)* to the execution creditor after the expiration of twenty-one days, he shall not be liable to the Official Assignee in respect of the payment.

(5) Where property is surrendered or proceeds of sale or other money paid over to the Official Assignee, the costs of the execution shall be a first charge thereon and the Official Assignee may sell the whole or part of the property for the purpose of satisfying the charge.

Annotations

Amendments:

F41 Deleted (1.12.2009) by *Land and Conveyancing Law Reform Act 2009* (27/2009), s. 8(1) and sch. 1, S.I. No. 356 of 2009.

Priority of judgment mortgage.
(1857, s. 331)

51.—F42**[**(1) A judgment creditor who registers a judgment mortgage under section 116 of the Land and Conveyancing Law Reform Act 2009 shall not, by reason of such registration, be entitled to any priority or preference over simple contract creditors in the event of the person against whom such judgment mortgage is registered being adjudicated bankrupt, unless the judgment mortgage is registered at least three months before the date of the adjudication.**]**

(2) F43**[**...**]**

Annotations

Amendments:

F42 Substituted (1.12.2009) by *Land and Conveyancing Law Reform Act 2009* (27/2009), s. 8(1) and sch. 1, S.I. No. 356 of 2009.

F43 Repealed (1.06.2015) by *Companies Act 2014* (38/2014), s. 4(1) and sch. 2 part 1, S.I. No. 169 of 2015).

Modifications (not altering text):

C19 References to the date of adjudication construed (1.06.2015) by *Companies Act 2014* (38/2014), s. 613(3), S.I. No. 169 of 2015.

Application of bankruptcy rules in winding up of insolvent companies

619.— ...

(3) Subsection (1) of section 51 of the Bankruptcy Act 1988 shall apply in the winding up of an insolvent company and, accordingly, the reference in that subsection to the date of adjudication shall be read as—

(*a*) subject to *paragraph (b)*, a reference to, as the case may be—

(i) the presentation of a petition for the winding up of the company by the court, or

(ii) the passing of a resolution for voluntary winding up,

and

(*b*) where, before the presentation of a petition for the winding up of the company by the court, a resolution has been passed by the company for voluntary winding up, a reference to the passing of the resolution.

...

Order to put purchaser in possession.
(1872, s. 75)

52.—Where land belonging to a bankrupt or arranging debtor has been sold under the provisions of this Act or by or under the direction of the Court, the Court may, on the application of the purchaser, issue an order directing the appropriate sheriff or county registrar to put the purchaser into possession of all the land not in the occupation of lessees, under-lessees or tenants, subject to whose interests the sale has been made and who have attorned to the purchaser within a time to be limited in the order, and the order shall be executed in like manner as an order for the delivery of possession.

Permission to mortgagee to bid at sale.
(1857, s. 316)

53.—The mortgagee of any property of a bankrupt or arranging debtor may, with the leave of the Court, bid and purchase at the sale of the property.

Discharge of persons delivering property, etc., to Official Assignee.
(*cf*. 1857, s.281)

54.—A person—

(*a*) from whom the Official Assignee recovers any property of a bankrupt, or

(*b*) who, without legal proceedings, in good faith delivers up to the Official Assignee possession of any such property, or

(*c*) who pays any debt owed to a bankrupt and claimed by the Official Assignee,

shall, notwithstanding that the adjudication is subsequently annulled or discharged, be released from all claims by the bankrupt in respect of such property or debt.

Title to property sold not to be invalidated.

(1857, s. 323)

55.—The title to any property sold in bankruptcy shall not be invalidated by the bankrupt or any person claiming under him by reason only of any defect in any proceedings under this Act.

Disclaimer of onerous property.

(1872, ss. 97 and 98; 33/1963, s. 290)

F44**[56.**—(1) Subject to *subsection (5)*, where any of the property (other than after- acquired property) of a bankrupt consists of—

(*a*) any unprofitable contract, or

(*b*) any other property which—

(i) is unsaleable,

(ii) is not readily saleable for any reason whatsoever (including because the property is subject to any mortgage, charge, lien or other security), or

(iii) gives rise to a liability to pay money or perform any other onerous act,

the Official Assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, F45**[**...**]** subject to the provisions of this section, by writing signed by him, at any time disclaim the property.**]**

F46**[**(1A) The Official Assignee shall give notice in writing of the disclaimer to each person who, to the Official Assignee's knowledge at the time of the disclaimer—

(*a*) has an interest in the disclaimed property (including any person who is in occupation of, or claims a right to occupy, the property as that person's principal private residence, as defined in section 2 of the Personal Insolvency Act 2012, subject to the modification that a reference to the debtor shall be taken as a reference to that person), or

(*b*) is under a liability not discharged by this Act in respect of the disclaimed property.**]**

(2) F47**[**...**]**

(3) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the Official Assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the Official Assignee from liability, affect the rights or liabilities of any other person.

F48**[**(4) The Court may, on application by—

(*a*) the Official Assignee, at any time, or

(*b*) any person to whom *subsection (1A)* applies, before the end of the period of 28 days beginning on the day on which notice was given,

give such directions and make such other order in the matter as the Court thinks just.**]**

(5) The Official Assignee shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the Official Assignee has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim; and, in the case of a contract, if the Official Assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(6) The Court may, on the application of any person who is, as against the Official Assignee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person shall be deemed to be a debt proved and admitted in the bankruptcy.

(7) Subject to *subsection (8)*, the Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court may think just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(8) Where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the bankrupt was subject under the lease in respect of the property at the date of the adjudication; or

(*b*) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires), as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property and, if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the bankrupt in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the bankrupt.

(9) Any person damaged by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the amount of the damages, and may accordingly prove the amount as a debt in the bankruptcy.

Annotations

Amendments:

F44 Substituted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 8(a), S.I. No. 34 of 2016.

F45 Deleted (31.07.2023) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 34(a), S.I. No. 389 of 2023, art. 3(e).

F46 Inserted (31.07.2023) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 34(b), S.I. No. 389 of 2023, art. 3(e).

F47 Deleted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 8(b), S.I. No. 34 of 2016.

F48 Substituted (31.07.2023) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 34(c), S.I. No. 389 of 2023, art. 3(e).

Fraudulent and Voluntary Conveyances

Avoidance of fraudulent preferences.

(1872, s. 53; 33/1963, sch. 11, para. 1.)

57.—(1) Every conveyance or transfer of property or charge made thereon, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor or of any person in trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, F49**[**if the person making, incurring, taking or suffering the same is adjudicated bankrupt within F50**[**3 years**]** after the date of the making**]**, incurring, taking or suffering the same, be deemed fraudulent and void as against the Official Assignee; but this section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

(2) (*a*) Where a person is adjudicated bankrupt and anything made or done is void under *subsection (1)* or was void under the corresponding provisions of the law in force immediately before the commencement of this Act as a fraudulent preference of a person interested in property mortgaged or charged to secure the bankrupt's debt, then (without prejudice to any rights or liabilities arising apart from this section) the person preferred shall be subject to the same liabilities and shall have the same rights as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(*b*) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the bankrupt's debt was then subject.

(*c*) On any application made to the Court in relation to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions relating to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect thereof notwithstanding that it is not necessary so to do for the purposes of the bankruptcy, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(*d*) *Paragraph (c)* shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies to payments.

Annotations

Amendments:

F49 Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 30(c), commenced on enactment.

F50 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 152, S.I. No. 462 of 2013.

Modifications (not altering text):

C20 Application of section restricted (1.09.2008) by *Criminal Justice (Mutual Assistance) Act 2008* (7/2008), s. 40(3)(a), S.I. No. 338 of 2008.

Bankruptcy of defendant, etc.

40. —...

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift—

(*a*) no decision as to whether the gift is void shall be made under section 57, 58 or 59 of the said Act of 1988 in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a freezing co-operation order, and

(*b*) any decision as to whether it is void made under any of those sections after the discharge of the freezing co-operation order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

...

Avoidance of certain transactions.

(New)

58.—(1) F51**[**If within F52**[**3 years**]]** before he is adjudicated bankrupt a debtor commits an act of bankruptcy and thereafter either sells any of his property at a price which, in the opinion of the Court, is substantially below its market value or enters into or is a party to any other transaction which, in the opinion of the Court, has the effect of substantially reducing the sum available for distribution to the creditors, such transaction shall be void as against the Official Assignee, unless the transaction was *bona fide* entered into and the other party had not at the time of the transaction notice of any prior act of bankruptcy committed by the bankrupt.

(2) *Subsection (1)* shall not affect the rights of any person making title in good faith and for valuable consideration through or under a person (other than the bankrupt) who is party to a transaction mentioned therein.

(3) *Subsection (1)* shall not apply to any transaction mentioned in *section 57(1)* or *59*.

Annotations

Amendments:

F51 Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 30(d), commenced on enactment.

F52 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 153, S.I. No. 462 of 2013.

Modifications (not altering text):

C21 Application of section restricted (1.09.2008) by *Criminal Justice (Mutual Assistance) Act 2008* (7/2008), s. 40(3)(a), S.I. No. 338 of 2008.

Bankruptcy of defendant, etc.

40. —...

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift—

(*a*) no decision as to whether the gift is void shall be made under section 57, 58 or 59 of the said Act of 1988 in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a freezing co-operation order, and

(*b*) any decision as to whether it is void made under any of those sections after the discharge of the freezing co-operation order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

...

Avoidance of certain settlements.
(1857, s. 314; 1872, s. 52)

59.—(1) Any settlement of property, not being a settlement made before and in consideration of marriage F53**[**or civil partnership within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**]**, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall—

(*a*) if the settlor is adjudicated bankrupt within F54**[**3 years**]** after the date of the settlement, be void as against the Official Assignee, and

(*b*) if the settlor is adjudicated bankrupt at any subsequent time within five years after the date of the settlement, be void as against the Official Assignee unless the parties claiming under the settlement prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

(2) A covenant or contract made by any person (in this section called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's spouse or children, or for the future settlement, on or for the settlor's spouse or children, of property wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, shall, if the settlor is adjudicated bankrupt and the covenant or contract has not been executed at the date of the adjudication, be void as against the Official Assignee, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all the claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

F53**[**(2A) A covenant or contract made by any person (in this section called the settlor) in consideration of his or her entry into civil partnership within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, either for the future payment of money for the benefit of the settlor's civil partner, or for the future settlement, on or for the settlor's civil partner, of property wherein the settlor had not at the date of the registration of the civil partnership any estate or interest, whether vested or contingent, in possession or remainder, shall, if the settlor is adjudicated bankrupt and the covenant or contract has not been executed at the date of the adjudication, be void as against the Official Assignee, except so far as it enables the civil partner entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all the claims of the other creditors for valuable consideration in money or money's worth have been satisfied.**]**

(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of a covenant or contract to which *subsection (2)* applies shall be void as against the Official Assignee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove that:

(*a*) the payment or transfer was made more than F54**[**3 years**]** before the date of the adjudication of the settlor, or

(*b*) at the date of the payment or transfer, the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred, or

(*c*) the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract, and was made within three months after the money or property came into the possession or under the control of the settlor;

but, in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the date of the adjudication.

(4) In this section "settlement" includes any conveyance or transfer of property.

Annotations

Amendments:

F53 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2011), s. 170 and sch. part 5 item 9, S.I. No. 648 of 2010.

F54 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 154, S.I. No. 462 of 2013.

Modifications (not altering text):

C22 Application of section restricted (1.09.2008) by *Criminal Justice (Mutual Assistance) Act 2008* (7/2008), s. 40(3)(a), S.I. No. 338 of 2008.

Bankruptcy of defendant, etc.

40. —...

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift—

(*a*) no decision as to whether the gift is void shall be made under section 57, 58 or 59 of the said Act of 1988 in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a freezing co-operation order, and

(*b*) any decision as to whether it is void made under any of those sections after the discharge of the freezing co-operation order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

...

Management Provisions

F55**[**The Official Assignee

60.— (1) The Official Assignee shall have such functions as are assigned to him by or under this Act or any other enactment, and subject to this section, *sections 60A* to *60C* and the Personal

Insolvency Act 2012, such powers and functions as were heretofore exercisable by the Official Assignee in Bankruptcy continue to be exercisable by the Official Assignee.

(2) The Official Assignee shall be a member of the staff of the Insolvency Service.

(3) Subject to *subsections (4)* to *(6)*, the Official Assignee shall be independent in the performance of his functions under this Act and any other enactment.

(4) The Official Assignee shall, in relation to matters of general administration, be subject to the general direction of the Director.

(5) The Official Assignee, when performing any function relating to the business of a court, or acting under or pursuant to an order of a court, shall observe and obey such directions as are given to him by the court.

(6) The Official Assignee shall be an officer of the court for the purposes of the performance of his functions under this Act or any other enactment.

(7) Subject to *sections 60B* and *60C*, *subsections (3)* to *(6)* shall apply to a member of the staff of the Insolvency Service—

(*a*) to whom functions of the Official Assignee have been delegated under *section 60B*, as respects those functions, or

(*b*) who is designated under *section 60C*, as respects those functions,

for so long as the delegation or designation remains in force and is exercisable by the member of staff concerned.

(8) The Official Assignee shall not, without the approval of the Director, hold any other office or position in respect of which remuneration is payable, or carry on any business, trade or profession.

(9) In this section and *sections 60A* to *60C* a reference to an enactment means—

(*a*) an Act of the Oireachtas,

(*b*) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(*c*) an instrument made under—

(i) an Act of the Oireachtas, or

(ii) a statute referred to in *paragraph (b)*.**]**

Annotations

Amendments:

F55 Substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 29, S.I. No. 462 of 2013.

F56[Office of Official Assignee — Transfer of staff

60A.—(1) This section applies to—

(*a*) the person who immediately before the coming into operation of this section held the office of Official Assignee in Bankruptcy (otherwise referred to as the Official Assignee), and

(*b*) every person who immediately before the coming into operation of this section was a member of the staff of the Courts Service assigned to the Office of the Official Assignee in Bankruptcy.

(2) On the coming into operation of this section every member of the staff of the Courts Service to whom this section applies shall be seconded to the Insolvency Service for a period of 2 years.

(3) On the expiry of the period of secondment referred to in *subsection (2)* each person seconded under that subsection shall—

(*a*) transfer definitively to the staff of the Insolvency Service, or

(*b*) subject to *subsection (4)*, exercise a right to return to a suitable vacancy on the staff of the Courts Service.

(4) If a person seconded under *subsection (2)* exercises a right under *subsection (3)(b)* to return to the staff of the Courts Service but no suitable vacancy on the staff of the Courts Service exists, the person concerned shall be transferred to a suitable vacancy in a public service body.

(5) A person who—

(*a*) is seconded under *subsection (2)*,

(*b*) is transferred under *subsection (3)(a)* or *subsection (4)*, or

(*c*) returns to the Courts Service under *subsection (3)(b)*,

shall not, except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, receive a lesser scale of pay or less favourable superannuation benefits than the scale of pay and superannuation benefits to which he was entitled immediately before the secondment, transfer or return concerned.

(6) A person seconded under *subsection (2)* shall be deemed to be a member of the staff of the Insolvency Service during the period of the secondment.

(7) Subject to *subsection (3)(a)*—

(*a*) the person who immediately before the coming into operation of this section held the office of Official Assignee in Bankruptcy shall continue in office as Official Assignee, and

(*b*) the person who immediately before the coming into operation of this section held the position of Bankruptcy Inspector shall continue to hold the position of Bankruptcy Inspector.

(8) In this section—

(*a*) "public service body" has the meaning assigned to it by section 5 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012;

(*b*) "recognised trade union or staff association" means a trade union or staff association recognised by the Minister for the purposes of negotiations which are concerned with the remuneration or conditions of employment, or the working conditions of employees.**]**

Annotations

Amendments:

F56 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 29, S.I. No. 463 of 2013.

F57**[**Delegation of functions of Official Assignee

60B.—(1) The Official Assignee may in writing delegate to a specified member of the staff of the Insolvency Service—

(*a*) any of his functions under this Act in relation to a specific bankruptcy or arrangement matter, or

(*b*) any of his functions under any other enactment.

(2) A delegation under *subsection (1)* shall be subject to such conditions or limitations as to the performance of any of the functions delegated, or as to time or circumstance, as may be specified in the delegation.

(3) The Official Assignee may in writing revoke or vary a delegation made under *subsection (1)*.

(4) More than one delegation may be made and have effect under *subsection (1)* at any one time.

(5) Subject to *subsection (2)*, a person to whom functions of the Official Assignee have been delegated under *subsection (1)*, shall, while the delegation remains in force, have all the powers of the Official Assignee in respect of the functions delegated to him as fully as if he held that office, and such powers shall, where the delegation so specifies, include the power to sell, transfer or otherwise dispose of property or assets in the name of and on behalf of the Official Assignee.

(6) Nothing in this section shall affect the vesting of property in the Official Assignee in accordance with *section 44.*

(7) In any legal proceedings, a certificate that—

(*a*) is signed by the Official Assignee,

(*b*) states that any function of the Official Assignee in relation to a bankruptcy matter was on a specified date delegated to a specified member of staff of the Insolvency Service, and

(*c*) states that the delegation of the function remained in force on a specified date,

is, in the absence of evidence to the contrary, proof of the matters stated in the certificate.

(8) A certificate referred to in *subsection (7)* that appears to be signed by the Official Assignee is admissible in any proceedings as evidence of the matters stated in the certificate without proof of his signature.**]**

Annotations

Amendments:

F57 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 29, S.I. No. 463 of 2013.

F58[Deputy for Official Assignee

60C.—(1) The Director may in writing designate a member of the staff of the Insolvency Service to be the deputy for the Official Assignee, and the member of staff so designated shall, during every temporary absence and every temporary incapacity through illness of the Official Assignee and every occasion on which the office of the Official Assignee is vacant occurring while such designation remains in force, perform the functions assigned to the Official Assignee under this Act or under any other enactment.

(2) A designation under *subsection (1)* shall be subject to such conditions or limitations as to time or circumstance as may be specified in the designation.

(3) The Director may in writing at any time revoke or vary a designation made under *subsection (1)*.

(4) Subject to *subsection (2)*, a person designated under *subsection (1)* shall, while he performs the functions of the Official Assignee, have all the powers of the Official Assignee as fully as if he held that office, and such powers shall include the power to sell, transfer or otherwise dispose of property or assets in the name of and on behalf of the Official Assignee.

(5) In any legal proceedings, a certificate that—

(*a*) is signed by the Director,

(*b*) states that a specified member of staff of the Insolvency Service was designated on a specified date, in accordance with *subsection (1)*, to be the deputy for the Official Assignee, and

(*c*) states that the designation remained in force on a specified date,

is, in the absence of evidence to the contrary, proof of the matters stated in the certificate.

(6) A certificate referred to in *subsection (5)* that appears to be signed by the Director is admissible in any proceedings as evidence of the matters stated in the certificate without proof of his signature.**]**

Annotations

Amendments:

F58 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 29, S.I. No. 463 of 2013.

F59[Transfer of records to Insolvency Service

60D.—All documents and records in the custody and control of the Courts Service relating to the Office of the Official Assignee in Bankruptcy immediately before the coming into operation of section 29 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 shall on the coming into operation of that section be transferred to the Insolvency Service.**]**

Annotations

Amendments:

F59 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 29, S.I. No. 463 of 2013.

Functions of Official Assignee in bankruptcy and vesting arrangements.

(New)

61.—(1) This section applies to every bankruptcy matter and vesting arrangement.

(2) The functions of the Official Assignee are to get in and realise the property, to ascertain the debts and liabilities and to distribute the assets in accordance with the provisions of this Act.

(3) In the performance of his functions the Official Assignee shall, in particular, have power—

(*a*) to sell the property by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in lots and for the purpose of selling land to carry out such sale by F60**[**...**]** lease, sub-lease or otherwise and to sell F60**[**...**]** any reversion expectant upon the determination of any such lease,

(*b*) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages whereby the bankrupt or arranging debtor may be rendered liable,

(*c*) to compromise all debts and liabilities capable of resulting in debts and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the bankrupt or arranging debtor and any debtor and all questions in any way relating to or affecting the assets or the proceedings on such terms as may be agreed and take any security for the discharge of any debt, liability or claim, and give a complete discharge in respect thereof,

(*d*) to institute, continue or defend any proceedings relating to the property,

(*e*) to refer any dispute concerning the property to arbitration under the terms of section 11 of the Arbitration Act, 1954,

(*f*) to mortgage or pledge any property to raise any money requisite,

(*g*) to take out in his official name without being required to give security, letters of administration to any estate on the administration of which the bankrupt or arranging debtor would benefit,

(*h*) to agree a sum for costs where the Court so directs or where he considers that the amount which would be allowed on taxation would not exceed F61**[**€12,000**]**,

(*i*) to agree the charges of accountants, auctioneers, brokers and other persons,

(*j*) to ascertain and certify to the Court the amount due in respect of a mortgage debt and the due priority thereof with power to the Court to vary such certificate,

(*k*) to draw out of the account referred to in *section 84 (1)* any sum not exceeding F62**[**€130**]** by way of indemnity in respect of costs incurred by him.

F63**[**(3A) In the case of an adjudication in bankruptcy under Article 3(1) of the Insolvency Regulation, the Official Assignee shall have the powers conferred on a liquidator in relation to taking action in member states under the Regulation.**]**

F64**[**(4) Notwithstanding any provision to the contrary contained in *subsection (3)*, no disposition of property of a bankrupt, arranging debtor or person dying insolvent, which comprises—

(*a*) a family home (within the meaning of the Family Home Protection Act 1976) of the bankrupt or the bankrupt's spouse, or

(*b*) a shared home (within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) of the bankrupt or the bankrupt's civil partner (within the meaning of that Act),

shall be made without the prior sanction of the Court and any disposition made without such sanction shall be void.

(5) On an application by the Official Assignee under *subsection (4)* for an order for the disposition of a family home or shared home, the Court, notwithstanding anything contained in this or any other enactment, shall have power to order postponement of the disposition of the family home or shared home, as the case may be, having regard to the interests of the creditors, spouse or civil partner (within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010), and any dependants, of the bankrupt, arranging debtor or person dying insolvent, as the case may be, as well as to all the circumstances of the case.**]**

(6) The Official Assignee may in case of doubt or difficulty seek the directions of the Court in connection with the affairs of any bankrupt or arranging debtor.

(7) The exercise by the Official Assignee of the powers conferred by this section shall be subject to the control of the Court, and any creditor or other person who in the opinion of the Court has an interest may apply to the Court in relation to the exercise or proposed exercise of those powers.

(8) The powers and functions conferred on the Official Assignee by this section may be exercised and performed—

(*a*) in the case of an adjudication founded on a petition of a debtor, on adjudication,

(*b*) in the case of an adjudication founded on a petition by a creditor, on the expiration of the time for showing cause,

(*c*) in the case of a vesting arrangement, on approval of the proposal by the Court.

Annotations

Amendments:

F60 Deleted (1.12.2009) by *Land and Conveyancing Law Reform Act 2009* (27/2009), s. 8(1) and sch. 1, S.I. No. 356 of 2009.

F61 Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 30(e), commenced on enactment.

F62 Substituted (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch., in effect as per art. 2.

F63 Inserted (2.07.2002) by *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002), reg. 3(b).

F64 Substituted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 9, S.I. No. 34 of 2016.

Editorial Notes:

E22 Previous affecting provision: subs. (5) amended (1.12.2009) by *Land and Conveyancing Law Reform Act 2009* (27/2009), s. 8(1) and sch. 1, S.I. No. 356 of 2009 and (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 168 and sch. part 3 item 14(b), S.I. No. 648 of 2010; substituted as per F-note above.

E23 Previous affecting provision: subs. (3)(h) amended (10.04.2002) by *Courts and Court Officers Act 2002* (15/2002), s. 34, commenced on enactment; further amended as per F-note above.

E24 Previous affecting provision: subs. (3)(h) amended (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch., in effect as per art. 2; further amended as per F-note above.

F65**[**Statement of affairs

61A.—(1) A debtor or a bankrupt, when completing a statement of affairs, shall make full and honest disclosure of his or her financial affairs and ensure that, to the best of his or her knowledge, the statement of affairs is true, accurate and complete.

(2) Unless the Court otherwise directs, a debtor or bankrupt shall not file a statement of affairs with the Court unless the statement of affairs has been stamped, electronically or otherwise, by the Official Assignee.

(3) The Official Assignee may refuse to stamp a statement of affairs for the purposes of *subsection (2)* where he or she is not satisfied that the statement of affairs is true, accurate and complete.

(4) The Official Assignee may carry out such checks or make such enquiries as he or she considers necessary or appropriate to verify the truth, accuracy and completeness of any matter referred to in a statement of affairs.**]**

Annotations

Amendments:

F65 Inserted (1.02.2026) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 35, S.I. No. 15 of 2026.

Editorial Notes:

E25 The section heading is taken from the amending section in the absence of one included in the amendment.

F66**[**Provision of information to Official Assignee

61B.—(1) The Official Assignee may make such enquiries of, and request such information from, a person as the Official Assignee considers to be necessary and proportionate for the performance by him or her of his or her functions under section 61.

(2) A person of whom an enquiry or a request under *subsection (1)* is made shall provide the information the subject of the enquiry or request to the Official Assignee within such time as may be specified by the Official Assignee.

(3) In this section and *section 61A*—

"Act of 2018" means the Data Protection Act 2018 ;

"Article 10 data" means personal data referred to in Article 10 of the General Data Protection Regulation;

"General Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016[2] on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

"information" includes personal data, special categories of personal data and Article 10 data;

"personal data" has the same meaning as it has in the General Data Protection Regulation;

"special categories of personal data" has the same meaning as it has in the Act of 2018.**]**

Annotations

Amendments:

F66 Inserted (31.07.2023) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 35, S.I. No. 389 of 2023, art. 3(e).

Editorial Notes:

E26 The section heading is taken from the amending section in the absence of one included in the amendment.

Bankruptcy Inspector and assistants.

(1857, s. 62)

62.—(1) The Bankruptcy Inspector and his assistants shall follow the instructions of the Official Assignee, subject to the directions and control of the Court.

(2) Subject to the provisions of this Act, it shall be the duty of the Bankruptcy Inspector or his assistants—

(*a*) to seize the property of the bankrupt pursuant to a warrant issued by the Court under *section 27*,

(*b*) to take an inventory of and report on the bankrupt's property,

(*c*) to take possession of the property of an arranging debtor pursuant to *section 100*, and to take an inventory of and report on the property,

(*d*) to do such other things as may be directed by the Court or the Official Assignee.

Protection of Official Assignee.

(1857, s. 65)

63.—The Official Assignee shall not be liable—

(*a*) by reason of any of the matters on which an adjudication was grounded being insufficient to support the adjudication,

(*b*) in respect of his receipt of any property, provided he has not dealt with the property otherwise than as directed by the Court or as required by this Act or by F67**[**regulations made by the Minister under this Act**]**.

[2] OJ No. L 119, 4.5.2016, p.1

Annotations

Amendments:

F67 Substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 30, S.I. No. 463 of 2013.

Power of Official Assignee to bar entail.

(1857, s. 340; 1872, s. 50)

64.— F68**[**...**]**

Annotations

Amendments:

F68 Repealed (1.12.2009) by *Land and Conveyancing Law Reform Act 2009* (27/2009), s. 8(3) and sch. 2 part 5, S.I. No. 356 of 2009.

Power of Official Assignee to appropriate part of bankrupt's income.

(New: *cf*. 1857, s. 319; 1872, s. 51)

65.—(1) Notwithstanding any provision to the contrary in any other enactment, whenever a bankrupt, whether self-employed or not, is in receipt of or is entitled to receive any salary, income, emolument or pension, the Court may, from time to time, on the application of the Official Assignee, make such order directed to the bankrupt and any person from whom the bankrupt is entitled to receive any such salary, income, emolument or pension for the payment to the Official Assignee of all or part of such salary, income, emolument or pension, subject to such conditions as to payment as the Court may specify in the order having regard to the family responsibilities and personal situation of the bankrupt.

(2) The Court may at any time, on the application of any interested person, vary an order under *subsection (1)*, having regard to any changes in the family responsibilities or personal situation of the bankrupt.

F69**[**Cesser of section 65.

65A.—An application for an order under *section 65* shall not be made after the coming into operation of this section, but this section shall not operate to prevent an application under *section 65(2)* where an order under *section 65(1)* is in force on the coming into operation of this section. **]**

Annotations

Amendments:

F69 Inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 155, S.I. No. 463 of 2013.

Delivery of property to Official Assignee.

(*cf*. 1857, s. 324)

66.—Every person shall, on request, deliver up to the Official Assignee all money or securities for money in such person's possession or control which he is not by law entitled to retain as against the bankrupt or the Official Assignee.

Right of Official Assignee to transfer stocks or shares.

(*cf*. 1857, s. 320)

67.—Where any part of the property of a bankrupt, or of an arranging debtor under a vesting arrangement, consists of stocks or shares, the Official Assignee may exercise the right to transfer them to the same extent as the bankrupt or arranging debtor could have exercised it but for the adjudication or vesting arrangement.

Right of Official Assignee to inspect goods pawned or pledged.

(New)

68.—Where any goods of a bankrupt are held by any person by way of pledge, pawn or other security, the Official Assignee may give notice in writing to the holder of his intention to inspect the goods and, where such notice has been given, the holder shall not be entitled to realise his security until he has given the Official Assignee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

Receipt of property of bankrupt.

(*cf*. 1857, ss. 60, 61)

69.—(1) The Official Assignee shall be assignee of each bankrupt's estate and act with the creditors' assignee, if any.

(2) Except where otherwise directed by the Court, the property of every bankrupt, and the income and proceeds thereof, shall be possessed and received by the Official Assignee.

F70**[**(3) All money and securities received by the Official Assignee, being part of a bankrupt's estate, shall be forthwith lodged by him in an account in the Central Bank of Ireland or a bank authorised to carry on business in the State and shall be kept there to the credit of the Official Assignee subject to the provisions of this Act, any regulations made under *subsection (6)* and the directions of the Court.**]**

(4) Subject to *section 84*, all money and securities which, immediately before the commencement of this Act, stood to the credit of bank accounts in bankruptcy or arrangement matters shall be dealt with pursuant to rules of court.

(5) The Official Assignee, with the leave of the Court, may from time to time invest the whole or any part of any money referred to in this section, and any interest thereon shall be paid into the appropriate bank accounts.

F71**[**(6) The Minister may, following consultation with the Insolvency Service, by regulations make provision for the manner in which the Official Assignee shall maintain accounts referred to in *subsection (3)* and for matters relating to the keeping of such accounts.**]**

Annotations

Amendments:

F70 Substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 31(a), S.I. No. 463 of 2013.

F71 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 31(b), S.I. No. 463 of 2013.

Editorial Notes:

E27 Power pursuant to subs. (6) exercised (3.12.2013) by *Bankruptcy Act 1988 (Official Assignee Accounts and Related Matters) Regulations 2013* (S.I. No. 464 of 2013).

Claim to property in possession of bankrupt.

(New)

70.—(1) Where a person claims any property which is in the possession of the bankrupt at the date of adjudication he shall file with the Official Assignee a claim verified by affidavit.

(2) The Official Assignee may give notice in writing to any person to prove his claim to property which is in the possession of the bankrupt at the date of adjudication and, unless within one month after the service of the notice that person files with the Official Assignee a claim verified by affidavit, the Official Assignee may, with the sanction of the Court, sell or dispose of the property free of any right or interest therein of that person.

Allowances to bankrupt.

(*cf*. 1857, s. 301)

71.—The Court may make to the bankrupt out of his estate such allowances as the Court thinks proper in the special circumstances of the case.

Redirection of letters, etc., addressed to bankrupt.

(1857, s. 312)

72.—Where a debtor is adjudicated bankrupt the Court, on the application of the Official Assignee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit letters, telegrams and postal packets addressed to the bankrupt at any place mentioned in the order shall, on such terms and subject to such conditions as the Court thinks fit, be redirected, sent or delivered to the Official Assignee as the Court directs.

Appointment of receivers and managers.

(1872, s. 68)

73.—The Court may, at any time after adjudication or after the granting of an order for protection, appoint a receiver or manager of the whole or part of the property of the bankrupt or arranging debtor and may direct that the receiver or manager take immediate possession of such property or any part thereof.

Joint and separate dividends.

(*cf*. 1857, s. 266)

74.—If one or more of the partners of a firm is a bankrupt, any creditor of the firm shall be entitled to prove his debt or be admitted as a creditor for the purpose of voting in the choice and appointment of a creditors' assignee but such creditor shall not receive any dividend out of the separate estate of the bankrupt until all the separate creditors shall have received the full amount of their respective debts.

Debts provable in bankruptcy and arrangements.

(*cf*. 1857, ss. 247, 249, 252 to 258; 1872, ss. 45-47)

75.—(1) Debts and liabilities, present or future, certain or contingent, by reason of any obligation incurred by the bankrupt or arranging debtor before the date of adjudication or order for protection and claims in the nature of unliquidated damages for which the bankrupt or arranging debtor is liable at that date by reason of a wrong within the meaning of the Civil Liability Act, 1961, shall be provable in the bankruptcy or arrangement.

F72**[**(2) Where interest or any pecuniary consideration in lieu of interest is reserved or agreed for on a debt which is overdue at the date of adjudication or order for protection, the creditor shall be entitled to prove or to be admitted as a creditor for such interest or consideration up to the date of adjudication or order for protection.**]**

(3) Where all necessary parties agree, an order for assessment of damages or contribution under section 61 (2) of the Civil Liability Act, 1961, may be made by the Court, notwithstanding that it may not be the court by or before which the claim for damages or contribution falls to be determined.

(4) An estimate may be made by the Court of the value of any debt which, by reason of it being subject to any contingency or for any other reason, does not bear a certain value and the amount of the estimate shall be proved as a debt.

Annotations

Amendments:

F72 Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 30(f), commenced on enactment.

Proof of debts.

(*cf*. 1857, s. 246 in pt.)

76.—The provisions of the *First Schedule* shall apply in relation to the proof of debts.

Bankruptcy of mercantile agent.

(New)

77.—Section 12 (2) of the Factors Act, 1889 (which regulates the rights of an owner of goods in the case of the bankruptcy of a mercantile agent to whom they have been entrusted) shall have effect with the substitution for the reference to a trustee in bankruptcy of a reference to the Official Assignee.

Proof for costs of judgment.

(1857, s. 261)

78.—Where a party to any cause or matter has obtained a judgment or order against a person who is afterwards adjudicated bankrupt or is granted an order for protection for any debt for which he proves or is admitted a creditor, he shall also be entitled to prove or be admitted a creditor for the costs of the judgment or order, whether or not the costs have been taxed or ascertained at the date of the adjudication or order for protection.

Disallowance of debts already proved.

(1857, s. 263)

79.—The Court may, on the application of the Official Assignee or any creditor or the bankrupt or arranging debtor, disallow, in whole or in part, any debt already proved or admitted.

Distribution of Estate

Priority of expenses, etc.

(New)

80.—The expenses, fees and costs of the bankruptcy shall be payable in priority to the liabilities of the bankrupt in such order as may be prescribed.

Preferential payments.

(1889, ss. 4,6; 33/1963, s. 285)

81.—(1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

(*a*) all local rates due from the bankrupt at the date of the order of adjudication, and having become due and payable within twelve months next before that date, and all property or income tax assessed on the bankrupt up to the F73**[**31st December**]** next before the date of the order of adjudication, and not exceeding in the whole one year's assessment;

(*b*) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the bankrupt during the four months next before the date of the order of adjudication not exceeding £2,500;

(*c*) all wages not exceeding £2,500 of any labourer or workman (whether payable for time or for piece work) in respect of services rendered to the bankrupt during the four months next before the date of the order of adjudication: provided that, where any farm labourer has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year or other shorter term of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof, as the Court may decide to be due under the contract proportionate to the time of service up to the date of the order of adjudication;

(*d*) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the adjudication order;

(*e*) all sums due to any employee pursuant to any scheme or arrangement for the provision of payments to the employee while he is absent from employment owing to ill health;

(*f*) any payments due by the bankrupt pursuant to any scheme or arrangement for the provision of superannuation benefits to or in respect of employees of the bankrupt whether such payments are due in respect of the bankrupt's contribution to that scheme or under that arrangement or in respect of such contributions payable by the employees to the bankrupt under any such scheme or arrangement which have been deducted from the wages or salaries of employees;

(*g*) any debt, payment or contribution which by virtue of any provision in any enactment in operation before the commencement of this Act was included in the debts to which section 4 of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, gave priority; and any reference to the said section 4 in any such enactment shall be construed as a reference to this subsection.

(2) The foregoing debts shall rank equally between themselves and be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the bankrupt is sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the bankrupt within three months next before the date of the order of adjudication, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of sale thereof; provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) Any remuneration in respect of a period of holiday or absence from work through good cause shall be deemed to be wages in respect of services rendered to the bankrupt during that period.

(6) Notwithstanding *section 4*, this section shall not apply where the order of adjudication was made before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed shall be deemed to remain in full force.

(7) *Subsections (1), (2), (3), (5)* and *(6)* shall apply in the case of an arranging debtor under the provisions of this Act as if he were a bankrupt, and as if the date of the filing of the petition for arrangement were substituted for the date of the order of adjudication.

(8) Any creditor who, in the case of an arrangement, votes in respect of any debt to which priority is given by this section for or against the acceptance of the debtor's proposal or any modification thereof or, in the case of a composition after bankruptcy, votes in respect of any such debt for or against the acceptance of the bankrupt's offer of composition or any modification thereof shall by so voting be deemed to have abandoned any rights under *subsection (1)* and shall be remitted to such rights (if any) in respect of any of the debts therein mentioned as such creditor would have had apart from that subsection.

(9) This section shall apply in the case of a deceased person who dies insolvent as if he were a bankrupt and as if the date of his death were substituted for the date of the order of adjudication.

(10) Nothing in this section shall alter the effect of section 3 of the Partnership Act, 1890, or shall prejudice the provisions of section 14 of the Trustee Savings Banks Act, 1863, or the provisions of the Friendly Societies Act, 1896.

Annotations

Amendments:

F73 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 156, S.I. No. 462 of 2013.

Modifications (not altering text):

C23 Application of section extended (2.09.2024) by *Employment Permits Act 2024* (17/2024), s. 60(5) and sch. 2 para. 3(2), S.I. No. 443 of 2024.

Prohibition on penalisation

60. ...

(3) An employer shall not penalise or threaten penalisation against an employee for—

(*a*) making a complaint to a member of the Garda Síochána or the Minister that a provision of this Act is not being complied with,

(*b*) giving evidence in any proceedings under this Act, or

(*c*) giving notice of his or her intention to do any of the things referred to in *paragraphs (a)* or *(b)*.

(4) Subsection (3) shall not apply where the complaint is a protected disclosure within the meaning of the Protected Disclosures Act 2014.

(5) Schedule 2 has effect in relation to an alleged contravention of subsection (3) and matters consequential thereon and includes amendments of other enactments.

...

SCHEDULE 2

Redress for Contravention of Section 60(3)

1. A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a complaint of a contravention of section 60 (3) shall do one or more of the following, namely—

(*a*) declare that the complaint was or, as the case may be, was not well founded,

(*b*) require the employer to take a specified course of action, or

(*c*) require the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all of the circumstances.

2. A decision of the Labour Court under section 44 of the Workplace Relations Act 2015 on appeal from a decision of an adjudication officer referred to in paragraph 1 shall affirm, vary or set aside the decision of the adjudication officer

Provisions relating to winding up and bankruptcy

3. ...

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all

compensation payable by virtue of a decision under paragraph 1 or 2 by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided under that Act.

C24 Application of section extended (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 49(2), S.I. No. 410 of 2015.

Provisions relating to winding up and bankruptcy

49. ...

(2) There shall be included among the debts that, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of this Part by the bankrupt or arranging debtor, as the case may be, to an employee, and that section shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where provision is otherwise made in relation thereto under that Act.

C25 Application of section extended (15.07.2014) by *Protected Disclosures Act 2014* (14/2014), s. 12 and sch. 2 para. 5(2), S.I. No. 327 of 2014.

SCHEDULE 2

Redress for Contravention of section 12(1)

Provisions relating to winding up and bankruptcy.

5. ...

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under paragraph 1(2)(b) or a determination under paragraph 2(1)(b) by the bankrupt or arranging debtor to an employee, and that Act shall have effect accordingly.

C26 Application of section extended (1.08.2013) by *Central Bank (Supervision and Enforcement) Act 2013* (26/2013), s. 41 and sch. 5 para. 5(2), S.I. No. 287 of 2013.

SCHEDULE 5

Redress for Contravention of section 41(1)

Provisions relating to winding-up and bankruptcy

5. ...

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under paragraph 1(2)(b) or a determination under paragraph 2(1)(b) by the bankrupt or arranging debtor, to an employee, and that Act shall have effect accordingly. Formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided under that Act.

C27 Application of section extended (31.07.2013) by *Personal Insolvency Act 2012* (44/2012), ss. 67(1), (4) and 101(1), (5) S.I. No. 285 of 2013.

Preferential debts in Debt Settlement Arrangement.

67.— (1) Unless the creditor concerned otherwise agrees in writing and provision is so made in the terms of the Debt Settlement Arrangement, a preferential debt shall, subject to subsection (3), be paid in priority by the

debtor and where those debts are to be paid in priority the provisions of section 81 of the Bankruptcy Act 1988 shall apply with all necessary modifications.

...

(4) In this Chapter, "preferential debt" means a debt which, if the debtor concerned were a bankrupt would be a debt—

(a) that by virtue of section 81 of the Bankruptcy Act 1988 is to be paid in priority to all other debts, or

(b) that by virtue of any other statutory provision is to be included among such debts.

...

Preferential debts in Personal Insolvency Arrangement.

101.— (1) Unless the creditor concerned otherwise agrees in writing and provision is so made in the terms of the Personal Insolvency Arrangement, a preferential debt shall, subject to subsection (3), be paid in priority by the debtor and where those debts are to be paid in priority the provisions of section 81 of the Bankruptcy Act 1988 shall apply with all necessary modifications.

...

(5) In this Chapter, "preferential debt" means a debt which, if the debtor concerned were a bankrupt would be a debt

(a) that by virtue of section 81 of the Bankruptcy Act 1988 is to be paid in priority to all other debts, or

(b) that by virtue of any other statutory provision is to be included among such debts.

C28 Application of section extended by *Industrial Relations Act 1946* (26/1946), s. 45D, as inserted (1.08.2012) by *Industrial Relations (Amendment) Act 2012* (32/2012), s. 13, S.I. No. 302 of 2012.

Provisions relating to winding up and bankruptcy.

45D. ...

(3) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under section 45A(2)(b) or a determination under section 45B(1)(b) by the bankrupt or arranging debtor, as the case may be, to a worker, and the Bankruptcy Act 1988 shall have effect accordingly.

(4) Formal proof of the debts to which priority is given under subsection (3) shall not be required except in cases where it may otherwise be provided under the Bankruptcy Act 1988.

C29 Application of section extended (6.07.2012) by *Property Services (Regulation) Act 2011* (40/2011), s. 67(5), (6) and sch. 4 para. 3(10), S.I. No. 411 of 2011.

SCHEDULE 4

Redress for Contravention of section 67(5)

Paragraphs 1 and 2: supplemental provisions

3. ...

(10) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under paragraph 1(2)(b) or a determination under paragraph 2(1) by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly. Formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided under that Act.

C30 Application of section extended (16.05.2012) by *Protection of Employees (Temporary Agency Work) Act 2012* (13/2012), s. 25 and sch. 2 para. 5(2), commenced on enactment.

SCHEDULE 2

Redress for certain contraventions of Act

Provisions relating to winding up and bankruptcy.

5. ...

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under paragraph 1(2) or a determination under paragraph 2(1) by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided under that Act.

C31 Application of section extended (9.08.2011) by *Criminal Justice Act 2011* (22/2011), s. 20 and sch. 2 para. 5(3) and (4), S.I. No. 411 of 2011.

SCHEDULE 2

Redress for Contravention of section 20(1)

Provisions relating to winding up and bankruptcy

5. ...

(3) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under paragraph 1(2)(b) or a determination under paragraph 2(1)(b) by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly.

(4) Formal proof of the debts to which priority is given under subparagraph (3) shall not be required except in cases where it may otherwise be provided under the Bankruptcy Act 1988.

C32 Application of section extended (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 223(3), (4) and sch. 2 para. 5(2), S.I. No. 545 of 2009.

SCHEDULE 2

Redress for Contravention of section 223(3)

Provisions relating to winding up and bankruptcy

5. ...

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under paragraph 1(2)(b) or a determination under paragraph 2(1) by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly. Formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided under that Act.

C33 Application of section extended (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 26(3), (4) and sch. 2 para. 5(2), S.I. No. 682 of 2006.

SCHEDULE 2

Redress for Contravention of section 26(3)

Provisions relating to winding up and bankruptcy.

5. ...

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under paragraph 1(2)(b) or a determination under paragraph 2(1) by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided under that Act.

C34 Application of section restricted and extended (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 19(3), (5), S.I. No. 923 of 2005.

Winding-up and bankruptcy.

19.—(1) In this section "Act of 1988" means the Bankruptcy Act 1988.

...

(3) A sum equal in amount to any sum deducted by an employer from the remuneration of an employee of the employer in respect of an employment contribution due by the employer and unpaid by the employer in respect of the contribution before the date of the order of adjudication or the filing of the petition for arrangement (as the case may be) shall not form part of the property of the bankrupt or arranging debtor so as to be included among the debts which under section 81 of the Act of 1988 are in the distribution of that property to be paid in priority to all other debts, but shall, before the distribution and notwithstanding anything in the Act of 1988, be paid to the Social Insurance Fund in priority to the debts specified in section 81 of the Act of 1988.

...

(5) There shall be included among the debts which under section 81 of the Act of 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all employment contributions payable by the bankrupt or arranging debtor during the 12 months before the date of the order of adjudication in the case of a bankrupt or the filing of the petition for arrangement in the case of an arranging debtor, and that Act has effect accordingly, and formal proof of the debts to which priority is given under this subsection is not required except in cases where it may otherwise be provided by general orders made under that Act.

C35 Application of section extended by *Protection of Employees (Employers' Insolvency) Act 1984* (21/1984), s. 10(2A), as inserted (6.04.2004) by *Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004), s. 15, S.I. No. 138 of 2004.

Transfer to Minister of certain rights and remedies

10.— ...

[(2A) Where the Minister makes a payment to an employee under section 6(2)(a)(iii)(II) (inserted by section 15 of the Redundancy Payments Act 2003) of this Act, that payment shall be recoverable by the Minister as a debt to be paid in priority to all other debts under—

(*a*) section 81 of the Bankruptcy Act 1988, or

(*b*) section 285 (as amended by section 10 of the Companies (Amendment) Act 1982 and section 134 of the Companies Act 1990) of the Companies Act 1963,

and any amount of that payment which would, but for the limit set by section 6(4)(a) (as may be varied by regulations under section 11(5)), be payable to an employee, shall be treated for all purposes as if it were a payment required to be paid by virtue of an award under section 12(1) of the Act of 1973.**]**

...

C36 Application of section extended (21.12.2000) by *National Training Fund Act 2000* (41/2000), s. 5(11), (12), S.I. No. 494 of 2000.

Collection of levy.

5.—...

(11) There shall be included among the debts which, under section 81 of the Bankruptcy Act, 1988, are, in the distribution of the property of a bankrupt to be paid, subject to section 119 of that Act, in priority to all other debts, all levy payable pursuant to *section 3* by the bankrupt during the period 12 months before the date of the order of adjudication, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall comply with the provisions of the First Schedule to that Act and any rules of court relating to proof of debt.

...

C37 Application of section extended (1.04.2000) by *National Minimum Wage Act 2000* (5/2000), s. 49(2), (3), S.I. No. 96 of 2000.

Provisions relating to winding-up and bankruptcy.

49.— ...

(2) There shall be included amoung the debts which, under section 81 of the Bankruptcy Act, 1988, are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all arrears of pay payable under this Act by the bankrupt or arranging debtor.

(3) Formal proof of the debts to which priority is given under subsection (1) or (2) shall not be required except in cases where it may otherwise be provided by rules or general orders made under the respective Act.

C38 Application of section extended (18.10.1999) by *Employment Equality Act 1998* (21/1998), s. 103(2), S.I. No. 320 of 1999.

Provisions relating to insolvency.

103.— ...

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act, 1988, are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all relevant compensation payable under this Part by the bankrupt or arranging debtor, as the case may be, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by general orders made under that Act.

C39 Application of section extended (3.12.1998) by *Parental Leave Act 1998* (30/1998), s. 24(2), commenced as per s. 1(2).

Winding up and bankruptcy.

24.— ...

(2) There shall be included among the debts that, under section 81 of the Bankruptcy Act, 1988, are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, any compensation payable under this Act by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules of court.

C40 Application of section extended (6.04.1997) by *Taxes Consolidation Act 1997* (39/1997), ss. 982 and 994, commenced as per s. 1097.

Preferential payment.

982.—The priority attaching to assessed taxes under section 81 of the Bankruptcy Act, 1988, and sections 98 and 285 of the Companies Act, 1963, shall apply to capital gains tax.

...

Priority in bankruptcy, etc. of certain amounts.

994.—(1) In this section, "employer's liability for the period of 12 months" means all sums which an employer was liable under this Chapter and any regulations under this Chapter to deduct from emoluments to which this Chapter applies paid by the employer during the period of 12 months mentioned in *subsection (2)*, reduced by any amounts which the employer was liable under this Chapter and any regulations under this Chapter to repay during the same period, and subject to the addition of interest payable under *section 991*.

(2) There shall be included among the debts which under section 81 of the Bankruptcy Act, 1988, are to be paid in priority to all other debts in the distribution of the property of a bankrupt, arranging debtor or person dying insolvent so much as is unpaid of the employer's liability for the period of 12 months before the date on which the order of adjudication of the bankrupt was made, the petition of arrangement of the debtor was filed or, as the case may be, the person died insolvent.

C41 Application of section extended (29.08.1989) by *European Communities (Preferential Treatment For Debts in Respect of Levies on Production of Coal and Steel) Regulations 1989* (S.I. No. 219 of 1989), reg. 3(1).

3.(1)(*a*) There shall be included among the debts which, under section 81 (1) of the Bankruptcy Act, 1988, are to be paid in priority to all other debts in the distribution of the property of a bankrupt—

(i) any debts arising from the application of the levies referred to in Articles 49 and 50 of the ECSC Treaty which shall have fallen due within the period of twelve months next before the date of the order of adjudication of the bankrupt was made, and

(ii) any surcharges, in respect of delay in paying those levies, referred to in Article 3 of the Commission Recommendation.

(*b*) Subparagraph (*a*) of this paragraph shall, for the purposes of section 81 of the Bankruptcy Act, 1988, be deemed to be contained in subsection (1) of that section and, in particular, subsections (7) and (9) of that section shall be construed accordingly.

Editorial Notes:

E28 Priority attaching to taxes to which section applies prescribed by *Taxes Consolidation Act 1997* (25/1997), s. 960P, as inserted (24.12.2008) by *Finance (No. 2) Act 2008* (25/2008), s. 97 and sch. 4 para. 1(b), commenced on enactment; amended (1.11.2010) by *Value-Added Tax Consolidation Act 2010* (31/2010), ss. 123 and sch. 7, commenced as per s. 125; and (1.01.2012) by *Finance Act 2011* (6/2011), s. 20(1)(n), S.I. No. 660 of 2011; and (1.01.2013) by *Finance (Local Property Tax) Act 2012* (52/2012), s. 158 and schedule item 7, S.I. No. 589 of 2012.

E29 Section confirmed to apply to the recovery of interest payable on overdue income tax and corporation tax as if the interest were a part of the tax (6.04.1997) by *Taxes Consolidation Act 1997* (39/1997), s. 1080(3), (4), commenced as per s. 1097, as substituted (25.03.2005) by *Finance Act 2005* (5/2005), s. 145, commenced on enactment.

E30 Previous affecting provision: application of section extended (2.07.2001) by *Carer's Leave Act 2001* (19/2001), s. 25(2), commenced on enactment; repealed (1.01.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. 2 ref. 13, S.I. No. 410 of 2015, subject to transitional provision in subs. (2).

E31 Previous affecting provision: application of section extended (20.03.1995) by *Adoptive Leave Act 1995* (2/1995), s. 38(2), S.I. No. 64 of 1995; repealed (1.01.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. 2 ref. 8, S.I. No. 410 of 2015, subject to transitional provision in subs. (2).

E32 Previous affecting provision: application of section extended (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 36(2), S.I. No. 16 of 1995; repealed (1.01.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. 2 part 1 ref. 7, S.I. No. 410 of 2015, subject to transitional provision in subs. (2).

E33 Previous affecting provision: application of section extended (25.03.1994) by *Industrial Training (Apprenticeship Levy) Act 1994* (3/1994), s. 12(3), S.I. No. 61 of 1994; Act repealed (21.12.2000) by *National Training Fund Act 2000* (41/2000), s. 9 and sch., S.I. No. 494 of 2000.

Distribution of estate.

(*cf*. 1857, ss. 286, 288, 289, 290, 292, 293)

82.—(1) As soon as convenient after the receipt by him of sufficient funds to meet expenses, fees, costs and preferential payments and to pay a dividend to creditors in any bankrupt's estate the Official Assignee shall place on the Court file a list of creditors admitted by him or by the Court, a copy of the relevant account of the bankrupt in his books, particulars of expenses, fees, costs, preferential payments and dividend payable to creditors and his report on the realisation of the estate.

F74**[**(2) The Official Assignee shall—

(*a*) within four working days of the filing under *subsection (1)*, cause notice of the filing to be given to the creditors concerned by the publication of the notice on the website of the Insolvency Service, or in such other manner as the Minister may, by regulation, prescribe, and

(*b*) within four working days of the publication of the notice under *paragraph (a)*, provide, by a notice in such form as the Minister may by regulation prescribe, particulars to the creditors concerned of how it is proposed to distribute the estate.**]**

F75**[**(2A) The Official Assignee shall distribute the estate in the manner set out in the particulars provided under *subsection (2)(b)* no earlier than 15 days after the provision of such particulars but no such distribution shall be made without leave of the Court where an application under *subsection (3)* has been made by a creditor.**]**

F74**[**(3) The Court may, on the application of a creditor, make such order as it thinks fit in respect of the distribution of the estate or any part thereof by payment of the expenses, fees, costs and preferential payments, as well as the relevant dividend and any such application shall be made within 14 days of the provision of particulars under *subsection (2)(b)*.**]**

(4) The F74**[**list**]** referred to in *subsection (1)* shall be open to public inspection on payment of a prescribed fee but no fee shall be charged to creditors inspecting the F74**[**list**]**.

(5) If for any reason the estate of the bankrupt is not fully distributed at such sitting, second and subsequent distributions shall be made as soon as convenient after the realisation of the residual estate. The procedure shall be the same as for the first distribution.

F74**[**(6) In any case where there are no funds or, in the opinion of the Official Assignee, insufficient funds available for distribution to the creditors, the Official Assignee may pay the expenses, fees, costs and preferential payments in that order, so far as the funds extend, and where a balance remains it shall be transferred to the bank account referred to in *section 84(1)*.**]**

Annotations

Amendments:

F74 Substituted (1.02.2026) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 37(a), (c), (d), (e), S.I. No. 15 of 2026.

F75 Inserted (1.02.2026) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 37(b), S.I. No. 15 of 2026.

Accounts and audit.

83.—F76**[**...**]**

(New)

Annotations

Amendments:

F76 Repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 32, S.I. No. 463 of 2013.

F77**[**Official Assignee — Unclaimed Dividend Account

84.—(1) The Official Assignee shall cause an account to be opened—

(*a*) in the Central Bank of Ireland, or

(*b*) a bank authorised to carry on business in the State,

and any such account shall be called the "Official Assignee — Unclaimed Dividend Account" and a reference in this section to a "relevant account" is to be construed as a reference to such an account.

(2) The Official Assignee shall pay into a relevant account all unclaimed dividends and all money unclaimed, being part of any bankrupt's estate.

(3) (*a*) The Official Assignee shall be entitled to pay out of a relevant account all dividends lawfully claimed as well as the sums provided for by *section 61(3)(k)*.

(*b*) In order to provide temporarily for payments for which no funds are immediately available in the particular estate against which they are chargeable, there may be paid out of a relevant account to the credit of the Official Assignee in a separate account in the said bank such sums, subject to such conditions, as may be prescribed by regulations made by the Minister.

(4) The Official Assignee, with the leave of the Court, may from time to time invest the whole or any part of the money standing to the credit of a relevant account, and the interest on the investments shall be paid into a relevant account.

(5) The Court may order that the Official Assignee shall be paid out of a relevant account such sum by way of indemnity in respect of any damages, costs or expenses payable or incurred or to be payable or incurred by him for or by reason of any act or matter done by him while acting as Official Assignee as the Court thinks just, including the costs of any proceedings taken by the Official Assignee with the leave of the Court where there are insufficient funds in the matter.

(6) A relevant account shall not be available for any purpose other than the purposes of this section.

(7) The Minister may, following consultation with the Insolvency Service, by regulations prescribe—

(*a*) the manner in which the Official Assignee shall maintain a relevant account,

(*b*) the purposes for which funds may be withdrawn from a relevant account pursuant to *subsection (3)(b)*,

(*c*) the monetary limits relating to the withdrawal of funds from a relevant account pursuant to *subsection (3)(b)*, and

(*d*) the conditions subject to which funds may be withdrawn from a relevant account pursuant to *subsection (3)(b)*.**]**

Annotations

Amendments:

F77 Substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 33, S.I. No. 463 of 2013.

Editorial Notes:

E34 Power pursuant to subs. (7) exercised (3.12.2013) by *Bankruptcy Act 1988 (Official Assignee Accounts and Related Matters) Regulations 2013* (S.I. No. 464 of 2013).

F78**[**Automatic discharge from bankruptcy.

85.—F79**[**(1) Subject to *subsection (2)* and *section 85A*, every bankruptcy shall, on the 1st anniversary of the date of the making of the adjudication order in respect of that bankruptcy, unless prior to that date the bankruptcy has been discharged or annulled, stand discharged.**]**

F79**[**(2) (*a*) Where an adjudication order in respect of a bankruptcy would, but for section 10 of the Bankruptcy (Amendment) Act 2015, expire on any day during the period of 6 months from the commencement of that section, the bankruptcy concerned shall, subject to *section 85A*, stand discharged on that day unless it has otherwise been discharged or annulled.

(*b*) Where an adjudication order in respect of a bankruptcy would, but for section 10 of the Bankruptcy (Amendment) Act 2015, expire at any time after the expiration of 6 months from the commencement of that section, the bankruptcy concerned shall, subject to *section 85A*, stand discharged on the later of—

(i) 6 months after that commencement, or

(ii) one year from the date that the adjudication order was made,

unless it has otherwise been discharged or annulled.**]**

(3) F79**[**Subject to *subsection (3A)*, where a bankruptcy is discharged**]** in pursuance of this section the unrealised property of the bankrupt shall remain vested in the Official Assignee for the benefit of the creditors.

F80**[**(3A) Subject to *subsections (3B)* to *(3F)*, where on the 3rd anniversary of the date of the making of the adjudication order in respect of a bankruptcy—

(*a*) the unrealised property of the bankrupt referred to in *subsection (3)* includes an estate or interest in what was, at the date of the making of the adjudication order, the family home, shared home or principal private residence of the bankrupt, and

(*b*) in the case of the family home or shared home, the Official Assignee has not applied to the Court for an order for sale of that home,

that estate or interest shall, on that 3rd anniversary, stand re-vested in the bankrupt without the need for any conveyance, assignment or transfer.

(3B) Subject to *subsections (3E)* and *(3F)*, where prior to the 3rd anniversary of the date of the making of the adjudication order in respect of a bankruptcy the Official Assignee—

(*a*) has applied to the Court for an order for sale in respect of what was at the date of that adjudication the family home or shared home of the bankrupt, and

(*b*) that application is dismissed by the Court,

the Court shall, unless it does not consider it just to do so in all the circumstances, make an order that the estate or interest of the bankrupt in that family home or shared home shall stand re-vested in the bankrupt from such date as is specified in the order without the need for any conveyance, assignment or transfer.

(3C) Subject to *subsections (3E)* and *(3F)*, *subsection (3A)* shall not apply where at any time after the date of the making of the adjudication order in respect of the bankruptcy but prior to the 3rd anniversary of that date—

(*a*) the Official Assignee and the bankrupt have entered into an agreement in writing, for consideration or otherwise, that any estate or interest of the bankrupt in what was, at the date of adjudication, the family home, shared home or principal private residence of that bankrupt will not re-vest in that bankrupt, or

(*b*) on application by the bankrupt or the Official Assignee, the Court, where it considers it just to do so, makes an order that any estate or interest of the bankrupt in what was, at the date of adjudication, the family home, shared home or the principal private residence of that bankrupt will not re-vest in that bankrupt.

(3D) *Subsection (3A)* shall not apply where, on application by the Official Assignee at any time after the date of the making of the adjudication order in respect of that bankruptcy but prior to the 3rd anniversary of that date, the Court substitutes for that 3rd anniversary such longer period as the Court considers just in all the circumstances.

(3E) Where the Court makes an order under *subsection (3D)*, *subsections (3A)*, *(3B)* and *(3C)* shall apply subject to the modification that each reference to the 3rd anniversary in those subsections shall be taken to be a reference to the longer period substituted by the Court under *subsection (3D)* for such 3rd anniversary.

(3F) Where an order of adjudication in bankruptcy was made more than 2 years and six months prior to the day of coming into operation of section 10 of the Bankruptcy (Amendment) Act 2015, *subsections (3A)*, *(3B)* and *(3C)* shall apply subject to the modification that each reference to the 3rd anniversary in those subsections shall be taken to be a reference to the day falling 6 months after the day of coming into operation of that section.

(3G) Where an estate or interest in a family home, shared home or principal private residence has re-vested in a bankrupt in accordance with this section, the Official Assignee shall, on the application of the bankrupt, issue a certificate in such form as may be prescribed confirming that the estate or interest has re-vested in that bankrupt.**]**

(4) A bankrupt who is discharged from bankruptcy in pursuance of this section shall have a duty to co-operate with the Official Assignee in relation to the realisation and distribution of such of his property as is vested in the Official Assignee.

(5) A person whose bankruptcy has been discharged by virtue of this section may apply to the Official Assignee for the issue of a certificate of discharge from bankruptcy.

F79**[**(6) (*a*) In this section and in *sections 85A* to *85D*, "bankrupt" includes personal representatives and assigns.

(*b*) In this section, "family home" and "shared home" have the same meaning as they have in *section 61*.**]]**

Annotations

Amendments:

F78 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 157, S.I. No. 462 of 2013.

F79 Substituted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 10(a), (b), (d), S.I. No. 34 of 2016.

F80 Inserted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 10(c), S.I. No. 34 of 2016.

Editorial Notes:

E35 Previous affecting provision: section substituted (10.10.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 30(g), S.I. No. 508 of 2011.; substituted as per F-note above.

E36 Previous affecting provision: subs. (3)(a)(ii) substituted (20.07.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 65, S.I. No. 274 of 2008; substituted as per E-note above.

E37 Previous affecting provision: subss. (3) and (4) amended (1.01.2002) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 7(1), commenced as per s. 7(1); substituted as per E-note above.

F81**[**Objection to automatic discharge from bankruptcy.

85A.—(1) The Official Assignee, the trustee in bankruptcy or a creditor of the bankrupt may, prior to the discharge of a bankrupt pursuant to *section 85*, apply to the Court to object to the discharge of a bankrupt from bankruptcy in accordance with *section 85* where the Official Assignee, the trustee in bankruptcy or the creditor concerned believes that the bankrupt has—

(*a*) failed to co-operate with the Official Assignee in the realisation of the assets of the bankrupt, or

(*b*) hidden from or failed to disclose to the Official Assignee income or assets which could be realised for the benefit of the creditors of the bankrupt.

(2) An application under *subsection (1)* shall be made on notice to the bankrupt and where made by the trustee in bankruptcy or a creditor, notice shall also be given to the Official Assignee.

(3) Where it appears to the Court that the making of an order pursuant to *subsection (4)* may be justified, the Court may make an order that the matters complained of by the applicant under

subsection (1) be further investigated and pending the making of a determination of the application the bankruptcy shall not stand discharged by virtue of *section 85*.

F82**[**(4) Where the Court is satisfied that the bankrupt has—

(*a*) failed to co-operate with the Official Assignee in the realisation of the assets of the bankrupt, or

(*b*) hidden from or failed to disclose to the Official Assignee income or assets which could be realised for the benefit of the creditors of the bankrupt,

the Court may, where it considers just to do so, order that, in place of the discharge provided for in *section 85*, the bankruptcy shall stand discharged on such later date—

(i) being not later than the 8th anniversary of the date of the making of the adjudication order, as the Court considers just, or

(ii) being not later than the 15th anniversary of the date of the making of the adjudication order, which the Court considers just in view of the seriousness of the failure to co-operate referred to in *paragraph (a)* or the extent to which income or assets referred to in *paragraph (b)* were hidden or not disclosed, or both, as the case may be.**]**

(5) Where the Court has made an order under *subsection (4)*, no further application may be made under *subsection (1)*.

(6) The making of an order under this section shall not prevent an application being made for discharge or annulment under *section 85B*.**]**

Annotations

Amendments:

F81 Inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 157, S.I. No. 462 of 2013.

F82 Substituted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 11, S.I. No. 34 of 2016.

F83**[**Entitlement to discharge from bankruptcy.

85B.—(1) A bankrupt shall be entitled to an order discharging him from bankruptcy where provision has been made for the payment of the expenses, fees and costs of the bankruptcy, and for preferential payments, and—

(*a*) he has paid one euro in the euro, with such interest as the Court may allow, or

(*b*) he has obtained the consent in writing of all of his creditors, whose debts have been proved and admitted in the bankruptcy, or

(*c*) *section 41* (discharge of adjudication order) applies.

(2) The giving of consent by a creditor under *subsection (1)* constitutes a waiver by that creditor of the right to recover the amount concerned proved and admitted in the bankruptcy.

F84**[**(2A) An order of discharge shall provide that any property of the bankrupt then vested in the Official Assignee shall be revested in or returned to the bankrupt, and that order shall for all purposes be deemed to be a conveyance, assignment or transfer of that property to the bankrupt and, where appropriate, may be registered accordingly.**]**

(3) A person whose bankruptcy has been discharged by virtue of this section may apply to the Official Assignee for the issue of a certificate of discharge from bankruptcy. **]**

Annotations

Amendments:

F83 Inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 157, S.I. No. 462 of 2013.

F84 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 34, S.I. No. 463 of 2013.

F85**[**Annulment of adjudication in bankruptcy.

85C.— (1) A person shall be entitled to an annulment of his adjudication—

(*a*) where he has shown cause pursuant to *section 16*, or

(*b*) in any other case where, in the opinion of the Court, he ought not to have been adjudicated bankrupt.

(2) An order of annulment shall provide that any property of the bankrupt then vested in the Official Assignee shall be revested in or returned to the bankrupt, and that order shall for all purposes be deemed to be a conveyance, assignment or transfer of that property to the bankrupt and, where appropriate, may be registered accordingly.

(3) A person whose bankruptcy has been annulled may apply to the Official Assignee for the issue of a certificate that the bankruptcy has been annulled.**]**

Annotations

Amendments:

F85 Inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 157, S.I. No. 462 of 2013.

F86**[**Bankruptcy payment orders.

85D.— (1) The Court may, on application being made to it by the Official Assignee or the trustee in bankruptcy, make an order requiring a bankrupt to make payments to the Official Assignee or the trustee in bankruptcy from his income or other assets for the benefit of his creditors (a "bankruptcy payment order").

(2) An application for a bankruptcy payment order may not be made after the bankrupt has been discharged from bankruptcy, but where an application for such an order is made before the discharge of the bankrupt, the Court may make a bankruptcy payment order after the date of discharge as if the bankrupt had not been so discharged.

F87**[**F88**[**(3) Subject to *subsections (3A)* and *(3B)*—

(*a*) an order made under *subsection (1)* shall have effect for no longer than 3 years from the date of the order coming into operation, save in circumstances where the bankrupt has not complied with the order and in such circumstances the order shall have effect until such time as it has been complied with, and

(*b*) where the Court has varied the order under *subsection (5)*, such variation shall not cause the order to have effect for a period of more than 3 years, save in circumstances where

the bankrupt has not complied with the varied order, and in such circumstances that varied order shall have effect until such time as it has been complied with.**]**

(3A) (*a*) Where a bankruptcy payment order would, but for section 12 of the Bankruptcy (Amendment) Act 2015, expire on any day during the period of 6 months from the commencement of that section, the bankruptcy payment order concerned shall, subject to *subsection (3B)*, stand discharged on that day unless it has otherwise been discharged or annulled.

(*b*) Where a bankruptcy payment order would, but for section 12 of the Bankruptcy (Amendment) Act 2015, expire at any time after the expiration of 6 months from the commencement of that section, the bankruptcy payment order concerned shall, subject to *subsection (3B)*, stand discharged on the later of—

(i) 6 months after that commencement, or

(ii) 3 years from the date that bankruptcy payment order was made,

unless it has otherwise been discharged or annulled.

F88**[**(3B) Where the Court has made an order under *section 85A(4)*—

(*a*) a bankruptcy payment order made under *subsection (1)* shall have effect for no longer than 5 years from the date of that order coming into operation, save in circumstances where the bankrupt has not complied with the bankruptcy payment order and in such circumstances that order shall have effect until such time as it has been complied with, and

(*b*) where the Court has varied the bankruptcy payment order under *subsection (5)*, such variation shall not cause that order to have effect for a period of more than 5 years, save in circumstances where the bankrupt has not complied with the varied order and in such circumstances that varied order shall have effect until such time as it has been complied with.**]]**

(4) In making an order under *subsection (1)* the Court shall have regard to the reasonable living expenses of the bankrupt and his or her dependants and the Court may also have regard to any guidelines on reasonable living expenses issued by the Insolvency Service under the Personal Insolvency Act 2012 or by the Official Assignee.

(5) The Court, on the application of the bankrupt or the Official Assignee or the trustee in bankruptcy, may vary a bankruptcy payment order granted under *subsection (1)* where there has been a material change in the circumstances of the bankrupt.

(6) The court in granting an application under *subsection (1)* may order any person from whom the bankrupt is entitled to receive any salary, income, emolument, pension or other payment to make payments to the Official Assignee or trustee.

(7) For the purposes of this section, where a bankrupt is, or may become entitled to, payments under a relevant pension arrangement, an asset relating to the arrangement (other than payments already received by the bankrupt, or that the bankrupt was entitled to receive, under the arrangement) shall not be regarded as an asset.**]**

F89**[**(8) A payment which a bankrupt receives, or is entitled to receive, under a periodic payments order, other than any part of such payment that relates to damages in respect of future loss of earnings, shall not be regarded as income or an asset for the purposes of this section.**]**

Annotations

Amendments:

F86 Inserted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 157, S.I. No. 462 of 2013.

F87 Substituted and inserted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 12, S.I. No. 34 of 2016.

F88 Substituted (31.07.2023) by *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 38(a), (b), S.I. No. 389 of 2023, art. 3(e).

F89 Inserted (1.10.2018) by *Civil Liability (Amendment) Act 2017* (30/2017), s. 4(e), S.I. No. 377 of 2018.

Surplus.
(1857, s. 304)

86.—(1) If the estate of any bankrupt is sufficient to pay F90**[**one euro in the euro**]**, with interest at the rate currently payable on judgment debts, and to leave a surplus the Court shall order such surplus to be paid or delivered to or vested in the bankrupt, his personal representatives or assigns.

(2) The order shall for all purposes be deemed to be a conveyance, assignment or transfer of property and, where appropriate, may be registered accordingly.

Annotations

Amendments:

F90 Substituted (1.01.2002) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 7(2), commenced as per s. 7(2).

PART IV

ARRANGEMENTS UNDER CONTROL OF COURT

F91**[**Prohibition on presentation of petition for arrangement under section 87

86A.— A person shall not present a petition to the Court under *section 87* after the coming into operation of section 35 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013.**]**

Annotations

Amendments:

F91 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 35, S.I. No. 463 of 2013.

Petition for protection.
(1857, s. 343)

87.—(1) Any debtor unable to meet his engagements with his creditors and wishing to place the state of his affairs before them with a view to making a proposal for the composition of his debts, under the control of the Court, and to subject himself to the jurisdiction of the Court as provided by this Part may present a petition to the Court setting out the reason for his inability to pay his debts and requesting that his person and property may be protected until further order from any action or other process.

(2) The Court, on such petition, may by order grant such protection and renew the same from time to time as it thinks fit.

(3) The Court may refuse to grant protection to any debtor who is a member of a partnership, unless all the partners join in the petition.

(1872, s. 62)

(4) In this section "process" includes a bankruptcy summons and the registration of F92**[**a judgment mortgage under section 116 of the Land and Conveyancing Law Reform Act 2009**]**.

(5) While an order for protection is in force a creditor shall not be entitled to register any F92**[**judgment mortgage**]** referred to in *subsection (4)* and any purported registration shall be of no effect.

(New)

(6) If a debtor, at the time of his petition, is in prison by virtue of section 6 of the Enforcement of Court Orders Act, 1940, the Court, on granting protection, may order his release.

Annotations

Amendments:

F92 Substituted (1.12.2009) by *Land and Conveyancing Law Reform Act 2009* (27/2009), s. 8(1) and sch. 1, S.I. No. 356 of 2009.

Editorial Notes:

E38 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Restriction on dealing with property.

(New)

88.—After an order for protection has been granted and so long as it is in force the arranging debtor shall not, without the prior sanction of the Court, pledge, part with or dispose of his property or any part thereof, save in the ordinary course of trade or business.

Annotations

Editorial Notes:

E39 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Effect of protection on execution orders.

(New)

89.—(1) An order for protection may be granted notwithstanding that there is an execution order in the hands of a sheriff or county registrar and the order shall operate to protect against execution save as provided by this section.

(2) The order for protection shall not affect an execution order on foot of which the sheriff or county registrar has made a seizure or gone into possession, and in such case the execution creditor may recover such amount of his debt as may be realised by the execution.

(3) In any case when the sheriff or county registrar has not made a seizure or gone into possession on foot of an execution order, the order for protection shall protect the debtor from further process in respect thereof and the execution creditor shall be bound by the arrangement.

Annotations

Editorial Notes:

E40 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Procedure on grant of protection.

(New)

90.—On the granting of an order for protection—

(*a*) the Court shall direct the arranging debtor to call a preliminary meeting of his creditors at which meeting the arranging debtor shall present a statement of his assets and liabilities and keep a minute of the proceedings;

(*b*) the Court shall direct a private sitting before the Court (to be held at a date specified in the order) for the purpose of considering his proposal;

(*c*) the arranging debtor shall deliver forthwith to the Official Assignee a memorandum containing:

(i) the date of the order for protection,

(ii) his name and address,

(iii) the amount of liabilities secured, partly secured and unsecured,

(iv) the amount of assets,

and shall deliver a duplicate of the said memorandum to the Central Office.

Annotations

Editorial Notes:

E41 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Filing of statements.

(1857, s. 345 in pt.)

91.—The arranging debtor shall file in the Official Assignee's Office F93**[**no later than 7 days after the conclusion of the preliminary meeting**]** referred to in *section 90*—

(*a*) a statement of affairs in the prescribed form, which shall have endorsed thereon such proposal as he is able to make for the future payment or compromise of the debts or engagements set out therein, and

(*b*) a copy of the statement submitted at the preliminary meeting and of the minute of the proceedings with any proposal made thereat or at any adjournment thereof.

Annotations

Amendments:

F93 Substituted (20.07.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 66, S.I. 274 of 2008.

Editorial Notes:

E42 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Acceptance of proposal.

(1857, s. 346 in pt., s. 348)

92.—(1) (*a*) If, at the private sitting referred to in *section 90* or any adjournment thereof, three-fifths in number and value of the creditors voting at such sitting either in person or by an agent authorised in writing in that behalf accept the proposal or any modification thereof, it shall be deemed to be accepted by the creditors, subject to the approval of the Court.

(1857, s. 347)

(*b*) If approved by the Court, the proposal or any modification thereof shall be binding on the arranging debtor and on all persons who were creditors at the date of the petition and who had notice of the sitting.

(2) A creditor whose debt is less than F94**[**€130**]** shall not be entitled to vote.

(3) The arranging debtor shall attend the sitting and the Court shall have power to examine him on oath or any witness produced by him or any creditor or person claiming to be a creditor.

(4) The Court may require any person so examined to sign a transcript of his evidence.

(1857, ss. 346, 347)

(5) Debts may be proved at the sitting.

Annotations

Amendments:

F94 Substituted (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch., in effect as per art. 2.

Editorial Notes:

E43 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Vesting in Official Assignee.

93.—(1) If the proposal provides for the vesting of all or part of the arranging debtor's property in the Official Assignee either as security for an offer or for realisation and distribution, that property shall vest in the Official Assignee, if he consents, in accordance with the terms of the proposal on the approval of the proposal by the Court.

(2) Where all or part of the property is vested in the Official Assignee for realisation and distribution, the Official Assignee shall have for that purpose all such powers in relation to the property as he has in a bankruptcy matter. A proposal under which property is so vested is referred to in this Act as a "vesting arrangement".

(New)

(3) *Section 46* (which relates to a certificate of vesting) shall apply to property which vests in the Official Assignee under this section.

Annotations

Editorial Notes:

E44 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Distribution of property in vesting arrangement.

(New)

94.—(1) When the Official Assignee has sufficient funds to implement the terms of a vesting arrangement he shall present to the Court for approval a list of creditors admitted by him or by the Court, a copy of the relevant account of the arranging debtor in his books, particulars of expenses, fees, costs, preferential payments and dividend payable to creditors and his report on the realisation of the estate.

(2) The Court may make such order as it thinks fit for the distribution of the estate or any part thereof by payment of the expenses, fees, costs and preferential payments as well as the relevant dividend.

(3) The report and the account, together with the order of the Court, shall then be filed in the Central Office and shall be open to inspection by each creditor to whom notice of filing has been given in such form as may be prescribed. No fee shall be charged for inspecting the file.

(4) If for any reason the estate of the arranging debtor is not fully distributed by such order, second and subsequent distributions shall be made as soon as convenient after the realisation of the residual estate. The procedure shall be the same as for the first distribution.

(5) In any case where there are no funds, or in the opinion of the Official Assignee insufficient funds, available for distribution to the creditors, the Court may order the payment of expenses, fees and costs in that order so far as the funds extend. Where a balance remains, it shall be transferred to the account referred to in *section 84(1)*.

Annotations

Editorial Notes:

E45 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Special private sitting.

(*cf*. 1857, ss. 351, 353 in pt.)

95.—(1) Where a proposal has been approved and the Court considers it necessary and desirable so to do, the Court may on the application of the arranging debtor cause a special private sitting to be held.

(2) At this sitting the majority in number and value of the creditors who have proved debts of not less than F95**[**€130**]** may confirm, alter or annul the proposal.

(3) If, however, one-third in number and value of such creditors do not attend the sitting, the decision at the sitting shall not be valid unless it is approved by the Court.

Annotations

Amendments:

F95 Substituted (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch., in effect as per art. 2.

Editorial Notes:

E46 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Carrying proposal into effect.

(New)

96.—A proposal shall be considered to be carried into effect—

(*a*) in the case of a vesting arrangement, on the approval thereof by the Court, and

(*b*) in any other case, at such time as may be prescribed.

Annotations

Editorial Notes:

E47 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Lodgment with Official Assignee.

(New)

97.—Where the proposal of an arranging debtor (not being a proposal providing for the vesting of all or part of his property in the Official Assignee for realisation and distribution) has been approved, the arranging debtor shall, within the prescribed period, lodge with the Official Assignee for purposes of distribution the necessary amount to pay expenses, fees, costs and the preferential payments, together with the cash, bills or promissory notes (if any) provided for in the proposal.

Annotations

Editorial Notes:

E48 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Certificate of arranging debtor.

(New: *cf*. 1872, s. 64 in pt.)

98.—Where the proposal of the arranging debtor has been carried into effect, the Court shall, on the report of the Official Assignee and in the absence of fraud, grant to the arranging debtor a certificate under the seal of the Court, and the certificate shall operate as a discharge to the arranging debtor from the claims of creditors who received notice of the arrangement.

Annotations

Editorial Notes:

E49 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Publication in relation to arrangements.

(New)

99.—(1) No publication of the affairs of the petitioner or of the proceedings in an arrangement matter shall take place without the sanction of the Court other than the publication in a *bona fide* trade journal of the particulars set out in the documents filed in the Central Office under *section 90*.

(2) Any person who contravenes *subsection (1)* shall be guilty of an offence.

Annotations

Editorial Notes:

E50 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Taking possession of property by Official Assignee.

(*cf*. 1857, s. 344 in pt.)

100.—The Court may, on the application of the Official Assignee or any creditor, at any time after an order for protection is made (and on sufficient cause shown) direct that the property of the arranging debtor or any part thereof shall be possessed and received by the Official Assignee.

Annotations

Editorial Notes:

E51 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Discharge of protection order.

(New)

101.—The Court may, at any time after the private sitting referred to in *section 90*, order that the order for protection be discharged on application to that effect being made by the arranging debtor with the concurrence of every creditor who had notice of the private sitting and whose debt is not less than F96**[**€130**]**.

Annotations

Amendments:

F96 Substituted (1.01.2002) by *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001), art. 2 and sch., in effect as per art. 2.

Editorial Notes:

E52 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Surplus.

(*cf*. 1872, s. 65 in pt.)

102.—(1) Whenever it appears to the Court that there remains vested in or in the possession or control of the Official Assignee any property of an arranging debtor who has obtained the certificate mentioned in *section 98* the Court shall order that it be revested in or returned to, as the case may be, the debtor, his personal representatives or assigns.

(2) The order shall for all purposes be deemed to be a conveyance, assignment or transfer of property and, where appropriate, may be registered accordingly.

Annotations

Editorial Notes:

E53 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Goods obtained on credit.

(New)

103.—If within fourteen days before an order for protection is made the debtor obtains goods on credit knowing at the time that he will be unable to pay for them the Court, on the application of the creditor, may, if it thinks fit, direct either the return of the goods or payment for them in full.

Annotations

Editorial Notes:

E54 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Private sitting for enquiry.

(1857, s. 353 in pt.)

104.—The Court may at any time in an arrangement matter, on the application of the Official Assignee or any person having an interest, appoint a private sitting for enquiry and summon before it the arranging debtor or any other person and examine him upon any matter which the Court considers relevant to the arrangement.

Annotations

Editorial Notes:

E55 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Adjudication of arranging debtor.

(New: *cf*. 1857, s. 353 in pt.)

105.—(1) The Court may, if it thinks fit, adjudicate the debtor bankrupt if—

(*a*) he does not, in the prescribed manner and within the time specified in *section 91*, file the documents required by that section, or

(*b*) at the private sitting referred to in *section 90* or any adjournment thereof his proposal or any modification thereof is not accepted or approved, or

(*c*) his proposal is annulled under *section 95 (2)*, or

(*d*) at any time after the presentation of his petition for arrangement it is shown that the affidavit filed with the petition is wilfully untrue or that he has not made a full disclosure of his property, assets and liabilities, or

(*e*) it appears that he does not wish to make a *bona fide* arrangement with all his creditors, or

(*f*) his proposal is not reasonable and proper to be executed under the direction of the Court, or

(*g*) he does not duly attend the private sitting or any adjournment thereof, or

(*h*) he fails to obey any order of the Court affecting him which may be made in the arrangement matter, or

(*i*) he is party to any corrupt agreement with his creditors to secure the acceptance of his proposal.

F97**[**(2) On an adjudication under *subsection (1)* the Court shall proceed as in bankruptcy and cause notice of the adjudication to be given forthwith in the prescribed manner in the *Iris Oifigiúil*, and—

(*a*) in at least one daily newspaper circulating in the State, or

(*b*) by the publication of the notice on the website of the Insolvency Service of Ireland,

and the petitioner shall be subject to the jurisdiction of the Court in the same manner as any other bankrupt, and any proposal which may have been made or accepted or approved shall be void.**]**

Annotations

Amendments:

F97 Substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 10(b), commenced as per s. 11(4).

Editorial Notes:

E56 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Partners obtaining protection of the Court.

(New)

106.—(1) Where two or more members of a partnership obtain the protection of the Court and make proposals to their creditors for the payment or compromise of their joint and several liabilities, the Court shall adjudicate all the members bankrupt if any of the proposals are not accepted.

(2) On an adjudication under *subsection (1)* the Court shall proceed as in bankruptcy and cause notice of the adjudication to be given forthwith in the prescribed manner in *Iris Oifigiúil* and in at least one daily newspaper, and the petitioner shall be subject to the jurisdiction of the Court in the same manner as any other bankrupt, and any proposal which may have been made or accepted or approved shall be void.

Annotations

Editorial Notes:

E57 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Summoning witnesses.

(1857, s. 353 in pt.)

107.—The procedure for summoning witnesses in an arrangement matter shall be the same as in bankruptcy and the Court shall have similar powers of enforcing their attendance.

Annotations

Editorial Notes:

E58 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Registration of arrangements.

(New: *cf*. 1887, c. 57, s. 7; 1890, c. 24, s. 2)

108.—(1) A register shall be maintained in the Central Office for the filing of memoranda delivered to that office under *section 90*.

(2) Rules of court may provide for matters ancillary to the keeping of the register.

Annotations

Editorial Notes:

E59 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Exclusion of Deeds of Arrangement Act, 1887.

(New)

109.—The Deeds of Arrangement Act, 1887, shall not apply to an arrangement under this Part.

Annotations

Editorial Notes:

E60 Previous affecting provision: section repealed by *Personal Insolvency Act 2012* (44/2012), s. 6 and sch. 1, not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

PART V

WINDING UP BY TRUSTEE

Order for winding up.
(1872, ss. 87-122)

F98**[110.**— Where at least three-fifths in number and value of the creditors voting at a meeting of the creditors, either in person or by a person authorised in writing in that behalf, by resolution declare that the estate of the bankrupt be wound up by a trustee and a committee of inspection, and appoint for that purpose a trustee and a committee of inspection of not more than 5 creditors qualified to vote at the meeting, the Court may on application being made to it in that behalf not later than 90 days after the date of the making of the adjudication order in respect of that bankruptcy, order that the property of the bankrupt be so wound up.**]**

Annotations

Amendments:

F98 Substituted (1.06.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 13, S.I. No. 253 of 2016.

Vesting in trustee.

111.—On the making of an order under *section 110* the Official Assignee shall be divested of the property of the bankrupt vesting in him under this Act and such property shall vest in the trustee.

Powers of trustee, etc.

112.—(1) F99**[** In the winding up the trustee shall be subject to the control of the Court and shall have regard to any directions given to him by the committee of inspection or by resolution of the creditors.**]**

(2) Subject to *subsection (1)*, the trustee shall have all the powers and may perform all the functions conferred by this Act on the Official Assignee in relation to property vested in him and the provisions of this Act (other than those of *Parts IV* and *VI*) shall apply, with any necessary modifications, in relation to the winding up of the property of a bankrupt by a trustee and a committee of inspection as they apply in relation to the administration of such property by the Official Assignee and the trustee shall be substituted for the Official Assignee in such provisions where appropriate.

(3) F100**[**Where on an application to it under *section 110* the Court makes an order referred to in that section it shall at the same time make provision for**]**:

(*a*) the remuneration of the trustee,

(*b*) the making of regular reports by the trustee at subsequent sittings in relation to the winding up,

(*c*) the procedure to be followed by the trustee in the lodgment of monies received by him,

(*d*) the audit of the trustee's accounts, and

(*e*) such other matters as may be prescribed.

Annotations

Amendments:

F99 Substituted (1.06.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 14(a), S.I. No. 253 of 2016.

F100 Substituted (1.06.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 14(b), S.I. No. 253 of 2016.

Order of discharge.

113.—When the bankrupt's property has been fully realised and a final dividend has been paid to the creditors, the trustee shall report to the Court, and the Court, if satisfied that the estate has been fully wound up, shall declare the bankruptcy discharged and order that the trustee be released.

Powers of Court.

114.—Where an order is made under this Part for the winding up of the bankrupt's property by a trustee and a committee of inspection, the Court shall, subject to the provisions of this Part, have power to make such orders and give such directions in relation to the bankrupt, his creditors, debtors and property and in relation to the examination of persons (including the bankrupt) and other matters as it would have had if a trustee and a committee of inspection had not been appointed under this Part.

PART VI

Estates of Persons Dying Insolvent

Petition to administer in bankruptcy estate of person dying insolvent.

(New)

115.—(1) A petition for the administration under this Part of the estate of a deceased person may be presented to the Court by—

(*a*) any creditor whose debt would have been sufficient to support a bankruptcy petition against the deceased if he had been alive, or

(*b*) the personal representative of the deceased.

(2) Where the petition is presented by a creditor, notice thereof shall be served on the personal representative of the deceased.

(3) Where there is no known personal representative, the Court may direct service on such person and in such manner as it thinks fit or may dispense with service.

(4) A petition for administration under this Part shall not be presented to the Court after proceedings have been commenced in the Circuit Court for the administration of the deceased's estate, but that court may, when satisfied that the estate is insufficient to pay the debts, transfer the proceedings to the Court, and thereupon the Court may make an order for the administration under this Part of the deceased's estate.

Effect on personal representative of service of notice of petition.

(New)

116.—(1) After service on the personal representative of notice of the presentation of a petition, no payment or transfer of property made by the personal representative shall operate as a discharge to him as between himself and the Official Assignee.

(2) Except as aforesaid, nothing in this Part shall invalidate any payment made or any act or thing done in good faith by the personal representative before the date of the order for the administration under this Part of the deceased's estate.

Order for administration under *Part VI*.

(New)

117.—(1) On presentation of a petition the Court may, unless it appears that there is a reasonable probability that the estate will be sufficient for the payment of the deceased's debts, make an order for the administration under this Part of the deceased's estate or may, upon cause shown, dismiss the petition with or without costs.

(2) Where the petition is presented by a creditor, he shall prove his debt to the Court before an order is made.

(3) An order may be made under this section notwithstanding that there is no known personal representative of the deceased.

Vesting and distribution.

(New)

118.—(1) Upon an order being made for the administration under this Part of the deceased's estate, his property shall vest in the Official Assignee for realisation and distribution.

(2) *Section 46* (which relates to a certificate of vesting) shall apply to property which vests in the Official Assignee under this section.

Priority of funeral and testamentary expenses.

(New)

119.—In the administration under this Part of the deceased's estate, the proper funeral and testamentary expenses incurred shall, notwithstanding anything to the contrary in this or any other enactment, be payable in full in priority to all other payments.

Application of Act.

(New)

120.—The provisions of this Act shall, so far as they are applicable and with appropriate modifications, apply in the case of an order for administration under this Part as they apply in the case of an order of adjudication except that *sections 50*, *57*, *58* and *59* shall not apply.

Surplus.

(New)

121.—(1) Where, on the administration under this Part of the deceased's estate, any property remains vested in, or in the possession or control of the Official Assignee after providing for the expenses, fees and costs, together with the debts and liabilities and interest at the rate currently payable on judgment debts, the Court shall order the property to be paid or delivered to or vested in the personal representative of the deceased or, if there is no personal representative, in such manner as the Court may direct.

(2) The order shall for all purposes be deemed to be a conveyance, assignment or transfer of property and, where appropriate, may be registered accordingly.

Right of retainer restricted.

(*cf*. 27/1965, s. 46)

122.—Where an order is made for administration under this Part, the right of retainer of a personal representative shall not be exercisable but he may prove any debt due to him which would otherwise be provable.

PART VII

OFFENCES

Punishment of fraudulent debtors.

(1872, c. 57, s. 11; 33/1963, s. 293)

123.—(1) Subject to *subsection (2)*, if a bankrupt or arranging debtor—

(*a*) fails to disclose to the Court, or to the Official Assignee or to such person or persons as the Court from time to time directs, all his property and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, or

(*b*) fails to deliver up to the Official Assignee, or as he or the Court directs, all such part of his property as is in his possession or under his control, and which he is required by law to deliver up, or

F101**[**(*c*) fails to deliver up to the Official Assignee, or as he or the Court directs, all books, papers and records (including copies of such books, papers and records held in electronic form) in his possession or under his control relating to his estate and which he is required by law to deliver up, or**]**

(*d*) conceals any part of his property to the value of F102**[**€650**]** or upwards, or conceals any debt due to or from him, or

(*e*) fraudulently removes any part of his property to the value of F102**[**€650**]** or upwards, or

(*f*) fails to file or deliver a statement of affairs as required by *section 19(c)* or makes any material omission in any statement relating to his affairs, or

(*g*) knowing or believing that a false debt has been proved by any person under the bankruptcy or arrangement, fails for the period of a month to inform the Official Assignee thereof, or

F101**[**(*h*) prevents the production of any book, paper or record (including copies of any book, paper or record held in electronic form) affecting or relating to his estate, or**]**

F101**[**(*i*) conceals, destroys, mutilates or falsifies or is privy to the concealment, destruction, mutilation or falsification of any book, paper or record (including any such book, paper or record held in electronic form) affecting or relating to his estate, or**]**

F101**[**(*j*) makes or is privy to the making of any false entry in any book, paper or record (including any such book, paper or record held in electronic form) affecting or relating to the estate, or**]**

(*k*) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to his estate, or

(*l*) attempts to account for any part of his property by fictitious losses or expenses, or

(*m*) obtains, by any fraud or false representation, any property on credit, or

(*n*) obtains, under the false pretence of carrying on business and, if a trader, of dealing in the ordinary way of his trade, any property on credit, or

(*o*) pawns, pledges or disposes of any property which he has obtained on credit, unless, in the case of a trader, such pawning, pledging or disposing is in the ordinary way of his trade, or

(*p*) is guilty of any fraud or false representation for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or the bankruptcy or arrangement;

he shall be guilty of an offence.

(2) It shall be a good defence to a charge under any of *paragraphs (a), (b), (c), (d), (f), (n)* and *(o)* of *subsection (1)* if the accused proves that he had no intent to defraud and to a charge under any of *paragraphs (h), (i)* and *(j)* of that subsection if he proves that he had no intent to conceal the state of his affairs or to defeat the law.

(3)(*a*) A person (other than a bankrupt or arranging debtor) who, with intent to defraud his creditors, does any of the acts mentioned in *paragraphs (e), (i), (j), (k), (l), (m), (n)* or *(o)* of *subsection (1)*, shall be guilty of an offence and for this purpose references in *paragraphs (e)* or *(k)* to an act which is fraudulent or is committed fraudulently shall be construed as references to an act done with intent to defraud creditors.

(*b*) Where a person referred to in *paragraph (a)* of this subsection does an act therein specified within F103**[**3 years**]** next before he is adjudicated or granted an order for protection, it shall be presumed until the contrary is proved that the act was done with intent to defraud his creditors.

(4) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under *paragraph (o)* of *subsection (1)* or under *subsection (3)*, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall also be guilty of an offence and shall be liable to be punished in the same way as if he had been guilty of an offence under the said *paragraph (o)* or *subsection (3)*.

Annotations

Amendments:

F101 Substituted (29.01.2016) by *Bankruptcy (Amendment) Act 2015* (60/2015), s. 15(a)-(d), S.I. No. 34 of 2016.

F102 Substituted (1.01.2002) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 1(3) and schs. 3, 4, commenced as per s. 1(3).

F103 Substituted (3.12.2013) by *Personal Insolvency Act 2012* (44/2012), s. 158, S.I. No. 462 of 2013.

Absconding debtor. (1872, c. 57, s. 12)

124.—If any person with intent to defraud his creditors leaves the State and takes with him, or attempts or makes preparation to leave the State and take with him, any part of his property to the amount of F104**[**€650**]** or upwards, he shall be guilty of an offence.

Annotations

Amendments:

F104 Substituted (1.01.2002) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 1(3) and schs. 3, 4, commenced as per s. 1(3).

Corrupt agreement with creditors.

(*cf*. 1857, s. 150 in pt.; 1872, s. 76)

125.—If any creditor of a bankrupt or an arranging debtor obtains or accepts any property from the bankrupt or arranging debtor or any other person as an inducement for forbearing to oppose or for accepting any offer of composition or proposal or any modification thereof made by or on behalf of the bankrupt or arranging debtor, the claim of the creditor shall be void and irrecoverable and the creditor and such other person (if any) shall each be guilty of an offence.

False claim.

(1872, c. 57, s. 14)

126.—If any creditor, or any person claiming to be a creditor, in any bankruptcy or arrangement with intent to defraud makes any false claim or any proof, declaration or statement of account which is untrue in any material particular, he shall be guilty of an offence.

Non-disclosure of after-acquired property.

(New)

127.—A bankrupt who fails to disclose to the Official Assignee any after-acquired property shall be guilty of an offence.

Obstructing officers.

(*cf*. 1857, s. 389)

128.—Any person who knowingly and wilfully resists, hinders or obstructs the Bankruptcy Inspector or any of his assistants or any other person in the execution of his duties under this Act shall be guilty of an offence.

Obtaining credit or trading under other name.

(New)

129.—A bankrupt or an arranging debtor who—

(*a*) either alone or jointly with any other person obtains credit to the extent of F105**[**€650**]** or upwards from any person without informing that person that he is a bankrupt or an arranging debtor, or

(*b*) engages in any trade or business under a name other than that under which he was adjudicated bankrupt or granted protection without disclosing to all persons with whom he enters into any business transactions the name under which he was so adjudicated or granted protection,

shall be guilty of an offence.

Annotations

Amendments:

F105 Substituted (1.01.2002) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 1(3) and schs. 3, 4, commenced as per s. 1(3).

F106**[**Arranging publication of notice without authority

130. A person who—

(*a*) arranges for or causes the publication of a notice under this Act—

(i) in the *Iris Oifigiúil*,

(ii) in a newspaper, or

(iii) on the website of the Insolvency Service of Ireland,

without authority under this Act, or

(*b*) arranges or causes the publication of such a notice, knowing that the contents of such notice are false in a material respect,

shall be guilty of an offence.**]**

Annotations

Amendments:

F106 Substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 10(c), commenced as per s. 11(4).

Criminal liability after annulment.

(New)

131.—Where a bankrupt or arranging debtor has been guilty of any offence, he shall not be exempt from being proceeded against for the offence by reason that his bankruptcy has been discharged or annulled or that his proposal has been carried into effect.

Punishment of offences.

(New)

132.—(1) Every person guilty of an offence under this Act shall be liable—

(*a*) on summary conviction, to a fine not exceeding £500 or, at the discretion of the Court, to imprisonment for a term not exceeding twelve months or to both the fine and the imprisonment, or

(*b*) on conviction on indictment, to a fine not exceeding £1,000 or, at the discretion of the Court, to imprisonment for a term not exceeding five years or to both the fine and the imprisonment.

(2) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this Act as if, in lieu of the penalties provided for in subsection (3) of the said section, there were specified therein the penalties provided for in *subsection (1) (a)* of this section, and the reference in subsection (2) *(a)* of the said section 13 to the penalties provided for in the said subsection (3) shall be construed and have effect accordingly.

Annotations

Editorial Notes:

E61 A fine of £500 converted (1.01.1999) to €634.86. This translates into a class C fine, not greater than €2,500, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 6(2) and table ref. no. 3, S.I. No. 662 of 2010.

A fine of £1,000 converted (1.01.1999) to €1,269.74. This also translates into a class C fine, not greater than €2,500, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 6(2) and table ref. no. 3, S.I. No. 662 of 2010.

PART VIII

MISCELLANEOUS

Limitation of actions.

(New)

133.—The Official Assignee shall not be a trustee for the purposes of the Statute of Limitations, 1957.

Proceedings in private.

(*cf*. 1857, s. 354 in pt.)

134.—The Court may direct that the whole or any part of any sitting of the Court or proceeding in any matter under this Act shall be in private.

Power of Court to review its orders.

(*cf*. 1872, s. 6; 1897, ss. 3, 4)

135.—The Court may review, rescind or vary an order made by it in the course of a bankruptcy matter other than an order of discharge or annulment.

Effect of adjudication on creditors' remedies.

(*cf*. 1857, s. 262; 1872, s. 68 in pt.)

136.—(1) On the making of an order of adjudication, a creditor to whom the bankrupt is indebted for any debt provable in bankruptcy shall not have any remedy against the property or person of the bankrupt in respect of the debt apart from his rights under this Act, and he shall not commence any proceedings in respect of such debt unless with the leave of the Court and on such terms as the Court may impose.

(2) This section shall not affect the power of a secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been enacted.

Power to stay or restrain proceedings against bankrupt.

(New: *cf*. 33/1963, s. 217)

137.—(1) The Official Assignee may—

(*a*) where any proceedings against the bankrupt are pending in the High Court or on appeal in the Supreme Court, apply to the court in which the proceedings are pending for a stay of proceedings therein, and

(*b*) where any other proceedings are pending against the bankrupt, apply to the High Court to restrain further proceedings therein,

and the court to which the application is made may grant the application on such terms and for such period as it thinks fit.

(*cf*. 1857, s. 262 in pt.)

(2) Where any proceedings against a bankrupt are stayed or restrained in pursuance of *subsection (1)*, the following provisions shall have effect:

(*a*) the creditor shall not be liable for any costs incurred by the bankrupt or the Official Assignee in such proceedings;

(*b*) if the proceedings have been instituted against the bankrupt jointly with any other person, the proceedings against that other person shall not thereby be affected.

Winding up of partnerships and deceased persons' estates.

(New)

138.—(1) The Court may, upon giving notice to such persons as it may direct, make such orders and give such directions as it thinks proper for winding up and settling the affairs of any partnership or the estate of a deceased person in which the bankrupt has an interest.

(2) All consequential accounts and enquiries shall be taken and made in such office of the Court as the Court may direct.

Prohibition on distress after adjudication or protection.

(New)

139.—No distress shall be levied on the goods of a bankrupt or an arranging debtor after the date of the adjudication or order for protection.

Evidence of deceased person.

(1857, s. 365)

140.—In the case of the death of any witness who has made a deposition in any proceeding under this Act the deposition, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be evidence of the matters therein deposed to.

F107**[**Registration of judgments given in insolvency proceedings.

140A.— (1) Without prejudice to Article 16(1) of the Insolvency Regulation, a liquidator who intends —

(*a*) to request under Article 21 of the Regulation that notice of the judgment opening the insolvency proceedings concerned and, where appropriate, the decision appointing him or her be published in the State, or

(*b*) to take any other action in the State under the Regulation,

shall deliver to the Official Assignee, for registration in a register to be kept for that purpose, a duly certified copy of the judgment and, where appropriate, of the decision appointing the liquidator.

F108**[**(1A) The register referred to in *subsection (1)* may be kept in electronic format.**]**

(2) Registration under *subsection (1)* may also be effected by the Official Assignee on application by a liquidator who does not intend to take any action in the State under the Insolvency Regulation.

(3)The certified copy or copies mentioned in *subsection (1)* shall be accompanied by -

(*a*) if the judgment or decision is not expressed in Irish or English, a translation, certified to be correct by a person competent to do so, into either of those languages,

(*b*) the prescribed form, and

F109**[**(*c*) any fee prescribed for that purpose by the Insolvency Service of Ireland.**]**

(4) The Official Assignee shall issue to the liquidator a certified copy of the entry in the register.

F109**[**(5) The register shall be open to public inspection on payment of such fee (if any) as may be prescribed for that purpose by the Insolvency Service of Ireland.**]**

(6) A copy of an entry in the register shall be supplied, on request, by the Official Assignee.

(7) In any proceedings a document purporting to be—

(*a*) a duly certified copy of a judgment opening insolvency proceedings or a decision appointing a liquidator in such proceedings, or

(*b*) a translation of such a document which is certified as correct by a person competent to do so,

shall, without further proof, be admissible as evidence of the judgment, the liquidator's appointment or the translation, unless the contrary is shown.**]**

Annotations

Amendments:

F107 Inserted (2.07.2002) by *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002), reg. 3(c).

F108 Inserted (24.12.20103) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 10(d)(i), commenced as per s. 11(4).

F109 Substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 10(d)(ii), (iii), commenced as per s. 11(4).

F110**[**Publication in relation to insolvency proceedings.

140B.— (1) In this section 'publication' means publication of—

(*a*) notice of the judgment opening the insolvency proceedings concerned,

(*b*) where appropriate, the decision appointing the liquidator,

(*c*) the name and business address of the liquidator, and

(*d*) the provision (either paragraph 1 or paragraph 2) of Article 3 of the Insolvency Regulation giving jurisdiction to open the proceedings,

F111**[**in the prescribed manner—

(i) in the *Iris Oifigiúil*, and

(ii) in either—

(I) at least one daily newspaper circulating in the State, or

(II) on the website of the Insolvency Service of Ireland.**]**

(2) Without prejudice to *section 140A(1)*, publication shall be effected by the liquidator concerned.

(3) Where the debtor has an establishment (within the meaning of Article 2(h) of the Insolvency Regulation) in the State, the liquidator or any authority mentioned in Article 21(2) of the Regulation shall ensure that publication takes place as soon as practicable after the opening of the insolvency proceedings.**]**

Annotations

Amendments:

F110 Inserted (2.07.2002) by *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002), reg. 3(c).

F111 Substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 10(e), commenced as per s. 11(4).

F112**[**Provision of certain documents to Official Assignee.

140C.— Where—

(*a*) a debtor is adjudicated bankrupt,

(*b*) the Court approves of a proposal for vesting the property of a debtor in the Official Assignee under *Part IV*, or

(*c*) an order is made by the Court for the administration under *Part VI* of a deceased's estate,

the Court shall, on application by the Official Assignee -

(i) certify that the Official Assignee is the liquidator within the meaning of the Insolvency Regulation, being the person whose function it is to administer or liquidate the assets of the debtor, or deceased debtor, concerned, and

(ii) arrange for a certified copy of the order made for the purposes of *paragraph (a)*, *(b)* or *(c)* to be supplied to the Official Assignee.**]**

Annotations

Amendments:

F112 Inserted (2.07.2002) by *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002), reg. 3(c).

F113**[**Restriction of right of access to personal data in certain circum-stances

140D.— (1) Article 15 (Right of access) of the Data Protection Regulation is restricted to the extent necessary and proportionate to safeguard the effective performance by the Official Assignee of his or her functions under *section 61*, where the performance of those functions gives rise to the processing of personal data to which the Data Protection Regulation applies.

(2) In this section, "Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016[15] on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).**]**

Annotations

Amendments:

F113 Inserted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 173, S.I. No. 174 of 2018.

F114**[**Publication of certain notices to be evidence

141.— A notice published pursuant to this Act—

(*a*) in the *Iris Oifigiúil*,

(*b*) in a daily newspaper circulating in the State, or

(*c*) on the website of the Insolvency Service of Ireland,

shall be evidence of the matters contained in the notice.**]**

Annotations

Amendments:

F114 Substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 10(f), commenced as per s. 11(4).

Acting in aid of other courts.

(1872, s. 71)

142.—(1) The Court and its officers may act in aid of any court in F115**[**...**]** the Isle of Man or the Channel Islands, and its officers respectively, at the request of such court, in any bankruptcy matter before such court, and the Court and its officers so acting shall have the like jurisdiction and authority as in the case of a bankruptcy originating under an order of the Court.

[15] OJ No. L 119, 4.5.2016, p.1

(2) (*a*) The Government may by order apply *subsection (1)* in relation to any other jurisdiction where the Government are satisfied that reciprocal facilities to that effect will be afforded by that jurisdiction.

(*b*) An order under this subsection may be made subject to such conditions, exceptions and qualifications as may be specified in the order.

(*c*) The Government may by order amend or revoke an order under this subsection.

(*d*) An order under this subsection shall have the force of law in accordance with its terms.

(*e*) On the revocation of an order applying *subsection (1)* in relation to any jurisdiction, that subsection shall cease to apply in relation to that jurisdiction.

(*f*) Every order under this subsection shall be published in *Iris Oifigiúil* as soon as may be.

Annotations

Amendments:

F115 Deleted (2.07.2002) by *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002), reg. 3(d).

Alteration of monetary limits.

(New)

143.—The Minister may by order increase or reduce any of the sums specified in *sections 8(1)(a)* and *(2), 11(1)(a), 15, 39(4), 45(1), 61(3)(h)* and *(k), 81(1)(b)* and *(c), 92(2), 95(2)*, and *101*, but such an order shall not affect any case in which a person was adjudicated bankrupt or granted protection before it came into force.

Annotations

Editorial Notes:

E62 Power pursuant to section exercised (1.01.2002) by *Bankruptcy Act, 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001).

F116[Regulations and orders

144.— (1) A regulation under this Act may contain such incidental, supplementary and consequential provisions as the Minister considers necessary or expedient for the purposes of the regulations.

(2) Every regulation made under this Act and every order made under *section 142(2)* or *143* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.**]**

Annotations

Amendments:

F116 Substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 36, S.I. No. 463 of 2013.

Section 76.

FIRST SCHEDULE

Proof of Debts

General

(New) 1. Every creditor shall prove his debt and a creditor who does not do so is not entitled to share in any distribution that may be made.

2. (*a*) A creditor may prove his debt by delivering or sending by post to the Official Assignee particulars of his debt (in this Schedule referred to as a "proof of debt").

(*b*) *Subparagraph (a)* is without prejudice to the entitlement of a creditor to prove his debt at a sitting of the Court.

3. The Official Assignee may fix a time within which proofs of debt shall be sent to him. A proof submitted thereafter shall not be allowed except by order of the Court.

4. Proof of debt may be furnished by way of a detailed statement of account, an affidavit of debt or other prescribed means.

5. The creditor shall specify the vouchers or any other evidence by which the debt can be substantiated. He shall also give particulars of any counterclaim that, to his knowledge, the bankrupt or arranging debtor may have, and he shall indicate whether or not he is a secured creditor.

6. Proof of debt in respect of money lent by a moneylender shall have annexed thereto the particulars required by section 16 (2) of the Moneylenders Act, 1933.

7. An affidavit shall be required in any case where the debt is disputed or the Court or the Official Assignee thinks fit.

(1857, s. 246) 8. Proof of debt may be given by the oath or affidavit of the creditor himself or by the oath or affidavit of some person authorised by or on behalf of the creditor and, if made by a person so authorised, shall state his authority and means of knowledge.

9. Subject to *paragraph 24 (5)*, a creditor may, with the consent of the Official Assignee, amend his proof of debt.

10. Every creditor who has lodged a proof of debt is entitled to see and examine the proofs of other creditors.

F117**[**11. A person may prove a debt against his or her spouse as if they were not married.**]**

(New) 12. A sole trustee (including a personal representative) who is a bankrupt or an arranging debtor shall be entitled, without leave of the Court, to prove in his own bankruptcy or arrangement in respect of a debt due from him to the trust estate. Any dividend in respect of such a debt shall be paid to the Accountant of the High Court for credit of the trust estate.

(1872, s. 48) 13. If any bankrupt or arranging debtor, at the date of the adjudication or order for protection, is liable in respect of distinct contracts, as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that such firms are, in whole or in part, composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts against the properties respectively liable upon such contracts.

(*cf*. 1857, s. 260)

14. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the adjudication, the creditor may prove for interest at the rate currently payable on judgment debts to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

(*cf*. 1857, s. 252)

15. In respect of debts due after the adjudication or order for protection, the liability for which existed at the date of such adjudication or order for protection, a creditor may prove for the value of the debt at that date.

16. Where a person who is liable to make any periodical payment (including rent) is adjudicated bankrupt or is granted an order for protection on a day other than the day on which such payment becomes due, the person entitled to the payment may prove for a proportionate part of the payment for the period from the date when the last payment became due to the date of the adjudication or order for protection as if the payment accrued due from day to day.

(1857, s. 251)

17. (1) Where there are mutual credits or debts as between a bankrupt and any person claiming as a creditor, one debt or demand may be set off against the other and only the balance found owing shall be recoverable on one side or the other.

(2) Section 36 of the Civil Liability Act, 1961 (which provides for the set-off of claims), as amended by section 5 of the Civil Liability (Amendment) Act, 1964, shall apply with the substitution in section 36 (3) of a reference to *subparagraph (1)* for the reference to section 251 of the Irish Bankrupt and Insolvent Act, 1857.

18. This Schedule is without prejudice to section 61 of the Civil Liability Act, 1961 (which provides for proof of claims for damages or contribution in respect of a wrong) and section 62 of the said Act (which provides for the application of moneys payable under certain policies of insurance where the insured becomes a bankrupt).

19. A creditor shall, unless the Court otherwise orders, bear his own costs of proving a debt.

(1857, s. 246)

20. Any person seeking to prove a debt or from whom additional proof is required, or any other person, may be examined by the Court in relation thereto.

21. Where a creditor or other person with intent to defraud makes any false claim or any proof, declaration or statement of account before the Court or in his affidavit which is untrue in any material particular in connection with the proof of debts, the Court may, in addition to any other penalty provided in this Act, disallow the claim in whole or in part.

22. Before deciding on a claim, the Official Assignee may require a creditor to furnish additional information or proof or to attend before him.

23. The Official Assignee shall deal in the following manner with claims:

(*a*) He shall prepare a list certified by him of the claims.

(*b*) This list shall record—

(i) the claims allowed by him, which shall be deemed to be admitted, and

(ii) the claims either disallowed by him or which he considers should not be admitted without reference to the Court.

(*c*) He shall refer disputed debts to the Court for adjudication.

(*d*) The decision of the Official Assignee in regard to a claim shall be confirmed in writing to the creditor.

(*e*) Any person aggrieved by the decision of the Official Assignee may appeal to the Court.

(*f*) The Official Assignee shall place a copy of the list on the Court file.

(*g*) The list shall be open to public inspection on payment of a prescribed fee but no fee shall be charged to creditors inspecting the list.

Secured Creditors

(1872, s. 21)

24. (1) If a secured creditor realises his security, he may prove for the balance due to him after deducting the net amount realised and receive dividends thereon but not so as to disturb any dividend then already declared. If he surrenders his security for the general benefit of the creditors, he may prove for his whole debt.

(2) If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date on which it was given and the value at which he assesses it, and he shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(3) A secured creditor shall not be entitled to surrender his security after the time fixed by the Official Assignee for receipt of proofs of debt, except by order of the Court.

(4) (*a*) Where a security is valued by the creditor, the Official Assignee may at any time redeem it on payment to the creditor of the assessed value. If the Official Assignee is dissatisfied with the assessed value he may require that the property comprised in any security so valued be offered for sale at such time and on such terms and conditions as may be agreed upon between him and the creditor or, in default of agreement, as the Court may direct. If the sale be by public auction the creditor, or the Official Assignee on behalf of the estate, may bid or purchase.

(*b*) The creditor may, however, at any time by notice in writing require the Official Assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be offered for sale, and if the Official Assignee does not, within three months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the Official Assignee, shall vest in the creditor and the amount of his debt shall be reduced by the amount at which the security has been valued.

(5) Where a creditor has valued his security he may at any time amend the valuation and proof on showing to the satisfaction of the Official Assignee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the Official Assignee allows the amendment without application to the Court.

(6) Where a valuation has been amended in accordance with *subparagraph (5)*, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation or, as the case may be, shall be entitled to be paid, out of any money for the time being available for dividend, any dividend or share of

dividend which he has not received by reason of the inaccuracy of the original valuation before that money is made applicable to the payment of any future dividend but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

(7) If a creditor having valued his security subsequently realises it, or if it is realised under the provisions of *subparagraph (4)*, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

(8) If it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, such creditor shall surrender his security to the Official Assignee for the general benefit of the creditors unless the Court on application otherwise orders, and the Court may allow the affidavit to be amended upon such terms as to repayment of any dividend or otherwise as the Court may consider just.

(9) If a secured creditor does not comply with *subparagraph (8)*, he shall be excluded from all share in any dividend.

(10) Subject to the provisions of *subparagraph (4)*, the creditor shall in no case receive more than F118**[**one euro in the euro**]** and interest, where the creditor is entitled to prove for interest.

(11) Where a mortgagee holds as security a policy of assurance on the life of a bankrupt or an arranging debtor which in the event of the non-payment of premiums provides for their automatic discharge out of moneys payable under the policy, the value of the policy for the purpose of proving in the bankruptcy or arrangement shall be taken to be not less than the value as at the date of adjudication or order for protection; provided that, if the bankrupt or arranging debtor dies before the policy is surrendered, the mortgagee may apply to the Court for the purpose of revaluing his security.

Annotations

Amendments:

F117 Substituted (16.11.2015) by *Marriage Act 2015* (35/2015), s. 18, S.I. No. 504 of 2015.

F118 Substituted (1.01.2002) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 7(3), commenced as per s. 7(1).

Modifications (not altering text):

C42 Application of schedule extended with modifications (31.07.2013) by *Personal Insolvency Act 2012* (44/2012), ss. 64(2)(a), (3) and 98(2)(a), (3), S.I. No. 285 of 2013.

Actions to be taken by personal insolvency practitioner following issue of protective certificate.

64.—...

(2)(a) A personal insolvency practitioner may in any case request a creditor to file a proof of debt and the debt shall be proved in the same manner as a debt of a bankrupt is proved under the Bankruptcy Act 1988 and, subject to subsection (3), paragraphs 1 to 22 of the First Schedule of that Act shall apply with all necessary modifications to the proof of such debts.

...

(3) In applying the First Schedule of the Bankruptcy Act 1988 to proof of debts under this section—

(*a*) a reference in that Schedule to the Court and the Official Assignee shall be read as a reference to the personal insolvency practitioner, and

(*b*) a reference to a bankrupt shall be read as the reference to the debtor to whom the proposal for a Debt Settlement Arrangement relates.

...

Actions to be taken by personal insolvency practitioner following issue of protective certificate.

98.—...

(2)(a) A personal insolvency practitioner may in any case request a creditor to file a proof of debt and the debt shall be proved in the same manner as a debt of a bankrupt is proved under the Bankruptcy Act 1988 and subject to subsection (3) paragraphs 1 to 22 of the First Schedule of that Act shall apply with all necessary modifications to the proof of such debts.

...

(3) In applying the First Schedule of the Bankruptcy Act 1988 to proof of debts under this section—

(*a*) a reference in that Schedule to the Court and the Official Assignee shall be read as a reference to the personal insolvency practitioner, and

(*b*) a reference to a bankrupt shall be read as a reference to the debtor to whom the proposal for a Personal Insolvency Arrangement relates.

Section 6.

SECOND SCHEDULE

REPEALS

Session and Chapter or Year and Number	Short Title	Extent of Repeal
20 and 21 Vict. c. 60	Irish Bankrupt and Insolvent Act, 1857	The whole Act
35 and 36 Vict. c. 57	Debtors Act (Ireland), 1872	Sections 11 and 12, and 14 to 22
35 and 36 Vict. c. 58	Bankruptcy (Ireland) Amendment Act, 1872	The whole Act
51 and 52 Vict. c. 44	Local Bankruptcy (Ireland) Act, 1888	The whole Act
52 and 53 Vict. c. 60	Preferential Payments in Bankruptcy (Ireland) Act, 1889	The whole Act
53 and 54 Vict. c. 24	Deeds of Arrangement Amendment Act, 1890	The whole Act
1926, No. 27	Court Officers Act, 1926	Section 12
1937, No. 3	Circuit Court (Registration of Judgments) Act, 1937	Section 3
1946, No. 16	Hire-Purchase Act, 1946	Section 17 (1) so far as it refers to section 313 of the Irish Bankrupt and Insolvent Act, 1857
1947, No. 14	Agricultural Credit Act, 1947	Section 32 (3)

1954, No. 26	Arbitration Act, 1954	In section 11 (1) the words from "and includes" to the end of the subsection.
1961, No. 39	Courts (Supplemental Provisions) Act, 1961	In section 23: subsection (3) and the reference to the Cork Local Bankruptcy Court in subsections (4), (5) and (6)
1963, No. 33	Companies Act, 1963	In section 286 (1), the words "the presentation of a bankruptcy petition on which" Section 345 (8)
1971, No. 24	Central Bank Act, 1971, 1971	Section 28 (2)
1981, No. 11	Courts Act, 1981	Section 26



Number 27 *of* 1988

BANKRUPTCY ACT 1988

REVISED

Updated to 1 February 2026

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Bankruptcy Acts 1988 to 2023: this Act is one of a group of Acts included in this collective citation (*Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), s. 1(3)). The Acts in this group are:

- *Bankruptcy Act 1988* (27/1988)
- *Euro Changeover (Amounts) Act 2001* (16/2001), s. 7 and s. 9(5)
- *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), Part 7 (s. 30)
- *Bankruptcy (Amendment) Act 2015* (60/2015)
- *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023), Part 5 (ss. 30-38)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1983, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Employment Permits Act 2024* (17/2024)
- *Courts and Civil Law (Miscellaneous Provisions) Act 2023* (18/2023)
- *Data Protection Act 2018* (7/2018)
- *Civil Liability (Amendment) Act 2017* (30/2017)
- *Bankruptcy (Amendment) Act 2015* (60/2015)
- *Marriage Act 2015* (35/2015)
- *Companies Act 2014* (38/2014)
- *Protected Disclosures Act 2014* (14/2014)
- *Companies (Miscellaneous Provisions) Act 2013* (46/2013)
- *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013)
- *Central Bank (Supervision and Enforcement) Act 2013* (26/2013)
- *Finance (Local Property Tax) Act 2012* (52/2012)
- *Personal Insolvency Act 2012* (44/2012)
- *Industrial Relations (Amendment) Act 2012* (32/2012)
- *Protection of Employees (Temporary Agency Work) Act 2012* (13/2012)
- *Property Services (Regulation) Act 2011* (40/2011)
- *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011)
- *Criminal Justice Act 2011* (22/2011)
- *Finance Act 2011* (6/2011)
- *Value-Added Tax Consolidation Act 2010* (31/2010)
- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010)
- *Fines Act 2010* (8/2010)
- *National Asset Management Agency Act 2009* (34/2009)
- *Land And Conveyancing Law Reform Act 2009* (27/2009)
- *Finance (No. 2) Act 2008* (25/2008)
- *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008)
- *Criminal Justice (Mutual Assistance) Act 2008* (7/2008)
- *Foyle and Carlingford Fisheries Act 2007* (17/2007)
- *International Criminal Court Act 2006* (30/2006)
- *Employment Permits Act 2006* (16/2006)
- *Social Welfare Consolidation Act 2005* (26/2005)
- *Finance Act 2005* (5/2005)
- *Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004)
- *Courts and Court Officers Act 2002* (15/2002)
- *Carers Leave Act 2001* (19/2001)
- *Euro Changeover (Amounts) Act 2001* (16/2001)
- *National Training Fund Act 2000* (41/2000)
- *National Minimum Wage Act 2000* (5/2000)
- *Parental Leave Act 1998* (30/1998)
- *Employment Equality Act 1998* (21/1998)
- *Taxes Consolidation Act 1997* (39/1997)
- *Proceeds of Crime Act 1996* (30/1996)
- *Netting of Financial Contracts Act 1995* (25/1995)
- *Investment Intermediaries Act 1995* (11/1995)
- *Adoptive Leave Act 1995* (2/1995)
- *Maternity Protection Act 1994* (34/1994)
- *Investment Limited Partnerships Act 1994* (24/1994)
- *Criminal Justice Act 1994* (15/1994)
- *Industrial Training (Apprenticeship Levy) Act 1994* (3/1994)

- *Protection of Employees (Employers' Insolvency) Act 1984* (21/1984)
- *Foyle Fisheries Act 1952* (5/1952)
- *Industrial Relations Act 1946* (26/1946)

All Acts up to and including *Credit Review Act 2026* (1/2026), enacted 3 February 2026, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Union (Markets in Financial Instruments) Regulations 2017* (S.I. No. 375 of 2017)
- *Bankruptcy (Amendment) Act 2015 (Commencement) (No. 2) Order 2016* (S.I. No. 253 of 2016)
- *National Vehicle and Driver File (Access) (No. 2) Regulations 2015* (S.I. No. 287 of 2015)
- *National Vehicle and Driver File (Access) Regulations 2015* (S.I. No. 64 of 2015)
- *Protected Disclosures Act 2014 (Section 7(2)) Order 2014* (S.I. No. 339 of 2014)
- *Personal Insolvency Act 2012 (Prescribed Fees in Bankruptcy Matters) Regulations 2013* (S.I. No. 465 of 2013)
- *Bankruptcy Act 1988 (Official Assignee Accounts and Related Matters) Regulations 2013* (S.I. No. 464 of 2013)
- *European Union (Occupation of Road Transport Operator) Regulations 2011* (S.I. No. 697 of 2011)
- *Prison Rules 2007* (S.I. No. 252 of 2007)
- *European Communities (Markets in Financial Instruments) Regulations 2007* (S.I. No. 60 of 2007)
- *Bankruptcy Act 1988 (Alteration of Monetary Limits) Order 2001* (S.I. No. 595 of 2001)
- *European Communities (Personal Insolvency) Regulations 2002* (S.I. No. 334 of 2002)
- *Criminal Justice Act 1994 (Section 46(6)) Regulations 1996* (S.I. No. 343 of 1996)

All statutory instruments up to and including *Courts and Civil Law (Miscellaneous Provisions) Act 2023 (Sections 35 and 37) (Commencement) Order 2026* (S.I. No. 15 of 2026), made 23 January 2026, were considered in the preparation of this revision.