

# ENTERPRISE AND REGULATORY REFORM ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Reduction of Legislative Burdens**

##### **Adjudicators**

##### Summary and Background

481. **Section 71** primarily makes provision amending Parts 9 and 14 of the Insolvency Act 1986 (“IA 1986”). Part 9 provides the legislative framework for bankruptcy proceedings in England and Wales. The purpose of the amendments is to reform the debtor bankruptcy petition procedure for obtaining a bankruptcy order under the IA 1986 by transferring the procedure from the civil court system to a new administrative system. The reforms are intended to free up court resources to deal with matters which do require judicial input, and to improve the accessibility of bankruptcy by facilitating the introduction of a flexible, electronic application process for debtors.

##### ***Section 71 and Schedules 18 and 19: Adjudicators: bankruptcy applications by debtors and bankruptcy orders***

482. The IA 1986 currently makes provision for debtors to petition the court to be made bankrupt. *Subsection (1)* of section 71 inserts new section 398A into Part 14 of the IA 1986, and through *subsection (2)* and Schedule 18 inserts a new Chapter A1 (comprising new sections 263H to 263O) into Part 9 of the 1986 Act. *Subsection (3)* introduces Schedule 19 which makes minor and consequential amendments to the IA 1986. These amendments provide that debtors who wish to be made bankrupt must apply to an adjudicator for a bankruptcy order. A debtor will no longer be able to petition the court for such an order.

483. New section 398A of the IA 1986 provides for the Secretary of State to appoint persons to the new office of adjudicator.

484. New sections 263H to 263J of the IA 1986 provide that a debtor may apply to an adjudicator to be made bankrupt on the ground that he or she is unable to pay his or her debts, provided that other specified conditions are met. An application will not be regarded as having been made until any fee or deposit that is required by an order made under section 415 of the IA 1986 has been properly paid.

485. New section 263I sets out the jurisdiction requirements to be met by a debtor when making a bankruptcy application to the adjudicator. These are unchanged from the current requirements that apply in relation to debtor and creditor bankruptcy petitions under section 265 of the IA 1986. However, the drafting of the jurisdiction requirements in new section 263I is intended to make the requirements more easily understood by users of the legislation; and to better reflect the practical application of this provision in the light of European law. Paragraph 7 of Schedule 19 makes a consequential

amendment to section 265 of the IA 1986 to narrow the scope of this section so that it applies to creditor bankruptcy petitions only and to adopt the approach taken in new section 263I. This will avoid any possible confusion arising out of having two sections with different drafting that purport to have an identical effect. It will ensure that both creditor bankruptcy petitions and debtor bankruptcy applications will be subject to exactly the same, unchanged, jurisdiction requirements.

486. New section 263K provides that where the specified conditions are met, the adjudicator must make a bankruptcy order. A bankruptcy application must be refused by the adjudicator if the conditions are not met. The form and content of the application will be prescribed in Rules made under section 412 of the IA 1986 (“the Rules”). Paragraph 65 of Schedule 19 amends Schedule 9 to the IA 1986 to provide powers to make such provision, and provision about the practice and procedure of adjudicators generally. Under *subsection (4)* an adjudicator must determine a bankruptcy application within a time period that will be prescribed in the Rules.
487. New section 263L(1) to (3) permits an adjudicator to request further information from the debtor provided it is necessary for the purposes of determining whether a bankruptcy order must be made. Subsection (4) provides that the Rules may make provision for the adjudicator to request information from a third party. The Government’s intention is to use this provision to require an adjudicator to undertake checks with a credit reference agency for the purpose of verifying information contained in the bankruptcy application.
488. New section 263M sets out what an adjudicator must do when making a bankruptcy order. *Subsection (2)* provides that bankruptcy orders made by an adjudicator must be made in the form prescribed in the Rules.
489. Where a bankruptcy application is refused, new section 263N provides the debtor with the right to request a review of the adjudicator’s decision before the end of the time period prescribed in the Rules. Where the review upholds the decision to refuse to make a bankruptcy order, the debtor has a right of appeal to the court. In the event that the appeal is successful, the court will have the power to make a bankruptcy order. The court will retain general jurisdiction over bankruptcy proceedings after a bankruptcy order has been made by an adjudicator under the IA 1986.
490. New section 263O creates two offences relating to the provision of information to adjudicators. Paragraph 66 of Schedule 19 amends Schedule 10 to the IA 1986 to provide for the maximum punishments for these offences. Section 432 of the IA 1986 (offences by bodies corporate) will apply to an offence under section 263O.
491. Beyond the amendments already mentioned, Schedule 19 makes minor and consequential amendments to the IA 1986. In particular, Chapter 1 of Part 9 is amended to remove provision relating to debtor bankruptcy petitions, and the appointment by the court of insolvency practitioners in relation to such petitions. There will be no equivalent in respect of applications to an adjudicator.
492. Paragraphs 20, 21, 23 and 24 of Schedule 19 amend sections 293, 295, 298 and 299 of the IA 1986 to provide that certain documents relating to the appointment, removal and release of trustees, currently filed with the court, must instead be filed with the persons prescribed in the Rules. That is likely to continue to be the court in creditor initiated bankruptcies and could, for example, be the Official Receiver, Adjudicator, Secretary of State or the court in debtor initiated bankruptcies. The purpose of these amendments is to enable the Government to modernise and make more efficient all of the filing and document inspection processes that govern bankruptcies.
493. Paragraph 59 of Schedule 19 amends section 415 of the IA 1986 to provide that a fees order made under that section may make different provision for different purposes, including by reference to the manner or form by which proceedings are commenced. The purpose of this amendment is to provide the Lord Chancellor with some flexibility

*These notes refer to the Enterprise and Regulatory Reform Act  
2013 (c.24) which received Royal Assent on 25 April 2013*

in fixing fees so as to take account of more cost-efficient ways of submitting, processing and determining applications.

494. Paragraph 65(4) of Schedule 19 inserts new paragraphs 24A to 24D into Schedule 9 to the 1986 Act. Schedule 9 sets out the provision which may be included in the Rules. New paragraphs 24A, 24C and 24D provide powers to make provision about the responsibility of specified persons (namely, the adjudicator, the official receiver and persons prescribed under sections 293, 295, 298 or 299 of the IA 1986) to keep files and records relating to bankruptcy applications, and to allow for the inspection of such by prescribed persons. New paragraph 24B provides a power to require an adjudicator to make returns to the Secretary of State of the adjudicator's business under Part 9 of the IA 1986.
495. Provision for such other consequential and transitional amendments as may be necessary will be made using the powers contained in sections 99 (consequential amendments, repeals and revocations) and 100 (transitional, transitory or saving provision).