

SCHEDULES

SCHEDULE 19

Section 71(3)

ADJUDICATORS: MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 The Insolvency Act 1986 is amended in accordance with this Schedule.
- 2 In section 253 (application for interim order), omit subsection (5).
- 3 In section 255 (cases in which interim order can be made), in subsection (1)(b) for “petition for his own bankruptcy” substitute “make a bankruptcy application”.
- 4 (1) Section 256A (debtor’s proposal and nominee’s report) is amended as follows.
 - (2) In subsection (1) omit the words from “unless” to the end.
 - (3) In subsection (3) for “petition for his own bankruptcy” substitute “make a bankruptcy application”.
- 5 For the heading to Chapter 1 of Part 9 substitute “The court: bankruptcy petitions and bankruptcy orders”.
- 6 In section 264 (who may present a bankruptcy petition), in subsection (1) omit paragraph (b).
- 7 For section 265 (conditions to be satisfied in respect of debtor) substitute—

“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.”

8 In section 266 (bankruptcy petitions: other preliminary conditions), in subsection (4) omit “, (b)”.

9 (1) Sections 272 to 274A (and the cross-heading immediately preceding those sections) (debtor’s petition) are repealed.

(2) In consequence of the repeal of section 274A by sub-paragraph (1), omit paragraph 3 of Schedule 20 to the Tribunals, Courts and Enforcement Act 2007 (debt relief orders: consequential amendments).

10 For the cross-heading immediately before section 278 substitute—
“CHAPTER 1A

Commencement and duration of bankruptcy”.

11 In section 278 (commencement and continuance), in paragraph (b) (discharge of bankruptcy order) omit “the following provisions of”.

12 In section 279 (duration of bankruptcy), in subsection (6) for “adjudged” substitute “made”.

13 In section 282 (court’s power to annul bankruptcy order), in subsection (2)—

(a) omit “, (b)”,

(b) after “section 264(1)” insert “or on a bankruptcy application”, and

(c) in paragraph (a) after “pending” insert “or the application was ongoing”.

14 In section 283 (definition of bankrupt’s estate), in subsection (5)(a) for “adjudged” substitute “made”.

15 (1) Section 284 (restrictions on dispositions of property) is amended as follows.

(2) In subsection (1) for “adjudged” substitute “made”.

(3) In subsection (3) for “presentation of the petition for the bankruptcy order” substitute “making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition”.

(4) In subsection (4), in paragraph (a) before “petition” insert “bankruptcy application had been made or (as the case may be) that the bankruptcy”.

16 (1) Section 285 (restriction on proceedings and remedies) is amended as follows.

(2) In subsection (1)—

(a) after “when” insert “proceedings on a bankruptcy application are ongoing or”, and

(b) for “adjudged” substitute “made”.

(3) In subsection (2) after “proof that” insert “a bankruptcy application has been made or”.

17 (1) Section 286 (power to appoint interim receiver) is amended as follows.

(2) Omit subsection (2).

(3) In subsection (8), for “adjudged” substitute “made”.

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- 18 In section 288 (statement of affairs), in subsection (1) for “debtor’s petition” substitute “bankruptcy application”.
- 19 In section 290 (public examination of bankrupt), in subsection (4)(a) for “adjudged” substitute “made”.
- 20 In section 293 (summoning of meeting to appoint first trustee), in subsections (2) and (3) for “court” substitute “prescribed person”.
- 21 In section 295 (failure of meeting to appoint trustee), in subsection (3) for “court” substitute “prescribed person”.
- 22 (1) Section 297 (appointment of trustee of bankrupt’s estate: special cases) is amended as follows.
- (2) Omit subsection (4).
- (3) In subsection (6) omit “(4) or”.
- 23 In section 298 (removal of trustee and vacation of office), in subsections (7) and (8) for “court” substitute “prescribed person”.
- 24 (1) Section 299 (release of trustee) is amended as follows.
- (2) In subsection (1)(a) for “to the court” substitute “under this paragraph to the prescribed person”.
- (3) In subsection (3)(a) for “court” substitute “prescribed person”.
- 25 (1) Section 320 (court order vesting disclaimed property) is amended as follows.
- (2) In subsection (2)(c) before “bankruptcy” insert “bankruptcy application was made or (as the case may be) the”.
- (3) In subsection (3)(c) before “bankruptcy” insert “bankruptcy application was made or (as the case may be) the”.
- 26 In section 321 (orders under section 320 in respect of leaseholds), in subsection (1) (a) before “bankruptcy” insert “bankruptcy application was made or (as the case may be) the”.
- 27 In section 323 (mutual credit and set-off), in subsection (3) before “a bankruptcy” insert “proceedings on a bankruptcy application relating to the bankrupt were ongoing or that”.
- 28 In section 334 (stay of distribution in case of second bankruptcy), in subsection (2) before “presentation of the petition” insert “making of the application or (as the case may be) the”.
- 29 (1) Section 336 (rights of occupation etc of bankrupt’s spouse or civil partner) is amended as follows.
- (2) In subsection (1) for “presentation of the petition for the bankruptcy order” substitute “making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition”.
- (3) In subsection (2) for “adjudged” substitute “made”.
- 30 In section 337 (rights of occupation of bankrupt), in subsection (1)—
- (a) in paragraph (a) for “adjudged” substitute “made”, and

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- (b) in paragraph (b) before “bankruptcy petition” insert “bankruptcy application was made or (as the case may be) the”.
- 31 In section 339 (transactions at an undervalue), in subsection (1) for “adjudged” substitute “made”.
- 32 In section 340 (preferences), in subsection (1) for “adjudged” substitute “made”.
- 33 In section 341 (meaning of “relevant time” under sections 339 and 340), in subsection (1)(a) for “presentation of the bankruptcy petition on which the individual is adjudged” substitute “making of the bankruptcy application as a result of which, or (as the case may be) the presentation of the bankruptcy petition on which, the individual is made”.
- 34 (1) Section 342 (orders under sections 339 and 340) is amended as follows.
- (2) In subsection (1) for “adjudged” substitute “made”.
- (3) In subsection (5)—
- (a) for paragraph (a) substitute—
- “(a) of the fact that the bankruptcy application as a result of which, or (as the case may be) the bankruptcy petition on which, the individual in question is made bankrupt has been made or presented; or”, and
- (b) in paragraph (b) for “adjudged” substitute “made”.
- 35 In section 342A (recovery of excessive pension contributions), in subsection (1) for “adjudged” substitute “made”.
- 36 In section 343 (extortionate credit transactions), in subsection (1) for “adjudged” substitute “made”.
- 37 (1) Section 344 (avoidance of general assignment of book debts) is amended as follows.
- (2) In subsection (1) for “adjudged” substitute “made”.
- (3) In subsection (2) before “presentation” insert “making of the bankruptcy application or (as the case may be) the”.
- 38 In section 345 (contracts to which bankrupt is a party), in subsection (1) for “adjudged” substitute “made”.
- 39 (1) Section 346 (enforcement procedures) is amended as follows.
- (2) In subsections (1) and (2) for “adjudged” substitute “made”.
- (3) In subsection (3)—
- (a) in paragraph (b) before “bankruptcy” insert “bankruptcy application has been made or a”, and
- (b) in paragraph (c) before “on that petition” insert “as a result of that application or”.
- (4) In subsection (4)(a) after “while” insert “proceedings on a bankruptcy application are ongoing or (as the case may be)”.
- 40 (1) Section 347 (distress, etc) is amended as follows.
- (2) In subsection (2)—
- (a) after “individual to whom” insert “a bankruptcy application or”, and

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- (b) before “on that petition” insert “as a result of that application or”.
- (3) In subsection (3) for “adjudged” substitute “made”.
- 41 In section 348 (apprenticeships, etc), in subsection (1)(a) for “petition on which the order was made” substitute “application for the order was made or (as the case may be) the petition for the order”.
- 42 In section 350 (application of Chapter 6 of Part 9: bankruptcy offences), in subsection (1) after “applies” insert “—
- (a) where an adjudicator has made a bankruptcy order as a result of a bankruptcy application, or
- (b)”.
- 43 (1) Section 351 (definitions for the purposes of Chapter 6 of Part 9) is amended as follows.
- (2) In paragraph (b) before “presentation” insert “making of the bankruptcy application or (as the case may be) the”.
- (3) Omit paragraph (c), and the preceding “and”.
- 44 (1) Section 354 (concealment of property) is amended as follows.
- (2) In subsection (1)(c) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- (3) In subsection (3)(a) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 45 (1) Section 355 (concealment of books and papers; falsification) is amended as follows.
- (2) In subsection (2)(d) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- (3) In subsection (3)(b) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 46 In section 356 (false statements), in subsection (2)(c) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 47 In section 358 (absconding), in paragraph (b) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 48 (1) Section 359 (fraudulent dealing with property obtained on credit) is amended as follows.
- (2) In subsection (1) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- (3) In subsection (2) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 49 In section 360 (obtaining credit and engaging in business), in subsection (1)(b) for “adjudged” substitute “made”.
- 50 (1) Section 364 (power of arrest) is amended as follows.
- (2) In subsection (1)(a) after “to whom a” insert “bankruptcy application or a”.

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- (3) In subsection (2) before “presentation” insert “making of the bankruptcy application or the”.
- 51 In section 376 (time limits), after “anything” insert “(including anything in relation to a bankruptcy application)”.
- 52 (1) Section 381 (definition of “bankrupt” and associated terminology) is amended as follows.
- (2) In subsection (1) for “adjudged” (in both places where it occurs) substitute “made”.
- (3) After subsection (1) insert—
- “(1A) Bankruptcy application” means an application to an adjudicator for a bankruptcy order.”
- (4) In subsection (2) for “adjudging” substitute “making”.
- 53 In section 383 (definition of “creditor” etc.), in subsection (1)(b)—
- (a) after “to whom a” insert “bankruptcy application or”, and
- (b) after “that” insert “application or”.
- 54 In section 384 (definitions of “prescribed” and “the rules”), in subsection (1) omit “section 273;”.
- 55 In section 385 (miscellaneous definitions), in subsection (1)—
- (a) before the definition of “the court” insert—
- ““adjudicator” means a person appointed by the Secretary of State under section 398A;”,
- (b) in the definition of “the debtor”, in paragraph (b)—
- (i) before “bankruptcy petition” insert “bankruptcy application or a”, and
- (ii) after “to whom the” insert “application or”,
- (c) omit the definition of “debtor’s petition”, and
- (d) before the definition of “dwelling house” insert—
- “determination period” has the meaning given in section 263K(4);”.
- 56 In section 387 (meaning of “the relevant date”), in subsection (6)(a) after “after” insert “the making of the bankruptcy application or (as the case may be)”.
- 57 In section 389A (authorisation of nominees and supervisors), in subsection (3)(a) for “adjudged” substitute “made”.
- 58 In section 390 (persons not qualified to act as insolvency practitioners), in subsection (4)(a) for “adjudged” substitute “made”.
- 59 (1) Section 415 (fees orders) is amended as follows.
- (2) In subsection (1)—
- (a) after paragraph (a) omit “and”, and
- (b) at the end of paragraph (b) insert “and
- (c) the performance by an adjudicator of functions under Part 9 of this Act,”.
- (3) After subsection (1) insert—

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- “(1A) An order under subsection (1) may make different provision for different purposes, including by reference to the manner or form in which proceedings are commenced.”
- 60 In section 421A (insolvent estates: joint tenancies), in subsection (9) in the definition of “value lost to the estate”, for “adjudged” substitute “made”.
- 61 In section 424 (who may apply for an order under section 423 in respect of transactions entered into at an undervalue), in subsection (1)(a) for “adjudged” substitute “made”.
- 62 In Schedule 4ZA (conditions for making a debt relief order), for paragraph 3 substitute—
- “3 A bankruptcy application under Part 9—
- (a) has not been made before the determination date; or
- (b) has been so made, but proceedings on the application have been finally disposed of before that date.”
- 63 (1) In Schedule 4A (bankruptcy restrictions orders), paragraph 2 is amended as follows.
- (2) In sub-paragraph (2)—
- (a) in paragraph (a), for the words from “petition” to the end substitute “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition and ending with the date of the application for the bankruptcy restrictions order”, and
- (b) in paragraph (j), for “presentation of the petition” substitute “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition”.
- (3) In sub-paragraph (4) omit the definition of “before petition”.
- 64 In Schedule 6 (categories of preferential debts), in paragraph 14(1) for “adjudged” substitute “made”.
- 65 (1) Schedule 9 (provisions capable of inclusion in individual insolvency rules) is amended as follows.
- (2) After paragraph 4 insert—
- “Adjudicators*
- 4A Provision for regulating the practice and procedure of adjudicators in the discharge of functions for the purposes of Part 9 of this Act.
- 4B Provision about the form and content of a bankruptcy application (including an application for a review of an adjudicator’s determination).”
- (3) After paragraph 4B (as inserted by sub-paragraph (2)) insert—
- “Appeals against determinations by adjudicators*
- 4C Provision about the making and determining of appeals to the court against a determination by an adjudicator, including provision—
- (a) enabling the court to make a bankruptcy order on such an appeal, and

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(b) about where such appeals lie.”

(4) After paragraph 24 insert—

“24A Provision requiring adjudicators—

- (a) to keep files and other records relating to bankruptcy applications and bankruptcies resulting from bankruptcy applications,
- (b) to make files and records available for inspection by persons of a prescribed description, and
- (c) to provide files and records, or copies of them, to persons of a prescribed description.

24B Provision requiring an adjudicator to make returns to the Secretary of State of the adjudicator’s business under Part 9 of this Act.

24C Provision requiring official receivers—

- (a) to keep files and other records relating to bankruptcy applications and bankruptcies resulting from bankruptcy applications, and
- (b) to make files and records available for inspection by persons of a prescribed description.

24D Provision requiring a person to whom notice is given under section 293(2), 295(3), 298(7) or (8) or section 299(1)(a) or (3)(a)—

- (a) to keep files and other records of notices given under the section in question, and
- (b) to make files and records available for inspection by persons of a prescribed description.”

66 (1) In the Table in Schedule 10 (punishment of offences), insert the following entry after the entry relating to section 262A(1)—

“2630	False representations or omissions in connection with a bankruptcy application.	1. On indictment 2. Summary	1. 7 years or a fine, or both. 2. 12 months or the statutory maximum, or both.”
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(2) In the application of the entry inserted by sub-paragraph (1) in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (limit on magistrates’ court powers to impose imprisonment), the reference in the fourth column to “12 months” is to be read as a reference to “6 months”.