



Insolvency Act 1986

1986 CHAPTER 45

PART IX

BANKRUPTCY

CHAPTER III

TRUSTEES IN BANKRUPTCY

Tenure of office as trustee

292 Power to make appointments.

- (1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) is exercisable—
 - (a) except at a time when a certificate for the summary administration of the bankrupt's estate is in force, by a general meeting of the bankrupt's creditors;
 - (b) under section 295(2), 296(2) or 300(6) below in this Chapter, by the Secretary of State; or
 - (c) under section 297, by the court.
- (2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.
- (3) Any power to appoint a person as trustee of a bankrupt's estate includes power to appoint two or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.
- (4) The appointment of any person as trustee takes effect only if that person accepts the appointment in accordance with the rules. Subject to this, the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

Status: Point in time view as at 27/09/1999.

Changes to legislation: Insolvency Act 1986, Chapter III is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) This section is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the estate.

Modifications etc. (not altering text)

- C1** S.292, applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C2 S. 292 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 26**
C3 S. 292 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 10**

293 Summoning of meeting to appoint first trustee.

- (1) Where a bankruptcy order has been made and no certificate for the summary administration of the bankrupt's estate has been issued, it is the duty of the official receiver, as soon as practicable in the period of 12 weeks beginning with the day on which the order was made, to decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.

This section [^{F1}does not apply where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy); and it] is subject to the provision made in sections 294(3) and 297(6) below.

- (2) Subject to the next section, if the official receiver decides not to summon such a meeting, he shall, before the end of the period of 12 weeks above mentioned, given notice of his decision to the court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.
- (3) As from the giving to the court of a notice under subsection (2), the official receiver is the trustee of the bankrupt's estate.

Textual Amendments

- F1** Words repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, **Sch. 8 para. 16, Sch. 16**

Modifications etc. (not altering text)

- C4** S. 293 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C5 S. 293 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 12**
C6 S. 293 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 11**

294 Power of creditors to requisition meeting.

- (1) Where in the case of any bankruptcy—
- (a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee, and
 - (b) a certificate for the summary administration of the estate is not for the time being in force,
- any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.

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- (2) If such a request appears to the official receiver to be made with the concurrence of not less than one-quarter, in value, of the bankrupt's creditors (including the creditor making the request), it is the duty of the official receiver to summon the requested meeting.
- (3) Accordingly, where the duty imposed by subsection (2) has arisen, the official receiver is required neither to reach a decision for the purposes of section 293(1) nor (if he has reached one) to serve any notice under section 293(2).

Modifications etc. (not altering text)

- C7** S. 294 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C8 S. 294 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 12**
C9 S. 294 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 11**

295 Failure of meeting to appoint trustee.

- (1) If a meeting summoned under section 293 or 294 is held but no appointment of a person as trustee is made, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (2) On a reference made in pursuance of that decision, the Secretary of State shall either make an appointment or decline to make one.
- (3) If—
 - (a) the official receiver decides not to refer the need for an appointment to the Secretary of State, or
 - (b) on such a reference the Secretary of State declines to make an appointment,the official receiver shall give notice of his decision or, as the case may be, of the Secretary of State's decision to the court.
- (4) As from the giving of notice under subsection (3) in a case in which no notice has been given under section 293(2), the official receiver shall be trustee of the bankrupt's estate.

Modifications etc. (not altering text)

- C10** S. 295 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C11 S. 295 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 13**
C12 S. 295 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 12**

296 Appointment of trustee by Secretary of State.

- (1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter (other than section 297(1) below) he may apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver.
- (2) On an application under subsection (1) the Secretary of State shall either make an appointment or decline to make one.

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- (3) Such an application may be made notwithstanding that the Secretary of State has declined to make an appointment either on a previous application under subsection (1) or on a reference under section 295 or under section 300(4) below.
- (4) Where the trustee of a bankrupt's estate has been appointed by the Secretary of State (whether under this section or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the court's directions.
- (5) In that notice or advertisement the trustee shall—
 - (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditor's committee under section 301, and
 - (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

Modifications etc. (not altering text)

C13 S. 296 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

C14 S. 296 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 8\(3\)\(9\), Sch. 4 Pt. II para. 12](#)

C15 S. 296 modified (1.12.1994) by [S.I. 1994/2421, art. 11\(2\)\(3\), Sch. 7 para. 13](#)

297 Special cases.

- (1) Where a bankruptcy order is made on a petition under section 264(1)(d) (criminal bankruptcy), the official receiver shall be trustee of the bankrupt's estate.
- (2) Subject to the next subsection, where the court issues a certificate for the summary administration of a bankrupt's estate, the official receiver shall, as from the issue of that certificate, be the trustee.
- (3) Where such a certificate is issued or is in force, the court may, if it thinks fit, appoint a person other than the official receiver as trustee.
- (4) Where a bankruptcy order is made in a case in which an insolvency practitioner's report has been submitted to the court under section 274 but no certificate for the summary administration of the estate is issued, the court, if it thinks fit, may on making the order appoint the person who made the report as trustee.
- (5) Where a bankruptcy order is made (whether or not on a petition under section 264(1)(c)) at a time when there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII, the court, if it thinks fit, may on making the order appoint the supervisor of the arrangement as trustee.
- (6) Where an appointment is made under subsection (4) or (5) of this section, the official receiver is not under the duty imposed by section 293(1) (to decide whether or not to summon a meeting of creditors).
- (7) Where the trustee of a bankrupt's estate has been appointed by the court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the directions of the court.
- (8) In that notice or advertisement he shall—

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- (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditor's committee under section 301 below, and
- (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

Modifications etc. (not altering text)

C16 S. 297 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), Sch. 7 para. 14

C17 S. 297(1)-(3)(5)-(8) applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

298 Removal of trustee; vacation of office.

- (1) Subject as follows, the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the rules.
- (2) Where the official receiver is trustee by virtue of section 297(1), he shall not be removed from office under this section.
- (3) A general meeting of the bankrupt's creditors shall not be held for the purpose of removing the trustee at any time when a certificate for the summary administration of the estate is in force.
- (4) Where the official receiver is trustee by virtue of section 293(3) or 295(4) or a trustee is appointed by the Secretary of State or (otherwise than under section 297(5)) by the court, a general meeting of the bankrupt's creditors shall be summoned for the purpose of replacing the trustee only if—
 - (a) the trustee thinks fit, or
 - (b) the court so directs, or
 - (c) the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).
- (5) If the trustee was appointed by the Secretary of State, he may be removed by a direction of the Secretary of State.
- (6) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.
- (7) The trustee may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (8) The trustee shall vacate office on giving notice to the court that a final meeting has been held under section 331 in Chapter IV and of the decision (if any) of that meeting.
- (9) The trustee shall vacate office if the bankruptcy order is annulled.

Modifications etc. (not altering text)

C18 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

S. 298 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(6), Sch. 4 Pt. II para. 21

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C19 S. 298 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 15**

299 Release of trustee.

- (1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—
 - (a) where that person is appointed by a general meeting of the bankrupt's creditors or by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced, and
 - (b) where that person is appointed by the court, such time as the court may determine.
- (2) If the official receiver while he is the trustee gives notice to the Secretary of State that the administration of the bankrupt's estate in accordance with Chapter IV of this Part is for practical purposes complete, he shall have his release with effect from such time as the Secretary of State may determine.
- (3) A person other than the official receiver who has ceased to be the trustee shall have his release with effect from the following time, that is to say—
 - (a) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has not resolved against his release or who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
 - (b) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has resolved against his release, or by the court, or by the Secretary of State, or who has vacated office under section 298(6), such time as the Secretary of State may, on an application by that person, determine;
 - (c) in the case of a person who has resigned, such time as may be prescribed;
 - (d) in the case of a person who has vacated office under section 298(8)—
 - (i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine; and
 - (ii) if that meeting has not so resolved, the time at which the person vacated office.
- (4) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the court may determine.
- (5) Where the official receiver or the trustee has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, be discharged from all liability both in respect of acts or omissions of his in the administration of the estate and otherwise in relation to his conduct as trustee.

But nothing in this section prevents the exercise, in relation to a person who has had his release under this section, of the court's powers under section 304.

Modifications etc. (not altering text)

C20 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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- C21** S. 299 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 22**
- C22** S. 299 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 16**

300 Vacancy in office as trustee.

- (1) This section applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.
- (2) The official receiver shall be trustee until the vacancy is filled.
- (3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of section 314(7) (creditor's requisition).
- (4) If at the end of the period of 28 days beginning with the day on which the vacancy first came to the official receiver's attention he has not summoned, and is not proposing to summon, a general meeting of creditors for the purpose of filling the vacancy, he shall refer the need for an appointment to the Secretary of State.
- (5) Where a certificate for the summary administration of the estate is for the time being in force—
 - (a) the official receiver may refer the need to fill any vacancy to the court or, if the vacancy arises because a person appointed by the Secretary of State has ceased to hold office, to the court or the Secretary of State, and
 - (b) subsections (3) and (4) of this section do not apply.
- (6) On a reference to the Secretary of State under subsection (4) or (5) the Secretary of State shall either make an appointment or decline to make one.
- (7) If on a reference under subsection (4) or (5) no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate, but without prejudice to his power to make a further reference.
- (8) References in this section to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under section 331 or the giving by the official receiver of notice under section 299(2).

Modifications etc. (not altering text)

- C23** Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
- C24** S. 300 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 12**
- C25** S. 300 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 17**

Control of trustee

301 Creditors' committee.

- (1) Subject as follows, a general meeting of a bankrupt's creditors (whether summoned under the preceding provisions of this Chapter or otherwise) may, in accordance with

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the rules, establish a committee (known as “the creditors’ committee”) to exercise the functions conferred on it by or under this Act.

- (2) A general meeting of the bankrupt’s creditors shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt’s estate, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver.

Modifications etc. (not altering text)

- C26** Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C27 S. 301 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 16**
C28 S. 301 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 18**
 S. 301 amended (1.12.2001) by 2000 c. 8, s. 374(4)(b); S.I. 2001/3538, art. 2(1)

302 Exercise by Secretary of State of functions of creditors’ committee.

- (1) The creditors’ committee is not to be able or required to carry out its functions at any time when the official receiver is trustee of the bankrupt’s estate; but at any such time the functions of the committee under this Act shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.
- (2) Where in the case of any bankruptcy there is for the time being no creditors’ committee and the trustee of the bankrupt’s estate is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.

Modifications etc. (not altering text)

- C29** Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C30 S. 302 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 16**

303 General control of trustee by the court.

- (1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt’s estate, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.
- (2) The trustee of a bankrupt’s estate may apply to the court for directions in relation to any particular matter arising under the bankruptcy.
- [^{F2}(2A) Where at any time after a bankruptcy petition has been presented to the court against any person, whether under the provisions of the Insolvent Partnerships Order 1994 or not, the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.
- (2B) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in subsection (2A) above, the court may give such directions for consolidating the proceedings, or any of them, as it thinks just.

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- (2C) Any order or directions under subsection (2A) or (2B) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.]

Textual Amendments

F2 S. 303(2A)-(2C) inserted (1.12.1994) by S.I. 1994/2421, art. 14(2)

Modifications etc. (not altering text)

C31 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

C32 S. 303 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 20

304 Liability of trustee.

- (1) Where on an application under this section the court is satisfied—
- that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or
 - that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

the court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.

This is without prejudice to any liability arising apart from this section.

- (2) An application under this section may be made by the official receiver, the Secretary of State, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of section 330(5) (final distribution)) the bankrupt himself.

But the leave of the court is required for the making of an application if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under section 299.

- (3) Where—
- the trustee seizes or disposes of any property which is not comprised in the bankrupts estate, and
 - at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the trustee is not liable to any person (whether under this section or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

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Modifications etc. (not altering text)

- C33** Ss. 298-307 applied (with modifications) by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)
S. 304 applied (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004 \(S.I. 2004/353\)](#), [reg. 31](#) (as amended (10.8.2005) by [S.I. 2005/1998, regs. 2\(3\)](#), {40(1)-(4)(10)(a)})

Status:

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