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# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IX

#### BANKRUPTCY

#### CHAPTER I

##### BANKRUPTCY PETITIONS; BANKRUPTCY ORDERS

##### *Commencement and duration of bankruptcy; discharge*

#### **278 Commencement and continuance.**

The bankruptcy of an individual against whom a bankruptcy order has been made—

- (a) commences with the day on which the order is made, and
- (b) continues until the individual is discharged under the following provisions of this Chapter.

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

- C1** S. 278 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**  
S. 278 applied (7.2.1994) by 1993 c. 48, s. 144(4)(a)(ii) (with s. 6(8)); S.I. 1994/86, art. 2

#### **279 Duration.**

- (1) Subject as follows, a bankrupt is discharged from bankruptcy—
- (a) in the case of an individual who was adjudged bankrupt on a petition under section 264(1)(d) or who had been an undischarged bankrupt at any time in the period of 15 years ending with the commencement of the bankruptcy, by an order of the court under the section next following, and
  - (b) in any other case, by the expiration of the relevant period under this section.

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- (2) That period is as follows—
- (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 2 years beginning with the commencement of the bankruptcy, and
  - (b) in any other case, the period of 3 years beginning with the commencement of the bankruptcy.
- (3) Where the court is satisfied on the application of the official receiver that an undischarged bankrupt in relation to whom subsection (1)(b) applies has failed or is failing to comply with any of his obligations under this Part, the court may order that the relevant period under this section 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.
- (4) This section is without prejudice to any power of the court to annul a bankruptcy order.

## **280 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 279(1)(a) may be made by the bankrupt at any time after the end of the period of 5 years beginning with the commencement of the bankruptcy.
- (2) On an application under this section the court may—
  - (a) refuse to discharge the bankrupt from bankruptcy,
  - (b) make an order discharging him absolutely, or
  - (c) make an order discharging him 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.
- (3) The court may provide for an order falling within subsection (2)(b) or (c) 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.

## **281 Effect of discharge.**

- (1) Subject as follows, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—
  - (a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or
  - (b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part;
 and, in particular, discharge does 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 does 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 does not release the 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.

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- (4) Discharge does not release the 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 an enactment relating to the public revenue or of a recognisance, with the consent of the Treasury.
- (5) Discharge does not, except to such extent and on such conditions as the court may direct, release the bankrupt from any bankruptcy debt which—
- (a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, [<sup>F1</sup>or to pay damages by virtue of Part I of the Consumer Protection Act 1987, being in either case] damages in respect of personal injuries to any person, or
  - (b) arises under any order made in family proceedings [<sup>F2</sup>or under a maintenance assessment made under the Child Support Act 1991]. . .
- (6) Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.
- (7) Discharge does 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—
- [<sup>F3</sup>“family proceedings” means—
    - (a) family proceedings within the meaning of the <sup>M1</sup> 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); and
    - (b) family proceedings within the meaning of Part V of the <sup>M2</sup> Matrimonial and Family Proceedings Act 1984.]  - “fine” means the same as in the Magistrates’ Courts Act 1980; and
  - “personal injuries” includes death and any disease or other impairment of a person’s physical or mental condition.

#### Textual Amendments

- F1** Words substituted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 41(2), 47(1)(2), 48, [Sch. 4 para. 12](#)
- F2** Words in s. 281(5)(b) inserted (5.4.1993) by [Child Support Act 1991 \(c. 48\)](#), s. 58(13), [Sch. 5 para.7](#); [S.I. 1992/2644](#), [art.2](#)
- F3** Definition of “family proceedings” paras. (a)(b) substituted (14.10.1991) for the definitions of “domestic proceedings” and “family proceedings” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 92, 108(6), [Sch. 11 Pt. II para. 11\(2\)](#), [Sch. 14 para. 1\(1\)](#); [S.I. 1991/828](#), [art. 3\(2\)](#).

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

- C2** [S. 281\(4\)](#) extended by [Drug Trafficking Offences Act 1986 \(c. 32, SIF 39:1\)](#), [s. 39\(5\)](#)  
[S. 281\(4\)](#) extended (3.2.1995) by [1994 c. 37](#), [ss. 65\(3\)](#), 69(2) (with s. 66(2))  
[S. 281\(4\)](#) extended (31.3.1996) by [1995 c. 20](#), [s. 113\(6\)](#); [S.I. 1996/517](#), [art. 3\(2\)](#) (subject to transitional provisions and savings in [arts. 4-6](#), [Sch. 2](#))  
[S. 281\(4\)](#) extended (S.) (1.4.1996) by [1995 c. 43](#), [ss. 47\(4\)](#), 50(2)
- C3** [S. 281\(4\)](#) amended by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [SS. 123](#), 170, [Sch. 8 para. 6](#), [Sch. 15 para. 110](#)

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**C4** S. 281(4) amended by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), SS. 45(4), 47(4)(a).

#### Marginal Citations

**M1** [1980 c.43\(82\)](#).

**M2** [1984 c.42\(49:3\)](#).

VALID FROM 01/04/2004

#### [<sup>F4</sup>281A Post-discharge restrictions

Schedule 4A to this Act (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.]

#### Textual Amendments

**F4** S. 281A inserted (1.4.2004) by [2002 c. 40, ss. 257\(1\), 279 \(with s. 249\(6\)\)](#); [S.I. 2003/2093, art. 2\(2\), Sch. 2 \(with arts. 3-8 \(as amended by S.I. 2003/2332, art. 2\)\)](#)

## 282 Court's power to annul bankruptcy order.

- (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.

[<sup>F5</sup>(2) The court may annul a bankruptcy order made against an individual on a petition under paragraph (a), (b) or (c) of section 264(1) 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 277) 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 section 264(1) (d) 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 under section 261 in Part VIII)—
  - (a) any sale or other disposition of property, payment made or other thing duly done, under any provision in this Group of Parts, by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the court is valid, but

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(b) if any of the bankrupt's estate is then vested, under any such provision, 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 279 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 is to be disregarded.

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#### Textual Amendments

**F5** S. 282(2) repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, Sch. 16

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

**C5** S. 282(1) applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**C6** S. 282(4) applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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