



Income Payments Orders – an underused tool in bankruptcy?

Matthew Moriarty

IPOs and IPAs

Income Payments Orders (section 310) and Income Payments Agreements (section 310A):

- One is by consent, one is by order – IPA is usually the first recourse

Introduced in the Insolvency Act 1986

Relatively limited use – around 18% of bankruptcies have an IPA or IPO

But some high-profile IPAs and IPOs in recent months (e.g. *Re Price* [2024] 2 WLUK 525)

Section 310 Insolvency Act 1986

Section 310

The court may make an order (“**an income payments order**”) claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

An income payments order may be made only on an application instituted by the trustee, and before the discharge of the bankrupt.

The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt when taken together with any payments to which subsection (8) applies below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

An income payments order must specify the period during which it is to have effect; and that period may end after the discharge of the bankrupt, but may not end after the period of three years beginning with the date on which the order is made.

Key points:

- The trustee must apply before discharge
- The order can last for 3 years (including after discharge)
- The order can be for any sum, but cannot reduce income below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family

Advantages

- Can last beyond discharge (but must be applied for before discharge) – for up to 3 years from the date of the order
- Can recover income not yet earned at the date of bankruptcy

Understanding the section

The main focus is likely to be on "reasonable domestic needs of the bankrupt and his family"

Family means *"persons (if any) who are living with [the bankrupt] and are dependent on him"* (section 385)

"What constitutes "reasonable domestic needs" must depend upon the particular circumstances of each case." (Muir Hunter)

Reasonable domestic needs

Hinton v Wotherspoon [2016] EWHC 621 (Ch):

“The court must ask:

- (i) is the expenditure a “domestic need” ; if so*
- (ii) how much of that kind of expenditure can be described as “reasonable domestic need”?*

In reaching the answer account should be had of (though not exclusively and not necessarily in this order):

- the purpose of section 310 IA, which is to achieve a realistic approach to payment of the bankruptcy debts taking account of the size of the debts and reasonable proportionality between the hardship to be imposed on the bankrupt and his family and the benefit to be received by creditors;*
- the discretionary element of the provision;*
- the need to adopt a realistic and humane approach (the debtor is not to become a slave of his creditors);*
- the importance of the item of domestic need in the context of reasonableness; and*
- the occupation and station of the bankrupt.”*

Scenario 1

- Bankrupt has monthly net income of around £5,000
- Bankrupt has monthly expenses of around £4,000
- Included in monthly expenses are costs for private school fees of around £2,000 per month
- What is the bankrupt's surplus income considering his 'reasonable domestic needs'?
- Is the private school fee a reasonable domestic need?

Re Rayatt [1998] B.P.I.R. 495

Scenario 2

- Bankrupt has monthly net income of £1,100
- Bankrupt is paying expenses of £1,500 per month, including mortgage payments of £800 per month

- What is the bankrupt's surplus income considering his 'reasonable domestic needs'?
- Is his mortgage payment a reasonable domestic need?
- Is the question 'what is left' or is it 'what is reasonable'?

Malcolm v Official Receiver [1999] B.P.I.R. 97

Scenario 3

- Bankrupt receives a one-off lump sum payment for long service, which will not be repeated
- Is this payment 'income'?
- Can it be recovered under an IPO?

Supperstone v Lloyd's Names Association Working Party [1999] B.P.I.R. 832

How can they be used?

- Most IPs will have income and expense details from the bankrupt
- Consider what might be reasonable (thinking about *Hinton* factors) – Insolvency Service Technical Manual
- Engage about an IPA; If unsuccessful, think about an IPO – but make sure to apply in time

Any Questions?



Home and Away: International Issues in Domestic Insolvency Cases

Bertie Beor-Roberts

Topic 1: Foreign Judgments and Petitions

Foreign judgment – why petition here?

1. Prefer the insolvency regime in England & Wales.
2. Foreign insolvency regime is overly friendly to debtors.
3. Debtor has significant assets in the UK that would fall outside debtor's bankruptcy estate if made bankrupt abroad.

What do I need for a petition?

- Bankruptcy Act 1914 → a judgment debt.
- Insolvency Act 1986 → any debt will do!
 - S.267(1): 'A creditor's petition must be in respect of one or more **debts** owed by the debtor [...].
 - *(Subject to debt being above £5,000, liquidated sum, subject to a statutory demand, etc.)*
 - Trade debts, unpaid loans, rent arrears – any sum due as a *primary obligation*, rather than damages.

When would I need a judgment, then?

1. I have a *claim for damages*, but not a debt → judgment will give me a *debt*.
2. The remedy I want requires execution of a judgment:
 - Charging Order
 - Attachment of Earnings Order
 - 3rd Party Debt Order
 - Warrant/writ of control and bailiffs.

Summary

IA 1986 allows you petition using an English judgment or any unsatisfied debt.

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... but what about my foreign judgment ...?

Dicey on the Conflict of Laws – Rule 45

A judgment of a court of a foreign country has no direct operation in England but may:

(1) be enforceable by claim or counterclaim at common law or under statute, or

(2) be recognised as a defence to a claim or as conclusive of an issue in a claim.

Using foreign judgments in the jurisdiction

1. Treaties providing for mutual recognition of foreign judgments.
2. Recognition proceedings

Using foreign judgments in the jurisdiction

(1) Treaties providing for mutual recognition of foreign judgments.

- Administration of Justice Act 1920 → Commonwealth countries
- Foreign Judgments (Reciprocal Enforcement) Act 1933 → various others (*not the USA*)

Using foreign judgments in the jurisdiction

(2) Recognition Proceedings

- A claim in the English court on the debt created by the foreign judgment
- Seek summary judgment
- Limited defences:
 1. Foreign court didn't have jurisdiction
 2. Judgment should be set aside for fraud
 3. Judgment should be set aside as breach of natural justice
 4. Judgment should not be enforced for public policy reasons

What about *unrecognised* foreign judgments?

Q. If (1) unrecognised and (2) not subject to a treaty for registration → **can I petition?**

A. Until 2024, yes.

1. *Drelle v Servis-Terminal LLC* before ICCJ Burton (March 2023) and Richards J (March 2024)
2. *Sun Legend Investments Ltd v Ho* [2013] BPIR 532

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Common conclusions in both cases:

1. Foreign judgments create debts → debts can found petitions
2. 'Enforcement' of judgments in Dicey r.45 ≠ bankruptcy petition on the debt created by the judgment

Drelle in EWCA – the Revenue Rule

The Rule: foreign tax laws will not be enforced in the UK, directly or indirectly

- *Includes* seeking recognition of a foreign tax judgment by bring a recognition claim on it in English courts.
- Based on principle that: 'foreign tax laws = exercise of sovereign rights'

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EWCA in Drelle:

- Foreign judgments *also* = exercise of sovereign rights.
- Therefore, foreign judgments cannot create debts that lead to bankruptcy petitions.

Practical Tips: Foreign Judgments

DO

- Check if the foreign country is covered by a mutual recognition treaty
- Register judgments
- Bring recognition proceedings swiftly if required.

DO NOT

- Issue a petition on an unrecognised judgment, even if it worked in the past
- *(Unless you would like to make legal history and go to the UKSC...)*

The right outcome?

1. Foreign judgments are *not* the same as foreign tax laws

- Foreign tax laws cannot be enforced even by recognition proceedings. Foreign judgments can
- Therefore, foreign judgments *do* give rise to debts the English court will recognise

2. Insolvency petitions are not just means of executing judgments

- Otherwise, trade debts, unpaid loans, rental arrears, would not be permitted as the basis of a petition

Topic 2: Residence in petitions

Jurisdiction: s.265 IA 1986

(1) A bankruptcy petition may be presented to the court under section 264(1)(a) only if

(a) the centre of the debtor's main interests is in England and Wales,

(ab) the centre of the debtor's main interests is in a member State (other than Denmark) and the debtor has an establishment in England and Wales, or

(b) the test in subsection (2) is met.

(2) The test is that—

(a) the debtor is domiciled in England and Wales, or

(b) at any time in the period of three years ending with the day on which the petition is presented, the debtor—

(i) has been ordinarily resident, or has had a place of residence, in England and Wales, or

(ii) has carried on business in England and Wales.

Jurisdiction: s.265 IA 1986 (simpler)

Any of the below...

1. Debtor's COMI is in England and Wales
2. Debtor's COMI is in EU member state (not Denmark) but debtor has an 'establishment' in England and Wales
3. Debtor is domiciled in England and Wales
4. Debtor has been ordinarily resident in England and Wales (at any time in the last three years)
5. Debtor has had a place of residence in England and Wales (at any time in the last three years)
6. Debtor has carried on business in England and Wales (at any time in the last three years)

Option 3: 'Domiciled'

- 10 key principles → *Barlow Clowes International Ltd v Henlow* [2008] BPIR 778
- Only one domicile at a time
- Will initially be country of birth ('domicile of origin')
- May change by choice
- Cannot be without one → will revert to country of birth

Option 4: 'Ordinarily resident'

- 14 principles → *Reynolds Porter Chamberlain v Khan* [2016] BPIR 722
- Not a term of art → question of fact and degree
- Implies a degree of permanence
- May be ordinarily resident in more than one place
- Can I phone you there?
- Evidence is everything

Option 5: 'Place of Residence'

- 5 principles → *Mobile Telecommunications Company KSCP v HRH Prince Hussam bin Saud bin Abdulaziz al Saud* [2025] EWHC 85 (Ch)
- Facts of the case:
 - Prince Hussam lived in his mother's house for 10 years in the 1980s during his studies
 - He remained the council tax registered payer, and had stayed there afterwards
 - Only refused permission to stay there once (on the evidence)
 - Had stayed in hotels or other properties when visiting the UK
 - Has been a governor of province since 2017 and companion of the King since 2014
 - Has not entered UK since sentenced to imprisonment in 2018 for contempt of court.

Option 5: 'Place of Residence'

Notable factors in finding no place of residence:

- Although *had* had York House as a place of residence until 1990, circumstances had changed
- Council tax was not something organised by him, but by the house manager on his behalf, erroneously
- His relationship with the UK had fundamentally altered
- Requirement to seek permission (even if generally given) was a factor
- He had been refused permission to stay, and would not always seek to stay if others using the property

Contact us

LONDON

9 Old Square, Lincoln's Inn, London, WC2A 3SR,
DX: 301 London/Chancery Lane
T: 020 7405 9471
E: london@enterprisechambers.com

LEEDS

Fountain House, 4 South Parade, Leeds, LS1 5QX,
DX: 26448 Leeds / Park Square
T: 0113 246 0391
E: leeds@enterprisechambers.com

BRISTOL

60 Queen Square, Bristol, BS1 4JZ,
DX: 7863 Bristol
T: 0117 450 7920
E: bristol@enterprisechambers.com

NEWCASTLE

65 Quayside, Newcastle upon Tyne, NE1 3DE,
DX: 61134 Newcastle upon Tyne
T: 0191 222 3344
E: newcastle@enterprisechambers.com

www.enterprisechambers.com

