



Insolvency Act 1985

1985 CHAPTER 65

PART III

INDIVIDUAL INSOLVENCY

CHAPTER II

BANKRUPTCY ORDERS

Duration of bankruptcy

126 Period of bankruptcy

- (1) The bankruptcy of an individual against whom a bankruptcy order has been made—
 - (a) shall commence with the day on which that order is made; and
 - (b) shall continue until that individual is discharged from bankruptcy under this Chapter.
- (2) Subject to subsection (4) below, a bankrupt is discharged from bankruptcy—
 - (a) in the case of an individual who was adjudged bankrupt on a petition under section 119(1)(d) above or who had been an undischarged bankrupt at any time in the period of fifteen years ending with the commencement of the bankruptcy, by an order of the court under section 127 below ; and
 - (b) in any other case, by the expiration of the relevant period.
- (3) Subject to subsection (4) below, the relevant period for the purposes of subsection (2) (b) above is—
 - (a) where a certificate for the summary administration of the bankrupt's estate has been issued and is not revoked before the bankrupt's discharge, the period of two years beginning with the commencement of the bankruptcy; and
 - (b) in any other case, the period of three years beginning with the commencement of the bankruptcy.

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- (4) Where the court is satisfied on the application of the official receiver that an undischarged bankrupt in relation to whom subsection (2)(b) above applies has failed or is failing to comply with any of his obligations under this Part, the court may order that the relevant period shall cease to run for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter), as may be specified in the order.
- (5) This section is without prejudice to any power of the court to annul a bankruptcy order.

127 Discharge by order of the court

- (1) An application for an order of the court discharging an individual from bankruptcy in a case falling within section 126(2)(a) above may be made by the bankrupt at any time after the end of the period of five years beginning with the commencement of the bankruptcy.
- (2) On an application under this section the court may—
- refuse to discharge the bankrupt from bankruptcy;
 - make an order discharging him from bankruptcy absolutely ; or
 - make an order discharging him from bankruptcy subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order;

and the court may provide for an order falling within paragraph (b) or (c) above to have immediate effect or to have its effect suspended for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter), as may be specified in the order.

128 Effect of discharge

- (1) Subject to subsections (2) to (6) below, where a bankrupt is discharged from his bankruptcy, the discharge shall release him from all the bankruptcy debts but shall have no effect on the functions (so far as they remain to be carried out) of the trustee of his estate or on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part and, in particular, shall not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.
- (2) Discharge from bankruptcy shall not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.
- (3) Discharge from bankruptcy shall not release a bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party.
- (4) Discharge from bankruptcy shall not release a bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under any enactment relating to the public revenue or of a recognisance, with the consent of the Treasury.
- (5) Discharge from bankruptcy shall not, except to such extent and on such conditions as the court may direct, release a bankrupt from any bankruptcy debt which—

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- (a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, being damages in respect of personal injuries to any person; or
 - (b) arises under any order made in family proceedings or in domestic proceedings.
- (6) Discharge from bankruptcy shall not release a bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.
- (7) Discharge from bankruptcy shall not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge or from any liability as surety for the bankrupt or as a person in the nature of such a surety.
- (8) In this section—
- " domestic proceedings " means domestic proceedings within the meaning of the Magistrates' Courts Act 1980 and any proceedings which would be such proceedings but for section 65(1)(ii) of that Act (proceedings for variation of order for periodical payments);
 - " family proceedings " has the same meaning as in Part V of the Matrimonial and Family Proceedings Act 1984 ;
 - " fine " has the same meaning as in the said Act of 1980 ;
 - " personal injuries " includes death and any disease or other impairment of a person's physical or mental condition.

129 Power to annul bankruptcy order in certain cases

- (1) The court may annul a bankruptcy order if it at any time appears to the court—
- (a) that, on any grounds existing at the time the order was made, the order ought not to have been made ; or
 - (b) that, to the extent required by the rules, the bankruptcy debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the court.
- (2) The court may annul a bankruptcy order made against an individual on a petition under paragraph (a), (b) or (c) of subsection (1) of section 119 above if it at any time appears to the court, on an application by the Official Petitioner—
- (a) that the petition was pending at a time when a criminal bankruptcy order was made against the individual or was presented after such an order was so made; and
 - (b) no appeal is pending (within the meaning of section 125 above) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made;
- and the court shall annul a bankruptcy order made on a petition under paragraph (d) of that subsection if it at any time appears to the court that the criminal bankruptcy order on which the petition was based has been rescinded in consequence of an appeal.
- (3) The court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.
- (4) Where the court annuls a bankruptcy order (whether under this section or section 116 above)—

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- (a) any sale or other disposition of property, payment made or other thing duly done under this Part by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the court shall be valid ; but
- (b) if any of the bankrupt's estate is then vested under this Part, in such a trustee, it shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms, if any, as the court may direct;

and the court may include in its order such supplemental provisions as may be authorised by the rules.

- (5) In determining for the purposes of section 126 above whether a person was an undischarged bankrupt at any time, any time when he was a bankrupt by virtue of an order that was subsequently annulled shall be disregarded.