



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IX

#### BANKRUPTCY

#### CHAPTER I

[<sup>F1</sup>THE COURT: BANKRUPTCY PETITIONS AND BANKRUPTCY ORDERS]

#### Textual Amendments

**F1** Pt. 9 Ch. 1 heading substituted (6.4.2016) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 19 para. 5](#); S.I. 2016/191, art. 2 (with art. 3)

#### *Preliminary*

#### **264 Who may present a bankruptcy petition.**

- (1) A petition for a bankruptcy order to be made against an individual may be presented to the court in accordance with the following provisions of this Part—
- (a) by one of the individual's creditors or jointly by more than one of them,
  - <sup>F2</sup>(b) .....
  - <sup>F3</sup>(ba) by a temporary administrator (within the meaning of Article 38 of the EC Regulation),
  - (bb) by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation,]
  - (c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part VIII, or

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- (d) where a criminal bankruptcy order has been made against the individual, by the Official Petitioner or by any person specified in the order in pursuance of section 39(3)(b) of the <sup>M1</sup>Powers of Criminal Courts Act 1973.
- (2) Subject to those provisions, the court may make a bankruptcy order on any such petition.

#### Textual Amendments

- F2** S. 264(1)(b) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 6**; S.I. 2016/191, art. 2 (with art. 3)
- F3** S. 264(1)(ba)(bb) inserted (31.5.2002) by S.I. 2002/1240, **reg. 13**

#### Modifications etc. (not altering text)

- C1** S. 264 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(1)(a)(6), Sch. 4 Pts. I, II paras. 1, 8, Sch. 6 para. 2 (as amended (1.7.2005) by S.I. 2005/1516, **art. 5(b)**)
- C2** S. 264 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (31.5.2002) by S.I. 2002/1309, **art. 3(1)(4)**, as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), **reg. 1, Sch. 2 para. 2(7)(a)**)
- C3** S. 264 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 2** (as amended (1.12.2001) by S.I. 2001/3649, **art. 469**)
- C4** S. 264 amended (20.7.2001 for certain purposes and otherwise 1.12.2001) by 2000 c. 8, **s. 372(1)**; S.I. 2001/2632, art. 2, **Sch. Pt. I**; S.I. 2001/3538, **art. 2(1)**

#### Marginal Citations

- M1** 1973 c. 62.

### [<sup>F4</sup>265] **Creditor's petition: debtors against whom the court may make a bankruptcy order.**

- (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, or
  - (b) the centre of the debtor's main interests is not in a member state of the European Union which has adopted the EC Regulation, but 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.
- (3) The reference in subsection (2) to the debtor carrying on business includes—
- (a) the carrying on of business by a firm or partnership of which the debtor is a member, and
  - (b) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

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- (4) In this section, references to the centre of the debtor's main interests have the same meaning as in Article 3 of the EC Regulation.]

#### Textual Amendments

- F4** S. 265 substituted (6.4.2016) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 19 para. 7](#); [S.I. 2016/191](#), art. 2 (with art. 3)

#### Modifications etc. (not altering text)

- C5** S. 265 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), arts. 8(3)(9), 10(1)(a), [Sch. 4 Pt. II para. 5](#), [Sch. 6](#)
- C6** S. 265 modified (1.12.1994) by [S.I. 1994/2421](#), art. 11(2)(3), [Sch. 7 para. 3](#)

### 266 Other preliminary conditions.

- (1) Where a bankruptcy petition relating to an individual is presented by a person who is entitled to present a petition under two or more paragraphs of section 264(1), the petition is to be treated for the purposes of this Part as a petition under such one of those paragraphs as may be specified in the petition.
- (2) A bankruptcy petition shall not be withdrawn without the leave of the court.
- (3) The court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss a bankruptcy petition or to stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.
- (4) Without prejudice to subsection (3), where a petition under section 264(1)(a) <sup>F5</sup>... or (c) in respect of an individual is pending at a time when a criminal bankruptcy order is made against him, or is presented after such an order has been so made, the court may on the application of the Official Petitioner dismiss the petition if it appears to it appropriate to do so.

#### Textual Amendments

- F5** Word in s. 266(4) omitted (6.4.2016) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 19 para. 8](#); [S.I. 2016/191](#), art. 2 (with art. 3)

#### Modifications etc. (not altering text)

- C7** S. 266 applied with modifications by [S.I. 1986/1999](#), art. 3, [Sch. 1 Pt. II](#) (as amended (31.5.2002) by [S.I. 2002/1309](#), art. 3(2)(4))
- C8** S. 266 modified (1.12.1994) by [S.I. 1994/2421](#), art. 11(2)(3), [Sch. 7 para. 4](#)

### *Creditor's petition*

### 267 Grounds of creditor's petition.

- (1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

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- (2) Subject to the next three sections, a creditor’s petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—
- (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
  - (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
  - (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
  - (d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts.
- [<sup>F6</sup>(3) A debt is not to be regarded for the purposes of subsection (2) as a debt for a liquidated sum by reason only that the amount of the debt is specified in a criminal bankruptcy order.]
- (4) “The bankruptcy level” is [<sup>F7</sup>£5,000] but the Secretary of State may by order in a statutory instrument substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.
- (5) An order shall not be made under subsection (4) unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

#### Textual Amendments

- F6** S. 267(3) repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, Sch. 16
- F7** Word in s. 267(4) substituted (1.10.2015) by The Insolvency Act 1986 (Amendment) Order 2015 (S.I. 2015/922), arts. 1, 2 (with art. 3)

#### Modifications etc. (not altering text)

- C9** S. 267 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II  
S. 267 extended (1.4.1992) by S.I. 1992/613, reg. 49(1)  
S. 267: power to modify conferred (6.3.1992) by Local Government Finance Act 1992 (c. 14), s. 14(3), Sch. 4 para. 9(1) (with s. 118(1)(2)(4))
- C10** S. 267 modified by S.I. 1989/1058, reg. 18(1)
- C11** S. 267 modified by S.I. 1989/438, reg. 43(1)
- C12** S. 267 power to amend conferred by Local Government Finance Act 1988 (c. 41, SIF 81:1), s. 22, Sch. 4 para. 9(1)
- C13** S. 267 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 6(b)
- C14** S. 267 modified (6.4.2010) by The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948), reg. 105(1)

## 268 Definition of “inability to pay”, etc.; the statutory demand.

- (1) For the purposes of section 267(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—
- (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as “the statutory demand”) in the prescribed form requiring

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- him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules, or
- (b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed, has been returned unsatisfied in whole or in part.
- (2) For the purposes of section 267(2)(c) the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—
- (a) the petitioning creditor to whom it is owed has served on the debtor a demand (also known as “the statutory demand”) in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due,
- (b) at least 3 weeks have elapsed since the demand was served, and
- (c) the demand has been neither complied with nor set aside in accordance with the rules.

**Modifications etc. (not altering text)**

C15 S. 268 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 7(b)

**269 Creditor with security.**

- (1) A debt which is the debt, or one of the debts, in respect of which a creditor’s petition is presented need not be unsecured if either—
- (a) the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt’s creditors, or
- (b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.
- (2) In a case falling within subsection (1)(b) the secured and unsecured parts of the debt are to be treated for the purposes of sections 267 to 270 as separate debts.

**Modifications etc. (not altering text)**

C16 S. 269 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**270 Expedited petition.**

In the case of a creditor’s petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under section 268, the petition may be presented before the end of the 3-week period there mentioned if there is a serious possibility that the debtor’s property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect.

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## 271 Proceedings on creditor’s petition.

- (1) The court shall not make a bankruptcy order on a creditor’s petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—
  - (a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or
  - (b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.
- (2) In a case in which the petition contains such a statement as is required by section 270, the court shall not make a bankruptcy order until at least 3 weeks have elapsed since the service of any statutory demand under section 268.
- (3) The court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—
  - (a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,
  - (b) that the acceptance of that offer would have required the dismissal of the petition, and
  - (c) that the offer has been unreasonably refused;

and, in determining for the purposes of this subsection whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.
- (4) In determining for the purposes of this section what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.
- (5) Nothing in sections 267 to 271 prejudices the power of the court, in accordance with the rules, to authorise a creditor’s petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those sections had been done only by or in relation to the remaining creditors or debts.

### Modifications etc. (not altering text)

**C17** S. 271 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**C18** S. 271 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, arts. 8\(3\)\(9\), 10\(1\)\(a\), Sch. 4 Pt. II para. 9, Sch. 6 para. 3](#)

F8 ...

### Textual Amendments

**F8** Ss. 272-274A and crossheading repealed (6.4.2016) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 19 para. 9\(1\); S.I. 2016/191, art. 2 \(with arts. 3, 4\)](#)

## <sup>F8</sup>272 Grounds of debtor’s petition.

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**F8 273 Appointment of insolvency practitioner by the court.**

.....

**F8 274 Action on report of insolvency practitioner.**

.....

**F8 274A Debtor who meets conditions for a debt relief order**

.....

**275 Summary administration.**

**F9** .....

**Textual Amendments**

**F9** S. 275 repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 2, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

*Other cases for special consideration*

**276 Default in connection with voluntary arrangement.**

- (1) The court shall not make a bankruptcy order on a petition under section 264(1)(c) (supervisor of, or person bound by, voluntary arrangement proposed and approved) unless it is satisfied—
  - (a) that the debtor has failed to comply with his obligations under the voluntary arrangement, or
  - (b) that information which was false or misleading in any material particular or which contained material omissions—
    - (i) was contained in any statement of affairs or other document supplied by the debtor under Part VIII to any person, or
    - (ii) was otherwise made available by the debtor to his creditors [<sup>F10</sup>in connection with a creditors' decision procedure instigated] under that Part, or
  - (c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.
- (2) Where a bankruptcy order is made on a petition under section 264(1)(c), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

**Textual Amendments**

**F10** Words in s. 276(1)(b)(ii) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\)](#),



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**Sch. 9 para. 73**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

**Modifications etc. (not altering text)**

**C19** S.276(2) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

**[<sup>F11</sup>277** **Petition based on criminal bankruptcy order.**

- (1) Subject to section 266(3), the court shall make a bankruptcy order on a petition under section 264(1)(d) on production of a copy of the criminal bankruptcy order on which the petition is based.

This does not apply if it appears to the court that the criminal bankruptcy order has been rescinded on appeal.

- (2) Subject to the provisions of this Part, the fact that an appeal is pending against any conviction by virtue of which a criminal bankruptcy order was made does not affect any proceedings on a petition under section 264(1)(d) based on that order.
- (3) For the purposes of this section, an appeal against a conviction is pending—
- (a) in any case, until the expiration of the period of 28 days beginning with the date of conviction;
  - (b) if notice of appeal to the Court of Appeal is given during that period and during that period the appellant notifies the official receiver of it, until the determination of the appeal and thereafter for so long as an appeal to the [<sup>F12</sup>Supreme Court] is pending within the meaning of [<sup>F13</sup>subsection (4)].
- (4) For the purposes of subsection (3)(b) an appeal to the Supreme Court shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for the purposes of this subsection an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.]]

**Textual Amendments**

**F11** S. 277 repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

**F12** Words in s. 277(3)(b) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148, **Sch. 9 para. 44(a)**; S.I. 2009/1604, art. 2(d)

**F13** S. 277(4) and words substituted (1.10.2009) for words in s. 277(3)(b) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148, **Sch. 9 para. 44(b)**; S.I. 2009/1604, art. 2(d)

**Modifications etc. (not altering text)**

**C20** S. 277 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**



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