



# Enterprise Act 2002 (repealed)

## 2002 CHAPTER 40

### PART 10

#### INSOLVENCY

##### Textual Amendments applied to the whole legislation

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148\(1\), Sch. 11 para. 5](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

*Companies etc.*

#### **248 Replacement of Part II of Insolvency Act 1986**

- (1) The following shall be substituted for Part II of the Insolvency Act 1986 (c. 45) (administration orders)—

#### **“PART II**

#### ADMINISTRATION

#### **8 Administration**

Schedule B1 to this Act (which makes provision about the administration of companies) shall have effect.”

- (2) The Schedule B1 set out in Schedule 16 to this Act shall be inserted after Schedule A1 to the Insolvency Act 1986.

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- (3) Schedule 17 (minor and consequential amendments relating to administration) shall have effect.
- (4) The Secretary of State may by order amend an enactment in consequence of this section.
- (5) An order under subsection (4)—
  - (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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

- C1** S. 248: power to modify extended (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), [ss. 170\(2\)\(a\)](#), [198\(2\)](#); [S.I. 2004/2575](#), [art. 2\(1\)](#), [Sch. 1](#)

**249 Special administration regimes**

- (1) Section 248 shall have no effect in relation to—
  - (a) a company holding an appointment under Chapter I of Part II of the Water Industry Act 1991 (c. 56) (water and sewerage undertakers),
  - (b) a protected railway company within the meaning of section 59 of the Railways Act 1993 (c. 43) (railway administration order) (including that section as it has effect by virtue of section 19 of the Channel Tunnel Rail Link Act 1996 (c. 61) (administration)),
  - (c) a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38) (air traffic services),
  - (d) a public-private partnership company within the meaning of section 210 of the Greater London Authority Act 1999 (c. 29) (public-private partnership agreement), or
  - (e) a building society within the meaning of section 119 of the Building Societies Act 1986 (c. 53) (interpretation).
- (2) A reference in an Act listed in subsection (1) to a provision of Part II of the Insolvency Act 1986 (or to a provision which has effect in relation to a provision of that Part of that Act) shall, in so far as it relates to a company or society listed in subsection (1), continue to have effect as if it referred to Part II as it had effect immediately before the coming into force of section 248.
- (3) But the effect of subsection (2) in respect of a particular class of company or society may be modified by order of—
  - (a) the Treasury, in the case of building societies, or
  - (b) the Secretary of State, in any other case.
- (4) An order under subsection (3) may make consequential amendment of an enactment.
- (5) An order under subsection (3)—
  - (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

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- (6) An amendment of the Insolvency Act 1986 (c. 45) made by this Act is without prejudice to any power conferred by Part VII of the Companies Act 1989 (c. 40) (financial markets) to modify the law of insolvency.

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

- C2** S. 249 extended (16.10.2005) by [Railways Act 2005 \(c. 14\)](#), **ss. 49(11)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

**250 Prohibition of appointment of administrative receiver**

- (1) The following shall be inserted after Chapter III of Part III of the Insolvency Act 1986 (receivership: receivers' powers)—

**“CHAPTER IV**

**PROHIBITION OF APPOINTMENT OF ADMINISTRATIVE RECEIVER**

**72A Floating charge holder not to appoint administrative receiver**

- (1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.
- (2) In Scotland, the holder of a qualifying floating charge in respect of a company's property may not appoint or apply to the court for the appointment of a receiver who on appointment would be an administrative receiver of property of the company.
- (3) In subsections (1) and (2)—
- “holder of a qualifying floating charge in respect of a company's property” has the same meaning as in paragraph 14 of Schedule B1 to this Act, and
- “administrative receiver” has the meaning given by section 251.
- (4) This section applies—
- (a) to a floating charge created on or after a date appointed by the Secretary of State by order made by statutory instrument, and
- (b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).
- (5) An order under subsection (4)(a) may—
- (a) make provision which applies generally or only for a specified purpose;
- (b) make different provision for different purposes;
- (c) make transitional provision.
- (6) This section is subject to the exceptions specified in sections 72B to 72G.

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### 72B First exception: capital market

- (1) Section 72A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—
- (a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and
  - (b) the arrangement involves the issue of a capital market investment.
- (2) In subsection (1)—
- “capital market arrangement” means an arrangement of a kind described in paragraph 1 of Schedule 2A, and
- “capital market investment” means an investment of a kind described in paragraph 2 or 3 of that Schedule.

### 72C Second exception: public-private partnership

- (1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—
- (a) is a public-private partnership project, and
  - (b) includes step-in rights.
- (2) In this section “public-private partnership project” means a project—
- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
  - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (3) In this section—
- “step-in rights” has the meaning given by paragraph 6 of Schedule 2A, and
- “project company” has the meaning given by paragraph 7 of that Schedule.

### 72D Third exception: utilities

- (1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—
- (a) is a utility project, and
  - (b) includes step-in rights.
- (2) In this section—
- (a) “utility project” means a project designed wholly or mainly for the purpose of a regulated business,
  - (b) “regulated business” means a business of a kind listed in paragraph 10 of Schedule 2A,
  - (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule, and
  - (d) “project company” has the meaning given by paragraph 7 of that Schedule.

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#### **72E Fourth exception: project finance**

- (1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—
  - (a) is a financed project, and
  - (b) includes step-in rights.
- (2) In this section—
  - (a) a project is “financed” if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,
  - (b) “project company” has the meaning given by paragraph 7 of Schedule 2A, and
  - (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule.

#### **72F Fifth exception: financial market**

Section 72A does not prevent the appointment of an administrative receiver of a company by virtue of—

- (a) a market charge within the meaning of section 173 of the Companies Act 1989 (c. 40),
- (b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469),
- (c) a collateral security charge within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

#### **72G Sixth exception: registered social landlord**

Section 72A does not prevent the appointment of an administrative receiver of a company which is registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under Part 3 of the Housing (Scotland) Act 2001 (asp 10).

#### **72H Sections 72A to 72G: supplementary**

- (1) Schedule 2A (which supplements sections 72B to 72G) shall have effect.
- (2) The Secretary of State may by order—
  - (a) insert into this Act provision creating an additional exception to section 72A(1) or (2);
  - (b) provide for a provision of this Act which creates an exception to section 72A(1) or (2) to cease to have effect;
  - (c) amend section 72A in consequence of provision made under paragraph (a) or (b);
  - (d) amend any of sections 72B to 72G;
  - (e) amend Schedule 2A.
- (3) An order under subsection (2) must be made by statutory instrument.

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- (4) An order under subsection (2) may make—
- (a) provision which applies generally or only for a specified purpose;
  - (b) different provision for different purposes;
  - (c) consequential or supplementary provision;
  - (d) transitional provision.
- (5) An order under subsection (2)—
- (a) in the case of an order under subsection (2)(e), shall be subject to annulment in pursuance of a resolution of either House of Parliament,
  - (b) in the case of an order under subsection (2)(d) varying the sum specified in section 72B(1)(a) or 72E(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (c) in the case of any other order under subsection (2)(a) to (d), may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”
- (2) The Schedule 2A set out in Schedule 18 to this Act shall be inserted after Schedule 2 to the Insolvency Act 1986 (c. 45).

#### Commencement Information

- II** [S. 250](#) wholly in force at 15.9.2003; [s. 250](#) not in force at Royal Assent see [s. 279](#); [s. 250\(1\)](#) in force for certain purposes at 18.3.2003 by [S.I. 2003/765](#), [art. 2](#), [Sch.](#), [s. 250](#) in force at 15.9.2003 by [S.I. 2003/2093](#), [art. 2\(1\)](#), [Sch. 1](#)

## 251 Abolition of Crown preference

- (1) The following paragraphs of Schedule 6 to the Insolvency Act 1986 (categories of preferential debts) shall cease to have effect—
- (a) paragraphs 1 and 2 (debts due to Inland Revenue),
  - (b) paragraphs 3 to 5C (debts due to Customs and Excise), and
  - (c) paragraphs 6 and 7 (social security contributions).
- (2) The following paragraphs of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (c. 66) (list of preferred debts) shall cease to have effect—
- (a) paragraph 1 (debts due to Inland Revenue),
  - (b) paragraph 2 (debts due to Customs and Excise), and
  - (c) paragraph 3 (social security contributions).
- (3) In section 386 of the Insolvency Act 1986 (categories of preferential debts) for the parenthetical words after “Schedule 6 to this Act” there shall be substituted “(contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production)”.

## 252 Unsecured creditors

The following shall be inserted after section 176 of the Insolvency Act 1986 (winding up: preferential debt)—

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*“Property subject to floating charge*

**176A Share of assets for unsecured creditors**

- (1) This section applies where a floating charge relates to property of a company—
  - (a) which has gone into liquidation,
  - (b) which is in administration,
  - (c) of which there is a provisional liquidator, or
  - (d) of which there is a receiver.
- (2) The liquidator, administrator or receiver—
  - (a) shall make a prescribed part of the company’s net property available for the satisfaction of unsecured debts, and
  - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Subsection (2) shall not apply to a company if—
  - (a) the company’s net property is less than the prescribed minimum, and
  - (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.
- (4) Subsection (2) shall also not apply to a company if or in so far as it is disapplied by—
  - (a) a voluntary arrangement in respect of the company, or
  - (b) a compromise or arrangement agreed under section 425 of the Companies Act (compromise with creditors and members).
- (5) Subsection (2) shall also not apply to a company if—
  - (a) the liquidator, administrator or receiver applies to the court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
  - (b) the court orders that subsection (2) shall not apply.
- (6) In subsections (2) and (3) a company’s net property is the amount of its property which would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (7) An order under subsection (2) prescribing part of a company’s net property may, in particular, provide for its calculation—
  - (a) as a percentage of the company’s net property, or
  - (b) as an aggregate of different percentages of different parts of the company’s net property.
- (8) An order under this section—
  - (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment pursuant to a resolution of either House of Parliament.

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(9) In this section—

“floating charge” means a charge which is a floating charge on its creation and which is created after the first order under subsection (2) (a) comes into force, and

“prescribed” means prescribed by order by the Secretary of State.

(10) An order under this section may include transitional or incidental provision.”

### 253 Liquidator’s powers

The following shall be inserted in Part I of Schedule 4 to the Insolvency Act 1986 (c. 45) (liquidator’s powers in winding up: powers exercisable only with sanction) after paragraph 3—

“3A Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423.”

### 254 Application of insolvency law to foreign company

(1) The Secretary of State may by order provide for a provision of the Insolvency Act 1986 to apply (with or without modification) in relation to a company incorporated outside Great Britain.

(2) An order under this section—

- (a) may make provision generally or for a specified purpose only,
- (b) may make different provision for different purposes, and
- (c) may make transitional, consequential or incidental provision.

(3) An order under this section—

- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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

C3 S. 254: power to modify extended (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), [ss. 170\(2\)\(b\)](#), 198(2); S.I. 2004/2575, [art. 2\(1\)](#), Sch. 1

### 255 Application of law about company arrangement or administration to non-company

(1) The Treasury may with the concurrence of the Secretary of State by order provide for a company arrangement or administration provision to apply (with or without modification) in relation to—

- (a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12),
- (b) a society registered under section 7(1)(b), (c), (d), (e) or (f) of the Friendly Societies Act 1974 (c. 46),



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- (c) a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40), or
  - (d) an unregistered friendly society.
- (2) In subsection (1) “company arrangement or administration provision” means—
- (a) a provision of Part I of the Insolvency Act 1986 (company voluntary arrangements),
  - (b) a provision of Part II of that Act (administration), and
  - (c) section 425 of the Companies Act 1985 (c. 6) (compromise or arrangement with creditors).
- (3) An order under this section may not provide for a company arrangement or administration provision to apply in relation to a society which is registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under Part 3 of the Housing (Scotland) Act 2001 (asp 10).
- (4) An order under this section—
- (a) may make provision generally or for a specified purpose only,
  - (b) may make different provision for different purposes, and
  - (c) may make transitional, consequential or incidental provision.
- (5) Provision by virtue of subsection (4)(c) may, in particular—
- (a) apply an enactment (with or without modification);
  - (b) amend an enactment.
- (6) An order under this section—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### *Individuals*

## **256 Duration of bankruptcy**

- (1) The following shall be substituted for section 279 of the Insolvency Act 1986 (c. 45) (duration of bankruptcy)—

### **“279 Duration**

- (1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.
- (2) If before the end of that period the official receiver files with the court a notice stating that investigation of the conduct and affairs of the bankrupt under section 289 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.
- (3) On the application of the official receiver or the trustee of a bankrupt’s estate, the court may order that the period specified in subsection (1) shall cease to run until—
  - (a) the end of a specified period, or
  - (b) the fulfilment of a specified condition.

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- (4) The court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.
- (5) In subsection (3)(b) “condition” includes a condition requiring that the court be satisfied of something.
- (6) In the case of an individual who is adjudged bankrupt on a petition under section 264(1)(d)—
  - (a) subsections (1) to (5) shall not apply, and
  - (b) the bankrupt is discharged from bankruptcy by an order of the court under section 280.
- (7) This section is without prejudice to any power of the court to annul a bankruptcy order.”
- (2) Schedule 19 (which makes transitional provision in relation to this section)—
  - (a) shall have effect, and
  - (b) is without prejudice to the generality of section 276.

## **257 Post-discharge restrictions**

- (1) The following shall be inserted after section 281 of the Insolvency Act 1986 (c. 45) (bankruptcy: effect of discharge)—

### **“281A Post-discharge restrictions**

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

- (2) The Schedule 4A set out in Schedule 20 to this Act shall be inserted after Schedule 4 to the Insolvency Act 1986.
- (3) The amendments set out in Schedule 21 (which specify the effect of a bankruptcy restrictions order or undertaking) shall have effect.

## **258 Investigation by official receiver**

The following shall be substituted for section 289 of the Insolvency Act 1986 (official receiver’s duty to investigate)—

### **“289 Investigatory duties of official receiver**

- (1) The official receiver shall—
  - (a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and
  - (b) make such report (if any) to the court as the official receiver thinks fit.
- (2) Subsection (1) shall not apply to a case in which the official receiver thinks an investigation under that subsection unnecessary.
- (3) Where a bankrupt makes an application for discharge under section 280—
  - (a) the official receiver shall make a report to the court about such matters as may be prescribed, and

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(b) the court shall consider the report before determining the application.

(4) A report by the official receiver under this section shall in any proceedings be prima facie evidence of the facts stated in it.”

## 259 Income payments order

(1) Section 310 of the Insolvency Act 1986 (income payments order) shall be amended as follows.

(2) In subsection (1) omit “, on the application of the trustee,”.

(3) After subsection (1) insert—

“(1A) An income payments order may be made only on an application instituted—

(a) by the trustee, and

(b) before the discharge of the bankrupt.”

(4) For subsection (6) substitute—

“(6) An income payments order must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of three years beginning with the date on which the order is made.

(6A) An income payments order may (subject to subsection (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).”

## 260 Income payments agreement

The following shall be inserted after section 310 of the Insolvency Act 1986 (c. 45) (income payments order)—

### “310A Income payments agreement

(1) In this section “income payments agreement” means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

(a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt’s income for a specified period, or

(b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

(2) A provision of an income payments agreement of a kind specified in subsection (1)(a) or (b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

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- (4) The following provisions of section 310 shall apply to an income payments agreement as they apply to an income payments order—
  - (a) subsection (5) (receipts to form part of estate), and
  - (b) subsections (7) to (9) (meaning of income).
- (5) An income payments agreement must specify the period during which it is to have effect; and that period—
  - (a) may end after the discharge of the bankrupt, but
  - (b) may not end after the period of three years beginning with the date on which the agreement is made.
- (6) An income payments agreement may (subject to subsection (5)(b)) be varied—
  - (a) by written agreement between the parties, or
  - (b) by the court on an application made by the bankrupt, the trustee or the official receiver.
- (7) The court—
  - (a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and
  - (b) shall grant an application to vary an income payments agreement if and to the extent that the court thinks variation necessary to avoid the effect mentioned in section 310(2).”

## 261 Bankrupt’s home

- (1) The following shall be inserted after section 283 of the Insolvency Act 1986 (definition of bankrupt’s estate)—

### “283A Bankrupt’s home ceasing to form part of estate

- (1) This section applies where property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
  - (a) the bankrupt,
  - (b) the bankrupt’s spouse, or
  - (c) a former spouse of the bankrupt.
- (2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall—
  - (a) cease to be comprised in the bankrupt’s estate, and
  - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (3) Subsection (2) shall not apply if during the period mentioned in that subsection—
  - (a) the trustee realises the interest mentioned in subsection (1),
  - (b) the trustee applies for an order for sale in respect of the dwelling-house,
  - (c) the trustee applies for an order for possession of the dwelling-house,
  - (d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or

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- (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.
- (4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application—
- (a) cease to be comprised in the bankrupt’s estate, and
  - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—
- (a) shall not begin with the date of the bankruptcy, but
  - (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt’s interest.
- (6) The court may substitute for the period of three years mentioned in subsection (2) a longer period—
- (a) in prescribed circumstances, and
  - (b) in such other circumstances as the court thinks appropriate.
- (7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).
- (8) The rules may also, in particular, make provision—
- (a) requiring or enabling the trustee of a bankrupt’s estate to give notice that this section applies or does not apply;
  - (b) about the effect of a notice under paragraph (a);
  - (c) requiring the trustee of a bankrupt’s estate to make an application to the Chief Land Registrar.
- (9) Rules under subsection (8)(b) may, in particular—
- (a) disapply this section;
  - (b) enable a court to disapply this section;
  - (c) make provision in consequence of a disapplication of this section;
  - (d) enable a court to make provision in consequence of a disapplication of this section;
  - (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”
- (2) Section 313 of the Insolvency Act 1986 (c. 45) (charge on bankrupt’s home) shall be amended as follows—
- (a) in subsection (2) for “, up to the value from time to time of the property secured,” substitute “, up to the charged value from time to time,”
  - (b) after subsection (2) insert—
- “(2A) In subsection (2) the charged value means—

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- (a) the amount specified in the charging order as the value of the bankrupt’s interest in the property at the date of the order, plus
- (b) interest on that amount from the date of the charging order at the prescribed rate.

(2B) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the rules.”,

and

- (c) at the end insert—

“(5) But an order under section 3(5) of that Act may not vary a charged value.”

- (3) The following shall be inserted after section 313 of that Act—

**“313A Low value home: application for sale, possession or charge**

- (1) This section applies where—

- (a) property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
  - (i) the bankrupt,
  - (ii) the bankrupt’s spouse, or
  - (iii) a former spouse of the bankrupt, and
- (b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.

- (2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.

- (3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2).”

- (4) The following shall be inserted after section 307(2)(a) of the Insolvency Act 1986 (c. 45) (after-acquired property: exclusions)—

“(aa) any property vesting in the bankrupt by virtue of section 283A in Chapter II.”.

- (5) In section 384(2) of that Act (prescribed amounts) after “section 273;” insert—

“section 313A;”.

- (6) In section 418(1) of that Act (monetary limits in bankruptcy) after the entry for section 273 insert—

“section 313A (value of property below which application for sale, possession or charge to be dismissed);”.

- (7) In subsection (8)—

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- (a) “pre-commencement bankrupt” means an individual who is adjudged bankrupt on a petition presented before subsection (1) above comes into force, and
  - (b) “the transitional period” is the period of three years beginning with the date on which subsection (1) above comes into force.
- (8) If a pre-commencement bankrupt’s estate includes an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of him, his spouse or a former spouse of his, at the end of the transitional period that interest shall—
- (a) cease to be comprised in the estate, and
  - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (9) But subsection (8) shall not apply if before or during the transitional period—
- (a) any of the events mentioned in section 283A(3) of the Insolvency Act 1986 (c. 45) (inserted by subsection (1) above) occurs in relation to the interest or the dwelling-house, or
  - (b) the trustee obtains any order of a court, or makes any agreement with the bankrupt, in respect of the interest or the dwelling-house.
- (10) Subsections 283A(4) to (9) of that Act shall have effect, with any necessary modifications, in relation to the provision made by subsections (7) to (9) above; in particular—
- (a) a reference to the period mentioned in section 283A(2) shall be construed as a reference to the transitional period,
  - (b) in the application of section 283A(5) a reference to the date of the bankruptcy shall be construed as a reference to the date on which subsection (1) above comes into force, and
  - (c) a reference to the rules is a reference to rules made under section 412 of the Insolvency Act 1986 (for which purpose this section shall be treated as forming part of Parts VIII to XI of that Act).

## **262 Powers of trustee in bankruptcy**

The following shall be inserted in Part I of Schedule 5 to the Insolvency Act 1986 (powers of trustee in bankruptcy: powers exercisable only with sanction) after paragraph 2—

“2A Power to bring legal proceedings under section 339, 340 or 423.”

## **263 Repeal of certain bankruptcy offences**

The following sections of the Insolvency Act 1986 shall cease to have effect—

- (a) section 361 (offence of failure to keep proper accounting records), and
- (b) section 362 (offence of gambling and speculation).

## **264 Individual voluntary arrangement**

- (1) Schedule 22 (which makes provision about individual voluntary arrangements) shall have effect.

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- (2) The Secretary of State may by order amend the Insolvency Act 1986 so as to extend the provisions of sections 263B to 263G (which are inserted by Schedule 22 and provide a fast-track procedure for making an individual voluntary arrangement) to some or all cases other than those specified in section 263A as inserted by Schedule 22.
- (3) An order under subsection (2)—
  - (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by each House of Parliament.
- (4) An order under subsection (2) may make—
  - (a) consequential provision (which may include provision amending the Insolvency Act 1986 or another enactment);
  - (b) transitional provision.

## **265 Disqualification from office: justice of the peace**

Section 65 of the Justices of the Peace Act 1997 (c. 25) (disqualification of bankrupt from appointment as justice of the peace) shall cease to have effect.

## **266 Disqualification from office: Parliament**

- (1) The following shall be inserted before section 427 of the Insolvency Act 1986 (c. 45) (the title to which becomes “Disqualification from Parliament (Scotland and Northern Ireland)”)—

### **“426A Disqualification from Parliament (England and Wales)**

- (1) A person in respect of whom a bankruptcy restrictions order has effect shall be disqualified—
  - (a) from membership of the House of Commons,
  - (b) from sitting or voting in the House of Lords, and
  - (c) from sitting or voting in a committee of the House of Lords or a joint committee of both Houses.
- (2) If a member of the House of Commons becomes disqualified under this section, his seat shall be vacated.
- (3) If a person who is disqualified under this section is returned as a member of the House of Commons, his return shall be void.
- (4) No writ of summons shall be issued to a member of the House of Lords who is disqualified under this section.
- (5) If a court makes a bankruptcy restrictions order or interim order in respect of a member of the House of Commons or the House of Lords the court shall notify the Speaker of that House.
- (6) If the Secretary of State accepts a bankruptcy restrictions undertaking made by a member of the House of Commons or the House of Lords, the Secretary of State shall notify the Speaker of that House.



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### 426B Devolution

- (1) If a court makes a bankruptcy restrictions order or interim order in respect of a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, the court shall notify the presiding officer of that body.
- (2) If the Secretary of State accepts a bankruptcy restrictions undertaking made by a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, the Secretary of State shall notify the presiding officer of that body.

### 426C Irrelevance of privilege

- (1) An enactment about insolvency applies in relation to a member of the House of Commons or the House of Lords irrespective of any Parliamentary privilege.
- (2) In this section “enactment” includes a provision made by or under—
  - (a) an Act of the Scottish Parliament, or
  - (b) Northern Ireland legislation.”
- (2) In section 427 of the Insolvency Act 1986 the following shall cease to have effect—
  - (a) in subsection (1), the words “England and Wales or”, and
  - (b) subsection (7).
- (3) The Secretary of State may by order—
  - (a) provide for section 426A or 426B of that Act (as inserted by subsection (1) above) to have effect in relation to orders made or undertakings accepted in Scotland or Northern Ireland under a system which appears to the Secretary of State to be equivalent to the system operating under Schedule 4A to that Act (as inserted by section 257 of this Act);
  - (b) make consequential amendment of section 426A or 426B of that Act (as inserted by subsection (1) above);
  - (c) make other consequential amendment of an enactment.
- (4) An order under this section may make transitional, consequential or incidental provision.
- (5) An order under this section—
  - (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### 267 Disqualification from office: local government

- (1) The following shall be substituted for section 80(1)(b) of the Local Government Act 1972 (c. 70) (disqualification for membership of local authority: bankrupt)—
 

“(b) is the subject of a bankruptcy restrictions order or interim order;”.
- (2) Section 81(1) and (2) of that Act (which amplify the provision substituted by subsection (1) above) shall cease to have effect.

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## **268 Disqualification from office: general**

- (1) The Secretary of State may make an order under this section in relation to a disqualification provision.
- (2) A “disqualification provision” is a provision which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a bankrupt or a class of bankrupts from—
  - (a) being elected or appointed to an office or position,
  - (b) holding an office or position, or
  - (c) becoming or remaining a member of a body or group.
- (3) In subsection (2) the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables him to be dismissed.
- (4) An order under subsection (1) may repeal or revoke the disqualification provision.
- (5) An order under subsection (1) may amend, or modify the effect of, the disqualification provision—
  - (a) so as to reduce the class of bankrupts to whom the disqualification provision applies;
  - (b) so as to extend the disqualification provision to some or all individuals who are subject to a bankruptcy restrictions regime;
  - (c) so that the disqualification provision applies only to some or all individuals who are subject to a bankruptcy restrictions regime;
  - (d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.
- (6) An order by virtue of subsection (5)(d) may provide for a discretion to be subject to—
  - (a) the approval of a specified person or body;
  - (b) appeal to a specified person or body.
- (7) An order by virtue of subsection (5)(d) made with the concurrence of the Lord Chancellor may provide for a discretion to be subject to appeal to a specified court or tribunal.
- (8) The Secretary of State may specify himself for the purposes of subsection (5)(d) or (6)(a) or (b).
- (9) In this section “bankrupt” means an individual—
  - (a) who has been adjudged bankrupt by a court in England and Wales or in Northern Ireland,
  - (b) whose estate has been sequestrated by a court in Scotland, or
  - (c) who has made an agreement with creditors of his for a composition of debts, for a scheme of arrangement of affairs, for the grant of a trust deed or for some other kind of settlement or arrangement.
- (10) In this section “bankruptcy restrictions regime” means an order or undertaking—
  - (a) under Schedule 4A to the Insolvency Act 1986 (c. 45) (bankruptcy restrictions orders), or
  - (b) under any system operating in Scotland or Northern Ireland which appears to the Secretary of State to be equivalent to the system operating under that Schedule.

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- (11) In this section—
- “body” includes Parliament and any other legislative body, and
- “provision” means—
- (a) a provision made by an Act of Parliament passed before or in the same Session as this Act, and
  - (b) a provision made, before or in the same Session as this Act, under an Act of Parliament.
- (12) An order under this section—
- (a) may make provision generally or for a specified purpose only,
  - (b) may make different provision for different purposes, and
  - (c) may make transitional, consequential or incidental provision.
- (13) An order under this section—
- (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (14) A reference in this section to the Secretary of State shall be treated as a reference to the National Assembly for Wales in so far as it relates to a disqualification provision which—
- (a) is made by the National Assembly for Wales, or
  - (b) relates to a function of the National Assembly.
- (15) Provision made by virtue of subsection (7) is subject to any order of the Lord Chancellor under section 56(1) of the Access to Justice Act 1999 (c. 22) (appeals: jurisdiction).

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

- C4** S. 268 applied (with modifications) (1.4.2004) by [Local Government Act 2003 \(c. 26\)](#), ss. 109(5), 129, [Sch. 4 para. 25](#); [S.I. 2003/2938](#), [art. 6\(a\)](#) (subject to transitional provisions and savings in [art. 8](#), [Sch.](#))
- C5** S. 268 extended (with modifications) (1.4.2005) by [Human Tissue Act 2004 \(c. 30\)](#), ss. 56, 60, [Sch. 6 para. 6](#); [S.I. 2005/919](#), [art. 3](#), [Sch.](#) (with transitional provisions in [art. 2](#))

**269 Minor and consequential amendments**

Schedule 23 (minor and consequential amendments relating to individual insolvency) shall have effect.

*Money*

**270 Fees**

- (1) The following shall be inserted after section 415 of the Insolvency Act 1986 (c. 45) (fees orders: individual insolvency)—

**“415A Fees orders (general)**

- (1) The Secretary of State—

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- (a) may by order require a body to pay a fee in connection with the grant or maintenance of recognition of the body under section 391, and
  - (b) may refuse recognition, or revoke an order of recognition under section 391(1) by a further order, where a fee is not paid.
- (2) The Secretary of State—
- (a) may by order require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under section 393, and
  - (b) may disregard an application or withdraw an authorisation where a fee is not paid.
- (3) The Secretary of State may by order require the payment of fees in respect of—
- (a) the operation of the Insolvency Services Account;
  - (b) payments into and out of that Account.
- (4) The following provisions of section 414 apply to fees under this section as they apply to fees under that section—
- (a) subsection (3) (manner of payment),
  - (b) subsection (5) (additional provision),
  - (c) subsection (6) (statutory instrument),
  - (d) subsection (7) (payment into Consolidated Fund), and
  - (e) subsection (9) (saving for rules of court).”
- (2) An order made by virtue of subsection (1) may relate to the maintenance of recognition or authorisation granted before this section comes into force.
- (3) At the end of section 392 of the Insolvency Act 1986 (c. 45) (authorisation of insolvency practitioner) there shall be added—
- “(9) Subsection (3)(c) shall not have effect in respect of an application made to the Secretary of State (but this subsection is without prejudice to section 415A).”
- (4) In section 440(2)(c) of that Act (provisions not extending to Scotland) after “415,” there shall be inserted “ 415A(3), ”.

#### Commencement Information

**I2** S. 270 wholly in force at 1.4.2004; s. 270 not in force at Royal Assent see s. 279; s. 270(1)(2)(4) in force at 18.12.2003 by S.I. 2003/3340, art. 3, s. 270(3) in force at 1.4.2004 by S.I. 2003/2093, art. 2(2), Sch. 2 (as amended by S.I. 2003/3340, art. 2(2))

### 271 Insolvency Services Account: interest

- (1) The following shall be inserted after paragraph 16 of Schedule 8 to the Insolvency Act 1986 (company insolvency rules: money)—
- “16A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.”
- (2) The following shall be inserted after paragraph 21 of Schedule 9 to the Insolvency Act 1986 (individual insolvency rules: money)—

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“21A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.”

## **272 Insolvency Services Accounts**

- (1) Section 405 of the Insolvency Act 1986 (operation of Investment Account) shall cease to have effect.
- (2) The following shall be substituted for section 408 of that Act (recourse to Consolidated Fund)—

### **“408 Adjustment of balances**

- (1) The Treasury may direct the payment out of the Consolidated Fund of sums into—
  - (a) the Insolvency Services Account;
  - (b) the Investment Account.
- (2) The Treasury shall certify to the House of Commons the reason for any payment under subsection (1).
- (3) The Secretary of State may pay sums out of the Insolvency Services Account into the Consolidated Fund.
- (4) The National Debt Commissioners may pay sums out of the Investment Account into the Consolidated Fund.”

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