



# Insolvency Act 1986

## 1986 CHAPTER 45

The Second Group of Parts Insolvency of Individuals ; Bankruptcy

### PART IX

#### BANKRUPTCY

#### CHAPTER I

##### BANKRUPTCY PETITIONS ; BANKRUPTCY ORDERS

##### *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,
  - (b) by the individual himself,
  - (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
  - (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 Powers of Criminal Courts Act 1973.
- (2) Subject to those provisions, the court may make a bankruptcy order on any such petition.

#### **265 Conditions to be satisfied in respect of debtor**

- (1) A bankruptcy petition shall not be presented to the court under section 264(1)(a) or (b) unless the debtor—

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- (a) is domiciled in England and Wales,
  - (b) is personally present in England and Wales on the day on which the petition is presented, or
  - (c) at any time in the period of 3 years ending with that day—
    - (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.
- (2) The reference in subsection (1)(c) to an individual carrying on business includes—
- (a) the carrying on of business by a firm or partnership of which the individual is a member, and
  - (b) the carrying on of business by an agent or manager for the individual or for such a firm or partnership.

## **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- (2) A bankruptcy petition shall not be withdrawn without the leave of the court.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), (b) 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.

### *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.
- (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

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- (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.
- (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 £750; 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.

## **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 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.

## **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.

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## **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.

## **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.

### *Debtor's petition*

## **272 Grounds of debtor's petition**

- (1) A debtor's petition may be presented to the court only on the grounds that the debtor is unable to pay his debts.
- (2) The petition shall be accompanied by a statement of the debtor's affairs containing—
  - (a) such particulars of the debtor's creditors and of his debts and other liabilities and of his assets as may be prescribed, and
  - (b) such other information as may be prescribed.

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### **273 Appointment of insolvency practitioner by the court**

- (1) Subject to the next section, on the hearing of a debtor's petition the court shall not make a bankruptcy order if it appears to the court—
- (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts, so far as unsecured, would be less than the small bankruptcies level,
  - (b) that if a bankruptcy order were made, the value of the bankrupt's estate would be equal to or more than the minimum amount,
  - (c) that within the period of 5 years ending with the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, and
  - (d) that it would be appropriate to appoint a person to prepare a report under section 274.

" The minimum amount" and " the small bankruptcies level " mean such amounts as may for the time being be prescribed for the purposes of this section.

- (2) Where on the hearing of the petition, it appears to the court as mentioned in subsection (1), the court shall appoint a person who is qualified to act as an insolvency practitioner in relation to the debtor—
- (a) to prepare a report under the next section, and
  - (b) subject to section 258(3) in Part VIII, to act in relation to any voluntary arrangement to which the report relates either as trustee or otherwise for the purpose of supervising its implementation.

### **274 Action on report of insolvency practitioner**

- (1) A person appointed under section 273 shall inquire into the debtor's affairs and, within such period as the court may direct, shall submit a report to the court stating whether the debtor is willing, for the purposes of Part VIII, to make a proposal for a voluntary arrangement.
- (2) A report which states that the debtor is willing as above mentioned shall also state—
- (a) whether, in the opinion of the person making the report, a meeting of the debtor's creditors should be summoned to consider the proposal, and
  - (b) if in that person's opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (3) On considering a report under this section the court may—
- (a) without any application, make an interim order under section 252, if it thinks that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal, or
  - (b) if it thinks it would be inappropriate to make such an order, make a bankruptcy order.
- (4) An interim order made by virtue of this section ceases to have effect at the end of such period as the court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the applicable provisions of Part VIII.
- (5) Where it has been reported to the court under this section that a meeting of the debtor's creditors should be summoned, the person making the report shall, unless the court

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otherwise directs, summon that meeting for the time, date and place proposed in his report.

The meeting is then deemed to have been summoned under section 257 in Part VIII, and subsections (2) and (3) of that section, and sections 258 to 263 apply accordingly.

## **275 Summary administration**

- (1) Where on the hearing of a debtor's petition the court makes a bankruptcy order and the case is as specified in the next subsection, the court shall, if it appears to it appropriate to do so, issue a certificate for the summary administration of the bankrupt's estate.
- (2) That case is where it appears to the court—
  - (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts so far as unsecured would be less than the small bankruptcies level (within the meaning given by section 273), and
  - (b) that within the period of 5 years ending with the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, whether the bankruptcy order is made because it does not appear to the court as mentioned in section 273(1)(b) or (d), or it is made because the court thinks it would be inappropriate to make an interim order under section 252.
- (3) The court may at any time revoke a certificate issued under this section if it appears to it that, on any grounds existing at the time the certificate was issued, the certificate ought not to have been issued.

### *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 at or in connection with a meeting summoned 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.

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## **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 House of Lords is pending within the meaning of section 40(5) of the Powers of Criminal Courts Act 1973.

*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.

## **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.
- (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.

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- (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.
- (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, being damages in respect of personal injuries to any person, or
  - (b) arises under any order made in family proceedings or in domestic proceedings.
- (6) Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.



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- (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—
- " domestic proceedings " means domestic proceedings within the meaning of the 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);
  - " family proceedings " means the same as in Part V of the 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.

## **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.
- (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
  - (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;

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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.

## CHAPTER II

### PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS

#### 283 Definition of bankrupt's estate

- (1) Subject as follows, a bankrupt's estate for the purposes of any of this Group of Parts comprises—
- (a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, and
  - (b) any property which by virtue of any of the following provisions of this Part is comprised in that estate or is treated as falling within the preceding paragraph.
- (2) Subsection (1) does not apply to—
- (a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation ;
  - (b) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family.
- This subsection is subject to section 308 in Chapter IV (certain excluded property reclaimable by trustee).
- (3) Subsection (1) does not apply to—
- (a) property held by the bankrupt on trust for any other person, or
  - (b) the right of nomination to a vacant ecclesiastical benefice.
- (4) References in any of this Group of Parts to property, in relation to a bankrupt, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the bankrupt's estate and—
- (a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under section 299(2) in Chapter III or a meeting summoned by the trustee of that estate under section 331 in Chapter IV has been held, or
  - (b) cannot be so exercised for the benefit of the bankrupt;
- and a power exercisable over or in respect of property is deemed for the purposes of any of this Group of Parts to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).
- (5) For the purposes of any such provision in this Group of Parts, property comprised in a bankrupt's estate is so comprised subject to the rights of any person other than

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the bankrupt (whether as a secured creditor of the bankrupt or otherwise) in relation thereto, but disregarding—

- (a) any rights in relation to which a statement such as is required by section 269(1) (a) was made in the petition on which the bankrupt was adjudged bankrupt, and
  - (b) any rights which have been otherwise given up in accordance with the rules.
- (6) This section has effect subject to the provisions of any enactment not contained in this Act under which any property is to be excluded from a bankrupt's estate.

## **284 Restrictions on dispositions of property**

- (1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.
- (2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate.
- (3) This section applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Chapter IV of this Part, of the bankrupt's estate in a trustee.
- (4) The preceding provisions of this section do not give a remedy against any person—
  - (a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented, or
  - (b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.
- (5) Where after the commencement of his bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this section, that debt is deemed for the purposes of any of this Group of Parts to have been incurred before the commencement of the bankruptcy unless—
  - (a) that banker or person had notice of the bankruptcy before the debt was incurred, or
  - (b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.
- (6) A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this section affects any disposition made by a person of property held by him on trust for any other person.

## **285 Restriction on proceedings and remedies**

- (1) At any time when proceedings on a bankruptcy petition are pending or an individual has been adjudged bankrupt the court may stay any action, execution or other legal process against the property or person of the debtor or, as the case may be, of the bankrupt.
- (2) Any court in which proceedings are pending against any individual may, on proof that a bankruptcy petition has been presented in respect of that individual or that he is an

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undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit.

- (3) After the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall—
- (a) have any remedy against the property or person of the bankrupt in respect of that debt, or
  - (b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the court and on such terms as the court may impose.

This is subject to sections 346 (enforcement procedures) and 347 (limited right to distress).

- (4) Subject as follows, subsection (3) does not affect the right of a secured creditor of the bankrupt to enforce his security.
- (5) Where any goods of an undischarged bankrupt are held by any person by way of pledge, pawn or other security, the official receiver may, after giving notice in writing of his intention to do so, inspect the goods.

Where such a notice has been given to any person, that person is not entitled, without leave of the court, to realise his security unless he has given the trustee of the bankrupt's estate a reasonable opportunity of inspecting the goods and of exercising the bankrupt's right of redemption.

- (6) References in this section to the property or goods of the bankrupt are to any of his property or goods, whether or not comprised in his estate.

## **286 Power to appoint interim receiver**

- (1) The court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver to be interim receiver of the debtor's property.
- (2) Where the court has, on a debtor's petition, appointed an insolvency practitioner under section 273 and it is shown to the court as mentioned in subsection (1) of this section, the court may, without making a bankruptcy order, appoint that practitioner, instead of the official receiver, to be interim receiver of the debtor's property.
- (3) The court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities of a receiver and manager under the next section.
- (4) An order of the court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.
- (5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information, and shall attend on the interim receiver at such times, as the latter may for the purpose of carrying out his functions under this section reasonably require.

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- (6) Where an interim receiver is appointed, section 285(3) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.
- (7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the court by order otherwise terminates the appointment.
- (8) References in this section to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were adjudged bankrupt.

## **287 Receivership pending appointment of trustee**

- (1) Between the making of a bankruptcy order and the time at which the bankrupt's estate vests in a trustee under Chapter IV of this Part, the official receiver is the receiver and (subject to section 370 (special manager)) the manager of the bankrupt's estate and is under a duty to act as such.
- (2) The function of the official receiver while acting as receiver or manager of the bankrupt's estate under this section is to protect the estate; and for this purpose—
  - (a) he has the same powers as if he were a receiver or manager appointed by the High Court, and
  - (b) he is entitled to sell or otherwise dispose of any perishable goods comprised in the estate and any other goods so comprised the value of which is likely to diminish if they are not disposed of.
- (3) The official receiver while acting as receiver or manager of the estate under this section—
  - (a) shall take all such steps as he thinks fit for protecting any property which may be claimed for the estate by the trustee of that estate,
  - (b) is not, except in pursuance of directions given by the Secretary of State, required to do anything that involves his incurring expenditure,
  - (c) may, if he thinks fit (and shall, if so directed by the court) at any time summon a general meeting of the bankrupt's creditors.
- (4) Where
  - (a) the official receiver acting as receiver or manager of the estate under this section seizes or disposes of any property which is not comprised in the estate, and
  - (b) at the time of the seizure or disposal the official receiver believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,the official receiver is not to be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by his negligence; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.
- (5) This section does not apply where by virtue of section 297 (appointment of trustee; special cases) the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

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## **288 Statement of affairs**

- (1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs to the official receiver before the end of the period of 21 days beginning with the commencement of the bankruptcy.
- (2) The statement of affairs shall contain—
  - (a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed, and
  - (b) such other information as may be prescribed.
- (3) The official receiver may, if he thinks fit—
  - (a) release the bankrupt from his duty under subsection (1), or
  - (b) extend the period specified in that subsection ;and where the official receiver has refused to exercise a power conferred by this section, the court, if it thinks fit, may exercise it.
- (4) A bankrupt who—
  - (a) without reasonable excuse fails to comply with the obligation imposed by this section, or
  - (b) without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements,is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

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

- (1) Subject to subsection (5) below, it is the duty of the official receiver to investigate the conduct and affairs of every bankrupt and to make such report (if any) to the court as he thinks fit.
- (2) Where an application is made by the bankrupt under section 280 for his discharge from bankruptcy, it is the duty of the official receiver to make a report to the court with respect to the prescribed matters; and the court shall consider that report before determining what order (if any) to make under that section.
- (3) A report by the official receiver under this section shall, in any proceedings, be prima facie evidence of the facts stated in it.
- (4) In subsection (1) the reference to the conduct and affairs of a bankrupt includes his conduct and affairs before the making of the order by which he was adjudged bankrupt.
- (5) Where a certificate for the summary administration of the bankrupt's estate is for the time being in force, the official receiver shall carry out an investigation under subsection (1) only if he thinks fit.

## **290 Public examination of bankrupt**

- (1) Where a bankruptcy order has been made, the official receiver may at any time before the discharge of the bankrupt apply to the court for the public examination of the bankrupt.
- (2) Unless the court otherwise orders, the official receiver shall make an application under subsection (1) if notice requiring him to do so is given to him, in accordance with the

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- rules, by one of the bankrupt's creditors with the concurrence of not less than one-half, in value, of those creditors (including the creditor giving notice).
- (3) On an application under subsection (1), the court shall direct that a public examination of the bankrupt shall be held on a day appointed by the court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.
- (4) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure, namely—
- (a) the official receiver and, in the case of an individual adjudged bankrupt on a petition under section 264(1)(d), the Official Petitioner,
  - (b) the trustee of the bankrupt's estate, if his appointment has taken effect,
  - (c) any person who has been appointed as special manager of the bankrupt's estate or business,
  - (d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.
- (5) If a bankrupt without reasonable excuse fails at any time to attend his public examination under this section he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

## **291 Duties of bankrupt in relation to official receiver**

- (1) Where a bankruptcy order has been made, the bankrupt is under a duty—
- (a) to deliver possession of his estate to the official receiver, and
  - (b) to deliver up to the official receiver all books, papers and other records of which he has possession or control and which relate to his estate and affairs (including any which would be privileged from disclosure in any proceedings).
- (2) In the case of any part of the bankrupt's estate which consists of things possession of which cannot be delivered to the official receiver, and in the case of any property that may be claimed for the bankrupt's estate by the trustee, it is the bankrupt's duty to do all such things as may reasonably be required by the official receiver for the protection of those things or that property.
- (3) Subsections (1) and (2) do not apply where by virtue of section 297 below the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.
- (4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may for any of the purposes of this Chapter reasonably require.
- (5) Subsection (4) applies to a bankrupt after his discharge.
- (6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

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## CHAPTER III

### TRUSTEES IN BANKRUPTCY

#### *Tenure of office as trustee*

#### **292 Power to make appointments**

- (1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) is exercisable—
  - (a) except at a time when a certificate for the summary administration of the bankrupt's estate is in force, by a general meeting of the bankrupt's creditors;
  - (b) under section 295(2), 296(2) or 300(6) below in this Chapter, by the Secretary of State; or
  - (c) under section 297, by the court.
- (2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.
- (3) Any power to appoint a person as trustee of a bankrupt's estate includes power to appoint two or more persons as joint trustees ; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.
- (4) The appointment of any person as trustee takes effect only if that person accepts the appointment in accordance with the rules. Subject to this, the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.
- (5) This section is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the estate.

#### **293 Summoning of meeting to appoint first trustee**

- (1) Where a bankruptcy order has been made and no certificate for the summary administration of the bankrupt's estate has been issued, it is the duty of the official receiver, as soon as practicable in the period of 12 weeks beginning with the day on which the order was made, to decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.

This section does not apply where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy) ; and it is subject to the provision made in sections 294(3) and 297(6) below.

- (2) Subject to the next section, if the official receiver decides not to summon such a meeting, he shall, before the end of the period of 12 weeks above mentioned, give notice of his decision to the court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.
- (3) As from the giving to the court of a notice under subsection (2), the official receiver is the trustee of the bankrupt's estate.



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## **294 Power of creditors to requisition meeting**

- (1) Where in the case of any bankruptcy—
  - (a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee, and
  - (b) a certificate for the summary administration of the estate is not for the time being in force,any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.
- (2) If such a request appears to the official receiver to be made with the concurrence of not less than one-quarter, in value, of the bankrupt's creditors (including the creditor making the request), it is the duty of the official receiver to summon the requested meeting.
- (3) Accordingly, where the duty imposed by subsection (2) has arisen, the official receiver is required neither to reach a decision for the purposes of section 293(1) nor (if he has reached one) to serve any notice under section 293(2).

## **295 Failure of meeting to appoint trustee**

- (1) If a meeting summoned under section 293 or 294 is held but no appointment of a person as trustee is made, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (2) On a reference made in pursuance of that decision, the Secretary of State shall either make an appointment or decline to make one.
- (3) If—
  - (a) the official receiver decides not to refer the need for an appointment to the Secretary of State, or
  - (b) on such a reference the Secretary of State declines to make an appointment,the official receiver shall give notice of his decision or, as the case may be, of the Secretary of State's decision to the court.
- (4) As from the giving of notice under subsection (3) in a case in which no notice has been given under section 293(2), the official receiver shall be trustee of the bankrupt's estate.

## **296 Appointment of trustee by Secretary of State**

- (1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter (other than section 297(1) below) he may apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver.
- (2) On an application under subsection (1) the Secretary of State shall either make an appointment or decline to make one.
- (3) Such an application may be made notwithstanding that the Secretary of State has declined to make an appointment either on a previous application under subsection (1) or on a reference under section 295 or under section 300(4) below.

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- (4) Where the trustee of a bankrupt's estate has been appointed by the Secretary of State (whether under this section or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the court's directions.
- (5) In that notice or advertisement the trustee shall—
  - (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under section 301, and
  - (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

## **297 Special cases**

- (1) Where a bankruptcy order is made on a petition under section 264(1)(d) (criminal bankruptcy), the official receiver shall be trustee of the bankrupt's estate.
- (2) Subject to the next subsection, where the court issues a certificate for the summary administration of a bankrupt's estate, the official receiver shall, as from the issue of that certificate, be the trustee.
- (3) Where such a certificate is issued or is in force, the court may, if it thinks fit, appoint a person other than the official receiver as trustee.
- (4) Where a bankruptcy order is made in a case in which an insolvency practitioner's report has been submitted to the court under section 274 but no certificate for the summary administration of the estate is issued, the court, if it thinks fit, may on making the order appoint the person who made the report as trustee.
- (5) Where a bankruptcy order is made (whether or not on a petition under section 264(1)(c)) at a time when there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII, the court, if it thinks fit, may on making the order appoint the supervisor of the arrangement as trustee.
- (6) Where an appointment is made under subsection (4) or (5) of this section, the official receiver is not under the duty imposed by section 293(1) (to decide whether or not to summon a meeting of creditors).
- (7) Where the trustee of a bankrupt's estate has been appointed by the court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the directions of the court.
- (8) In that notice or advertisement he shall—
  - (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under section 301 below, and
  - (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

## **298 Removal of trustee; vacation of office**

- (1) Subject as follows, the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the rules.

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- (2) Where the official receiver is trustee by virtue of section 297(1), he shall not be removed from office under this section.
- (3) A general meeting of the bankrupt's creditors shall not be held for the purpose of removing the trustee at any time when a certificate for the summary administration of the estate is in force.
- (4) Where the official receiver is trustee by virtue of section 293(3) or 295(4) or a trustee is appointed by the Secretary of State or (otherwise than under section 297(5)) by the court, a general meeting of the bankrupt's creditors shall be summoned for the purpose of replacing the trustee only if—
  - (a) the trustee thinks fit, or
  - (b) the court so directs, or
  - (c) the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).
- (5) If the trustee was appointed by the Secretary of State, he may be removed by a direction of the Secretary of State.
- (6) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.
- (7) The trustee may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (8) The trustee shall vacate office on giving notice to the court that a final meeting has been held under section 331 in Chapter IV and of the decision (if any) of that meeting.
- (9) The trustee shall vacate office if the bankruptcy order is annulled.

## **299 Release of trustee**

- (1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—
  - (a) where that person is appointed by a general meeting of the bankrupt's creditors or by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced, and
  - (b) where that person is appointed by the court, such time as the court may determine.
- (2) If the official receiver while he is the trustee gives notice to the Secretary of State that the administration of the bankrupt's estate in accordance with Chapter IV of this Part is for practical purposes complete, he shall have his release with effect from such time as the Secretary of State may determine.
- (3) A person other than the official receiver who has ceased to be the trustee shall have his release with effect from the following time, that is to say—
  - (a) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has not resolved against his release or who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;

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- (b) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has resolved against his release, or by the court, or by the Secretary of State, or who has vacated office under section 298(6), such time as the Secretary of State may, on an application by that person, determine ;
  - (c) in the case of a person who has resigned, such time as may be prescribed ;
  - (d) in the case of a person who has vacated office under section 298(8)—
    - (i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine ; and
    - (ii) if that meeting has not so resolved, the time at which the person vacated office.
- (4) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the court may determine.
- (5) Where the official receiver or the trustee has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, be discharged from all liability both in respect of acts or omissions of his in the administration of the estate and otherwise in relation to his conduct as trustee.

But nothing in this section prevents the exercise, in relation to a person who has had his release under this section, of the court's powers under section 304.

### **300 Vacancy in office of trustee**

- (1) This section applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.
- (2) The official receiver shall be trustee until the vacancy is filled.
- (3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of section 314(7) (creditors' requisition).
- (4) If at the end of the period of 28 days beginning with the day on which the vacancy first came to the official receiver's attention he has not summoned, and is not proposing to summon, a general meeting of creditors for the purpose of filling the vacancy, he shall refer the need for an appointment to the Secretary of State.
- (5) Where a certificate for the summary administration of the estate is for the time being in force—
  - (a) the official receiver may refer the need to fill any vacancy to the court or, if the vacancy arises because a person appointed by the Secretary of State has ceased to hold office, to the court or the Secretary of State, and
  - (b) subsections (3) and (4) of this section do not apply.
- (6) On a reference to the Secretary of State under subsection (4) or (5) the Secretary of State shall either make an appointment or decline to make one.
- (7) If on a reference under subsection (4) or (5) no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate, but without prejudice to his power to make a further reference.

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- (8) References in this section to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under section 331 or the giving by the official receiver of notice under section 299(2).

### *Control of trustee*

#### **301 Creditors' committee**

- (1) Subject as follows, a general meeting of a bankrupt's creditors (whether summoned under the preceding provisions of this Chapter or otherwise) may, in accordance with the rules, establish a committee (known as "the creditors' committee") to exercise the functions conferred on it by or under this Act.
- (2) A general meeting of the bankrupt's creditors shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt's estate, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver.

#### **302 Exercise by Secretary of State of functions of creditors' committee**

- (1) The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is trustee of the bankrupt's estate; but at any such time the functions of the committee under this Act shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.
- (2) Where in the case of any bankruptcy there is for the time being no creditors' committee and the trustee of the bankrupt's estate is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.

#### **303 General control of trustee by the court**

- (1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.
- (2) The trustee of a bankrupt's estate may apply to the court for directions in relation to any particular matter arising under the bankruptcy.

#### **304 Liability of trustee**

- (1) Where on an application under this section the court is satisfied—
- (a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or
  - (b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

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the court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.

This is without prejudice to any liability arising apart from this section.

- (2) An application under this section may be made by the official receiver, the Secretary of State, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of section 330(5) (final distribution)) the bankrupt himself.

But the leave of the court is required for the making of an application if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under section 299.

- (3) Where
- (a) the trustee seizes or disposes of any property which is not comprised in the bankrupt's estate, and
  - (b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the trustee is not liable to any person (whether under this section or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

## CHAPTER IV

### ADMINISTRATION BY TRUSTEE

#### *Preliminary*

#### **305 General functions of trustee**

- (1) This Chapter applies in relation to any bankruptcy where either—
- (a) the appointment of a person as trustee of a bankrupt's estate takes effect, or
  - (b) the official receiver becomes trustee of a bankrupt's estate.
- (2) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion.
- (3) It is the duty of the trustee, if he is not the official receiver—
- (a) to furnish the official receiver with such information,
  - (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
  - (c) to give the official receiver such other assistance,
- as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.

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- (4) The official name of the trustee shall be " the trustee of the estate of....., a bankrupt " (inserting the name of the bankrupt); but he may be referred to as " the trustee in bankruptcy " of the particular bankrupt.

*Acquisition, control and realisation of bankrupt's estate*

**306 Vesting of bankrupt's estate in trustee**

- (1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.
- (2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this section or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

**307 After-acquired property**

- (1) Subject to this section and section 309, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.
- (2) A notice under this section shall not be served in respect of—
- (a) any property falling within subsection (2) or (3) of section 283 in Chapter II,
  - (b) any property which by virtue of any other enactment is excluded from the bankrupt's estate, or
  - (c) without prejudice to section 280(2) (c) (order of court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.
- (3) Subject to the next subsection, upon the service on the bankrupt of a notice under this section the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.
- (4) Where, whether before or after service of a notice under this section—
- (a) a person acquires property in good faith, for value and without notice of the bankruptcy, or
  - (b) a banker enters into a transaction in good faith and without such notice,
- the trustee is not in respect of that property or transaction entitled by virtue of this section to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.
- (5) References in this section to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under section 310.

**308 Vesting in trustee of certain items of excess value**

- (1) Subject to the next section, where—
- (a) property is excluded by virtue of section 283(2) (tools of trade, household effects, etc.) from the bankrupt's estate, and

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- (b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,
- the trustee may by notice in writing claim that property or, as the case may be, that part of it for the bankrupt's estate.
- (2) Upon the service on the bankrupt of a notice under this section, the property to which the notice relates vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.
- (3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this section; and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.
- (4) For the purposes of this section property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

### **309 Time-limit for notice under s. 307 or 308**

- (1) Except with the leave of the court, a notice shall not be served—
- (a) under section 307, after the end of the period of 42 days beginning with the day on which it first came to the knowledge of the trustee that the property in question had been acquired by, or had devolved upon, the bankrupt;
- (b) under section 308, after the end of the period of 42 days beginning with the day on which the property in question first came to the knowledge of the trustee.
- (2) For the purposes of this section—
- (a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and
- (b) anything which comes (otherwise than under paragraph (a)) to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

### **310 Income payments orders**

- (1) The court may, on the application of the trustee, make an order (" an income payments order ") claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.
- (2) The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.
- (3) An income payments order shall, in respect of any payment of income to which it is to apply, either—
- (a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order, or
- (b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.



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- (4) Where the court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.
- (5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.
- (6) An income payments order shall not be made after the discharge of the bankrupt, and if made before, shall not have effect after his discharge except—
  - (a) in the case of a discharge under section 279(1)(a) (order of court), by virtue of a condition imposed by the court under section 280(2)(c) (income, etc. after discharge), or
  - (b) in the case of a discharge under section 279(1)(b) (expiration of relevant period), by virtue of a provision of the order requiring it to continue in force for a period ending after the discharge but no later than 3 years after the making of the order.
- (7) For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment.

### **311 Acquisition by trustee of control**

- (1) The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings).
- (2) In relation to, and for the purpose of acquiring or retaining possession of, the bankrupt's estate, the trustee is in the same position as if he were a receiver of property appointed by the High Court; and the court may, on his application, enforce such acquisition or retention accordingly.
- (3) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.
- (4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee; but notice of the deemed assignment need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself, for protecting the priority of the trustee.
- (5) Where any goods comprised in the estate are held by any person by way of pledge, pawn or other security and no notice has been served in respect of those goods by the official receiver under subsection (5) of section 285 (restriction on realising security), the trustee may serve such a notice in respect of the goods; and whether or not a notice has been served under this subsection or that subsection, the trustee may, if he thinks fit, exercise the bankrupt's right of redemption in respect of any such goods.
- (6) A notice served by the trustee under subsection (5) has the same effect as a notice served by the official receiver under section 285(5).

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### **312 Obligation to surrender control to trustee**

- (1) The bankrupt shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession.

This is without prejudice to the general duties of the bankrupt under section 333 in this Chapter.

- (2) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—
- (a) the official receiver,
  - (b) a person who has ceased to be trustee of the bankrupt's estate, or
  - (c) a person who has been the supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII,
- the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.
- (3) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee.
- (4) If any person without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

### **313 Charge on bankrupt's home**

- (1) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the court for an order imposing a charge on the property for the benefit of the bankrupt's estate.
- (2) If on an application under this section the court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and is enforceable, up to the value from time to time of the property secured, for the payment of any amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the prescribed rate.
- (3) An order under this section made in respect of property vested in the trustee shall provide, in accordance with the rules, for the property to cease to be comprised in the bankrupt's estate and, subject to the charge (and any prior charge), to vest in the bankrupt.
- (4) Subsections (1) and (2) and (4) to (6) of section 3 of the Charging Orders Act 1979 (supplemental provisions with respect to charging orders) have effect in relation to orders under this section as in relation to charging orders under that Act.

### **314 Powers of trustee**

- (1) The trustee may—

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- (a) with the permission of the creditors' committee or the court, exercise any of the powers specified in Part I of Schedule 5 to this Act, and
  - (b) without that permission, exercise any of the general powers specified in Part II of that Schedule.
- (2) With the permission of the creditors' committee or the court, the trustee may appoint the bankrupt—
- (a) to superintend the management of his estate or any part of it,
  - (b) to carry on his business (if any) for the benefit of his creditors, or
  - (c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.
- (3) A permission given for the purposes of subsection (1)(a) or (2) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.
- (4) Where the trustee has done anything without the permission required by subsection (1) (a) or (2), the court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.
- But the committee shall not do so unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay.
- (5) Part III of Schedule 5 to this Act has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under any of this Group of Parts.
- (6) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by any provision in this Group of Parts—
- (a) disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt, or
  - (b) employs a solicitor,
- he shall, if there is for the time being a creditors' committee, give notice to the committee of that exercise of his powers.
- (7) Without prejudice to the generality of subsection (5) and Part III of Schedule 5, the trustee may, if he thinks fit, at any time summon a general meeting of the bankrupt's creditors.
- Subject to the preceding provisions in this Group of Parts, he shall summon such a meeting if he is requested to do so by a creditor of the bankrupt and the request is made with the concurrence of not less than one-tenth, in value, of the bankrupt's creditors (including the creditor making the request).
- (8) Nothing in this Act is to be construed as restricting the capacity of the trustee to exercise any of his powers outside England and Wales.

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### *Disclaimer of onerous property*

#### **315 Disclaimer (general power)**

- (1) Subject as follows, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this section, that is to say—
  - (a) any unprofitable contract, and
  - (b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) A disclaimer under this section—
  - (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and
  - (b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.
- (4) A notice of disclaimer shall not be given under this section in respect of any property that has been claimed for the estate under section 307 (after-acquired property) or 308 (personal property of bankrupt exceeding reasonable replacement value), except with the leave of the court.
- (5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

#### **316 Notice requiring trustee's decision**

- (1) Notice of disclaimer shall not be given under section 315 in respect of any property if—
  - (a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee or that predecessor to decide whether he will disclaim or not. and
  - (b) the period of 28 days beginning with the day on which that application was made has expired without a notice of disclaimer having been given under section 315 in respect of that property.
- (2) The trustee is deemed to have adopted any contract which by virtue of this section he is not entitled to disclaim.

#### **317 Disclaimer of leaseholds**

- (1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee or mortgagee and either—

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- (a) no application under section 320 below is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served, or
  - (b) where such an application has been made, the court directs that the disclaimer is to take effect.
- (2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 320, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

### **318 Disclaimer of dwelling house**

Without prejudice to section 317, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

- (a) no application under section 320 is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this section was served, or
- (b) where such an application has been made, the court directs that the disclaimer is to take effect.

### **319 Disclaimer of land subject to rentcharge**

- (1) The following applies where, in consequence of the disclaimer under section 315 of any land subject to a rent-charge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection as " the proprietor").
- (2) The proprietor, and the successors in title of the proprietor, are not subject to any personal liability in respect of any sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

### **320 Court order vesting disclaimed property**

- (1) This section and the next apply where the trustee has disclaimed property under section 315.
- (2) An application may be made to the court under this section by—
  - (a) any person who claims an interest in the disclaimed property,
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or
  - (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (3) Subject as follows in this section and the next, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
  - (a) a person entitled to it or a trustee for such a person,

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- (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person, or
  - (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (4) The court shall not make an order by virtue of subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The effect of any order under this section shall be taken into account in assessing for the purposes of section 315(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.
- (6) An order under this section vesting property in any person need not be completed by any conveyance, assignment or transfer.

### **321 Order under s. 320 in respect of leaseholds**

- (1) The court shall not make an order under section 320 vesting property of a leasehold nature in any person, except on terms making that person—
- (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented, or
  - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him on that day.
- (2) For the purposes of an order under section 320 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.
- (3) Where subsection (1) applies and no person is willing to accept an order under section 320 on the terms required by that subsection, the court may (by order under section 320) vest the estate or interest of the bankrupt in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease.

The court may by virtue of this subsection vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.

- (4) Where subsection (1) applies and a person declines to accept any order under section 320, that person shall be excluded from all interest in the property.

### *Distribution of bankrupt's estate*

### **322 Proof of debts**

- (1) Subject to this section and the next, the proof of any bankruptcy debt by a secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.
- (2) Where a bankruptcy debt bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

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- (3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.
- (4) Where the value of a bankruptcy debt is estimated by the trustee under subsection (3) or, by virtue of section 303 in Chapter III, by the court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

### **323 Mutual credit and set-off**

- (1) This section applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.
- (2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.
- (3) Sums due from the bankrupt to another party shall not be included in the account taken under subsection (2) if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.
- (4) Only the balance (if any) of the account taken under subsection (2) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

### **324 Distribution by means of dividend**

- (1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.
- (2) The trustee shall give notice of his intention to declare and distribute a dividend.
- (3) Where the trustee has declared a dividend, he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this subsection shall contain the prescribed particulars of the bankrupt's estate.
- (4) In the calculation and distribution of a dividend the trustee shall make provision—
  - (a) for any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,
  - (b) for any bankruptcy debts which are the subject of claims which have not yet been determined, and
  - (c) for disputed proofs and claims.

### **325 Claims by unsatisfied creditors**

- (1) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

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- (a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive ; and
  - (b) any dividend or dividends payable under paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.
- (2) No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—
- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time it was withheld, and
  - (b) the costs of the proceedings in which the order to pay is made.

### **326 Distribution of property in specie**

- (1) Without prejudice to sections 315 to 319 (disclaimer), the trustee may, with the permission of the creditors' committee, divide in its existing form amongst the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.
- (2) A permission given for the purposes of subsection (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by subsection (1) has been given.
- (3) Where the trustee has done anything without the permission required by subsection (1), the court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

But the committee shall not do so unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

### **327 Distribution in criminal bankruptcy**

Where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy), no distribution shall be made under sections 324 to 326 so long as an appeal is pending (within the meaning of section 277) against the bankrupt's conviction of any offence by virtue of which the criminal bankruptcy order on which the petition was based was made.

### **328 Priority of debts**

- (1) In the distribution of the bankrupt's estate, his preferential debts (within the meaning given by section 386 in Part XII) shall be paid in priority to other debts.
- (2) Preferential debts rank equally between themselves after the expenses of the bankruptcy and shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.
- (3) Debts which are neither preferential debts nor debts to which the next section applies also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.



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- (4) Any surplus remaining after the payment of the debts that are preferential or rank equally under subsection (3) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy ; and interest on preferential debts ranks equally with interest on debts other than preferential debts.
- (5) The rate of interest payable under subsection (4) in respect of any debt is whichever is the greater of the following—
  - (a) the rate specified in section 17 of the Judgments Act 1838 at the commencement of the bankruptcy, and
  - (b) the rate applicable to that debt apart from the bankruptcy.
- (6) This section and the next are without prejudice to any provision of this Act or any other Act under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

### **329 Debts to spouse**

- (1) This section applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse at the time the credit was provided) was the bankrupt's spouse at the commencement of the bankruptcy.
- (2) Such debts—
  - (a) rank in priority after the debts and interest required to be paid in pursuance of section 328(3) and (4), and
  - (b) are payable with interest at the rate specified in section 328(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy ;and the interest payable under paragraph (b) has the same priority as the debts on which it is payable.

### **330 Final distribution**

- (1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—
  - (a) of his intention to declare a final dividend, or
  - (b) that no dividend, or further dividend, will be declared.
- (2) The notice under subsection (1) shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date (" the final date") specified in the notice.
- (3) The court may, on the application of any person, postpone the final date.
- (4) After the final date, the trustee shall—
  - (a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate, and
  - (b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

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- (5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt is entitled to the surplus.

### **331 Final meeting**

- (1) Subject as follows in this section and the next, this section applies where—
- (a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and
  - (b) the trustee is not the official receiver.
- (2) The trustee shall summon a final general meeting of the bankrupt's creditors which—
- (a) shall receive the trustee's report of his administration of the bankrupt's estate, and
  - (b) shall determine whether the trustee should have his release under section 299 in Chapter III.
- (3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under section 330(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.
- (4) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this section.

### **332 Saving for bankrupt's home**

- (1) This section applies where—
- (a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse, and
  - (b) the trustee has been unable for any reason to realise that property.
- (2) The trustee shall not summon a meeting under section 331 unless either—
- (a) the court has made an order under section 313 imposing a charge on that property for the benefit of the bankrupt's estate, or
  - (b) the court has declined, on an application under that section, to make such an order, or
  - (c) the Secretary of State has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.

### *Supplemental*

### **333 Duties of bankrupt in relation to trustee**

- (1) The bankrupt shall—
- (a) give to the trustee such information as to his affairs,
  - (b) attend on the trustee at such times, and

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- (c) do all such other things,  
as the trustee may for the purposes of carrying out his functions under any of this Group of Parts reasonably require.
- (2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.
- (3) Subsection (1) applies to a bankrupt after his discharge.
- (4) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

### **334 Stay of distribution in case of second bankruptcy**

- (1) This section and the next apply where a bankruptcy order is made against an undischarged bankrupt; and in both sections-
  - (a) " the later bankruptcy " means the bankruptcy arising from that order,
  - (b) " the earlier bankruptcy " means the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy, and
  - (c) " the existing trustee" means the trustee (if any) of the bankrupt's estate for the purposes of the earlier bankruptcy.
- (2) Where the existing trustee has been given the prescribed notice of the presentation of the petition for the later bankruptcy, any distribution or other disposition by him of anything to which the next subsection applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the court or is or was subsequently ratified by the court.

This is without prejudice to section 284 (restrictions on dispositions of property following bankruptcy order).

- (3) This subsection applies to—
  - (a) any property which is vested in the existing trustee under section 307(3) (after-acquired property);
  - (b) any money paid to the existing trustee in pursuance of an income payments order under section 310 ; and
  - (c) any property or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within paragraph (a) or (b) of this subsection.

### **335 Adjustment between earlier and later bankruptcy estates**

- (1) With effect from the commencement of the later bankruptcy anything to which section 334(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, is to be dealt with by the existing trustee in accordance with the rules.

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- (2) Any sums which in pursuance of an income payments order under section 310 are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy ; and the court may give such consequential directions for the modification of the order as it thinks fit.
- (3) Anything comprised in a bankrupt's estate by virtue of subsection (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.
- (4) Except as provided above and in section 334, property which is, or by virtue of section 308 (personal property of bankrupt exceeding reasonable replacement value) is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, shall not be comprised in his estate for the purposes of the later bankruptcy.
- (5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of his in the later bankruptcy in respect of the same debts; but the existing trustee may prove in the later bankruptcy for—
  - (a) the unsatisfied balance of the debts (including any debt under this subsection) provable against the bankrupt's estate in the earlier bankruptcy ;
  - (b) any interest payable on that balance ; and
  - (c) any unpaid expenses of the earlier bankruptcy.
- (6) Any amount provable under subsection (5) ranks in priority after all the other debts provable in the later bankruptcy and after interest on those debts and, accordingly, shall not be paid unless those debts and that interest have first been paid in full.

## CHAPTER V

### EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS, ETC.

#### *Rights of occupation*

#### **336 Rights of occupation etc. of bankrupt's spouse**

- (1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting of the bankrupt's estate in a trustee) is to be taken as having given rise to any rights of occupation under the Matrimonial Homes Act 1983 in relation to a dwelling house comprised in the bankrupt's estate.
- (2) Where a spouse's rights of occupation under the Act of 1983 are a charge on the estate or interest of the other spouse, or of trustees for the other spouse, and the other spouse is adjudged bankrupt—
  - (a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Act, binds the trustee of the bankrupt's estate and persons deriving title under that trustee, and
  - (b) any application for an order under section 1 of that Act shall be made to the court having jurisdiction in relation to the bankruptcy.

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- (3) Where a person and his spouse or former spouse are trustees for sale of a dwelling house and that person is adjudged bankrupt, any application by the trustee of the bankrupt's estate for an order under section 30 of the Law of Property Act 1925 (powers of court where trustees for sale refuse to act) shall be made to the court having jurisdiction in relation to the bankruptcy.
- (4) On such an application as is mentioned in subsection (2) or (3) the court shall make such order under section 1 of the Act of 1983 or section 30 of the Act of 1925 as it thinks just and reasonable having regard to—
  - (a) the interests of the bankrupt's creditors,
  - (b) the conduct of the spouse or former spouse, so far as contributing to the bankruptcy,
  - (c) the needs and financial resources of the spouse or former spouse,
  - (d) the needs of any children, and
  - (e) all the circumstances of the case other than the needs of the bankrupt.
- (5) Where such an application is made after the end of the period of one year beginning with the first vesting under Chapter IV of this Part of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

### **337 Rights of occupation of bankrupt**

- (1) This section applies where—
  - (a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt, and
  - (b) any persons under the age of 18 with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.
- (2) Whether or not the bankrupt's spouse (if any) has rights of occupation under the Matrimonial Homes Act 1983—
  - (a) the bankrupt has the following rights as against the trustee of his estate—
    - (i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the court,
    - (ii) if not in occupation, a right with the leave of the court to enter into and occupy the dwelling house, and
  - (b) the bankrupt's rights are a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.
- (3) The Act of 1983 has effect, with the necessary modifications, as if—
  - (a) the rights conferred by paragraph (a) of subsection (2) were rights of occupation under that Act,
  - (b) any application for leave such as is mentioned in that paragraph were an application for an order under section 1 of that Act, and
  - (c) any charge under paragraph (b) of that subsection on the estate or interest of the trustee were a charge under that Act on the estate or interest of a spouse.

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- (4) Any application for leave such as is mentioned in subsection (2) (a) or otherwise by virtue of this section for an order under section 1 of the Act of 1983 shall be made to the court having jurisdiction in relation to the bankruptcy.
- (5) On such an application the court shall make such order under section 1 of the Act of 1983 as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.
- (6) Where such an application is made after the end of the period of one year beginning with the first vesting (under Chapter IV of this Part) of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

### **338 Payments in respect of premises occupied by bankrupt**

Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of the preceding section or otherwise) on condition that he makes payments towards satisfying any liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt does not, by virtue of those payments, acquire any interest in the premises.

*Adjustment of prior transactions, etc.*

### **339 Transactions at an undervalue**

- (1) Subject as follows in this section and sections 341 and 342, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.
- (2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.
- (3) For the purposes of this section and sections 341 and 342, an individual enters into a transaction with a person at an undervalue if—
  - (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration,
  - (b) he enters into a transaction with that person in consideration of marriage, or
  - (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

### **340 Preferences**

- (1) Subject as follows in this and the next two sections, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) given a preference to any person, the trustee of the bankrupt's estate may apply to the court for an order under this section.

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- (2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.
- (3) For the purposes of this and the next two sections, an individual gives a preference to a person if—
  - (a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and
  - (b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.
- (4) The court shall not make an order under this section in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection(3)(b) above.
- (5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).
- (6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

#### **341 " Relevant time " under ss. 339, 340**

- (1) Subject as follows, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—
  - (a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt,
  - (b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time in the period of 2 years ending with that day, and
  - (c) in any other case of a preference which is not a transaction at an undervalue, at a time in the period of 6 months ending with that day.
- (2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a), (b) or (c) of subsection (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the end of the period mentioned in paragraph (a)), that time is not a relevant time for the purposes of sections 339 and 340 unless the individual—
  - (a) is insolvent at that time, or
  - (b) becomes insolvent in consequence of the transaction or preference;but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

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- (3) For the purposes of subsection (2), an individual is insolvent if—
  - (a) he is unable to pay his debts as they fall due, or
  - (b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.
- (4) A transaction entered into or preference given by a person who is subsequently adjudged bankrupt on a petition under section 264(1)(d) (criminal bankruptcy) is to be treated as having been entered into or given at a relevant time for the purposes of sections 339 and 340 if it was entered into or given at any time on or after the date specified for the purposes of this subsection in the criminal bankruptcy order on which the petition was based.
- (5) No order shall be made under section 339 or 340 by virtue of subsection (4) of this section where an 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.

### **342 Orders under ss. 339, 340**

- (1) Without prejudice to the generality of section 339(2) or 340(2), an order under either of those sections with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject as follows)—
  - (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate ;
  - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
  - (c) release or discharge (in whole or in part) any security given by the individual;
  - (d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the court may direct;
  - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate;
  - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and
  - (g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.
- (2) An order under section 339 or 340 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—



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- (a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and
  - (b) shall not require a person who received a benefit from the transaction or preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the trustee of the bankrupt's estate, except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.
- (3) Any sums required to be paid to the trustee in accordance with an order under section 339 or 340 shall be comprised in the bankrupt's estate.
- (4) For the purposes of this section the relevant circumstances, in relation to a transaction or preference, are;—
- (a) the circumstances by virtue of which an order under section 339 or 340 could be made in respect of the transaction or preference if the individual in question were adjudged bankrupt within a particular period after the transaction is entered into or the preference given, and
  - (b) if that period has expired, the fact that that individual has been adjudged bankrupt within that period.

### **343 Extortionate credit transactions**

- (1) This section applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.
- (2) The court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than 3 years before the commencement of the bankruptcy.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
  - (b) it otherwise grossly contravened ordinary principles of fair dealing;
- and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—
- (a) provision setting aside the whole or part of any obligation created by the transaction ;
  - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held ;
  - (c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;

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- (d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;
  - (e) provision directing accounts to be taken between any persons.
- (5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this section shall be comprised in the bankrupt's estate.
- (6) Neither the trustee of a bankrupt's estate nor an undischarged bankrupt is entitled to make an application under section 139(1)(a) of the Consumer Credit Act 1974 (re-opening of extortionate credit agreements) for any agreement by which credit is or has been provided to the bankrupt to be re-opened.

But the powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exercisable under this Act in relation to that transaction as a transaction at an undervalue.

#### **344 Avoidance of general assignment of book debts**

- (1) The following applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.
- (2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the Bills of Sale Act 1878.
- (3) For the purposes of subsections (1) and (2)—
  - (a) "assignment" includes an assignment by way of security or charge on book debts, and
  - (b) "general assignment" does not include—
    - (i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or
    - (ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.
- (4) For the purposes of registration under the Act of 1878 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of that Act with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under that Act.

#### **345 Contracts to which bankrupt is a party**

- (1) The following applies where a contract has been made with a person who is subsequently adjudged bankrupt.
- (2) The court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the court to be equitable.

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- (3) Any damages payable by the bankrupt by virtue of an order of the court under this section are provable as a bankruptcy debt.
- (4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

### **346 Enforcement procedures**

- (1) Subject to section 285 in Chapter II (restrictions on proceedings and remedies) and to the following provisions of this section, where the creditor of any person who is adjudged bankrupt has, before the commencement of the bankruptcy—
  - (a) issued execution against the goods or land of that person, or
  - (b) attached a debt due to that person from another person,that creditor is not entitled, as against the official receiver or trustee of the bankrupt's estate, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.
- (2) Subject as follows, where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the sheriff or other officer charged with the execution that that person has been adjudged bankrupt—
  - (a) the sheriff or other officer shall on request deliver to the official receiver or trustee of the bankrupt's estate the goods and any money seized or recovered in part satisfaction of the execution, but
  - (b) the costs of the execution are a first charge on the goods or money so delivered and the official receiver or trustee may sell the goods or a sufficient part of them for the purpose of satisfying the charge.
- (3) Subject to subsection (6) below, where—
  - (a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale, and
  - (b) before the end of the period of 14 days beginning with the day of the sale or payment the sheriff or other officer charged with the execution is given notice that a bankruptcy petition has been presented in relation to that person, and
  - (c) a bankruptcy order is or has been made on that petition,the balance of proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.
- (4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3), the sheriff or other officer charged with the execution—
  - (a) shall not dispose of the balance mentioned in subsection (3) at any time within the period of 14 days so mentioned or while there is pending a bankruptcy petition of which he has been given notice under that subsection, and
  - (b) shall pay that balance, where by virtue of that subsection it is comprised in the bankrupt's estate, to the official receiver or (if there is one) to the trustee of that estate.
- (5) For the purposes of this section—

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- (a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 1 of the Charging Orders Act 1979 ;
  - (b) an execution against land is completed by seizure, by the appointment of a receiver or by the making of a charging order under that section ;
  - (c) an attachment of a debt is completed by the receipt of the debt.
- (6) The rights conferred by subsections (1) to (3) on the official receiver or the trustee may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt
- (7) Nothing in this section entitles the trustee of a bankrupt's estate to claim goods from a person who has acquired them in good faith under a sale by a sheriff or other officer charged with an execution.
- (8) Neither subsection (2) nor subsection (3) applies in relation to any execution against property which has been acquired by or has devolved upon the bankrupt since the commencement of the bankruptcy, unless, at the time the execution is issued or before it is completed—
- (a) the property has been or is claimed for the bankrupt's estate under section 307 (after-acquired property), and
  - (b) a copy of the notice given under that section has been or is served on the sheriff or other officer charged with the execution.

### **347 Distress, etc.**

- (1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of an undischarged bankrupt for rent due to him from the bankrupt is available (subject to subsection (5) below) against goods and effects comprised in the bankrupt's estate, but only for 6 months' rent accrued due before the commencement of the bankruptcy.
- (2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy petition relates and a bankruptcy order is subsequently made on that petition, any amount recovered by way of that distress which—
- (a) is in excess of the amount which by virtue of subsection (1) would have been recoverable after the commencement of the bankruptcy, or
  - (b) is in respect of rent for a period or part of a period after the distress was levied, shall be held for the bankrupt as part of his estate.
- (3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of 3 months beginning with the distraint, so much of those goods or effects, or of the proceeds of their sale, as is not held for the bankrupt under subsection (2) shall be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting those debts.
- (4) Where by virtue of any charge under subsection (3) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate

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as is available for the payment of preferential creditors by virtue of the surrender or payment.

- (5) A landlord or other person to whom rent is payable is not at any time after the discharge of a bankrupt entitled to distrain upon any goods or effects comprised in the bankrupt's estate.
- (6) Where in the case of any execution—
- (a) a landlord is (apart from this section) entitled under section 1 of the Landlord and Tenant Act 1709 or section 102 of the County Courts Act 1984 (claims for rent where goods seized in execution) to claim for an amount not exceeding one year's rent, and
  - (b) the person against whom the execution is levied is adjudged bankrupt before the notice of claim is served on the sheriff or other officer charged with the execution,
- the right of the landlord to claim under that section is restricted to a right to claim for an amount not exceeding 6 months' rent and does not extend to any rent payable in respect of a period after the notice of claim is so served.
- (7) Nothing in subsection (6) imposes any liability on a sheriff or other officer charged with an execution to account to the official receiver or the trustee of a bankrupt's estate for any sums paid by him to a landlord at any time before the sheriff or other officer was served with notice of the bankruptcy order in question.

But this subsection is without prejudice to the liability of the landlord.

- (8) Nothing in this Group of Parts affects any right to distrain otherwise than for rent; and any such right is at any time exercisable without restriction against property comprised in a bankrupt's estate, even if that right is expressed by any enactment to be exercisable in like manner as a right to distrain for rent.
- (9) Any right to distrain against property comprised in a bankrupt's estate is exercisable notwithstanding that the property has vested in the trustee.
- (10) The provisions of this section are without prejudice to a landlord's right in a bankruptcy to prove for any bankruptcy debt in respect of rent.

### **348 Apprenticeships, etc.**

- (1) This section applies where—
- (a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articulated clerk at the time when the petition on which the order was made was presented, and
  - (b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.
- (2) Subject to subsection (6) below, the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.
- (3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as the trustee thinks reasonable, having regard to—
- (a) the amount of the fee,

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- (b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and
  - (c) the other circumstances of the case.
- (4) The power of the trustee to make a payment under subsection (3) has priority over his obligation to distribute the bankrupt's estate.
- (5) Instead of making a payment under subsection (3), the trustee may, if it appears to him expedient to do so, make an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.
- (6) Where a transfer is made under subsection (5), subsection (2) has effect only as between the apprentice or clerk and the bankrupt.

### **349 Unenforceability of liens on books, etc.**

- (1) Subject as follows, a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.
- (2) Subsection (1) does not apply to a lien on documents which give a title to property and are held as such.

## **CHAPTER VI**

### BANKRUPTCY OFFENCES

#### *Preliminary*

### **350 Scheme of this Chapter**

- (1) Subject to section 360(3) below, this Chapter applies where the court has made a bankruptcy order on a bankruptcy petition.
- (2) This Chapter applies whether or not the bankruptcy order is annulled, but proceedings for an offence under this Chapter shall not be instituted after the annulment.
- (3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his discharge; but nothing in this Group of Parts prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.
- (4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside England and Wales.
- (5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Secretary of State or by or with the consent of the Director of Public Prosecutions.
- (6) A person guilty of any offence under this Chapter is liable to imprisonment or a fine, or both.

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### **351 Definitions**

In the following provisions of this Chapter—

- (a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt's estate include any property which would be such property if a notice in respect of it were given under section 307 (after-acquired property) or 308 (personal property and effects of bankrupt having more than replacement value);
- (b) " the initial period " means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy; and
- (c) a reference to a number of months or years before petition is to that period ending with the presentation of the bankruptcy petition.

### **352 Defence of innocent intention**

Where in the case of an offence under any provision of this Chapter it is stated that this section applies, a person is not guilty of the offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

*Wrongdoing by the bankrupt before and after bankruptcy*

### **353 Non-disclosure**

- (1) The bankrupt is guilty of an offence if—
  - (a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or
  - (b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.
- (2) Subsection (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.
- (3) Section 352 applies to this offence.

### **354 Concealment of property**

- (1) The bankrupt is guilty of an offence if—
  - (a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,
  - (b) he conceals any debt due to or from him or conceals any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or trustee, or
  - (c) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (b) above if the bankruptcy order had been made immediately before he did it.

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Section 352 applies to this offence.

- (2) The bankrupt is guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the prescribed amount and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

Section 352 applies to this offence.

- (3) The bankrupt is guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver or the court—
- (a) to account for the loss of any substantial part of his property incurred in the 12 months before petition or in the initial period, or
  - (b) to give a satisfactory explanation of the manner in which such a loss was incurred.

### **355 Concealment of books and papers; falsification**

- (1) The bankrupt is guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs. Section 352 applies to this offence.
- (2) The bankrupt is guilty of an offence if—
- (a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;
  - (b) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;
  - (c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or
  - (d) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (b) or (c) above if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

- (3) The bankrupt is guilty of an offence if—
- (a) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs, or
  - (b) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

### **356 False statements**

- (1) The bankrupt is guilty of an offence if he makes or has made any material omission in any statement made under any provision in this Group of Parts and relating to his affairs.



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Section 352 applies to this offence.

- (2) The bankrupt is guilty of an offence if—
- (a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or
  - (b) he attempts to account for any part of his property by fictitious losses or expenses; or
  - (c) at any meeting of his creditors in the 12 months before petition or (whether or not at such a meeting) at any time in the initial period, he did anything which would have been an offence under paragraph (b) if the bankruptcy order had been made before he did it; or
  - (d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

### **357 Fraudulent disposal of property**

- (1) The bankrupt is guilty of an offence if he makes or causes to be made, or has in the period of 5 years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property.

Section 352 applies to this offence.

- (2) The reference to making a transfer of or charge on any property includes causing or conniving at the levying of any execution against that property.
- (3) The bankrupt is guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within 2 months before, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

Section 352 applies to this offence.

### **358 Absconding**

The bankrupt is guilty of an offence if—

- (a) he leaves, or attempts or makes preparations to leave, England and Wales with any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or the trustee, or
- (b) in the 6 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made immediately before he did it.

Section 352 applies to this offence.

### **359 Fraudulent dealing with property obtained on credit**

- (1) The bankrupt is guilty of an offence if, in the 12 months before petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

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Section 352 applies to this offence.

- (2) A person is guilty of an offence if, in the 12 months before petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—
  - (a) that the bankrupt owed money in respect of the property, and
  - (b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.
- (3) A person is not guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.
- (4) In determining for the purposes of this section whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.
- (5) In this section references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

### **360 Obtaining credit; engaging in business**

- (1) The bankrupt is guilty of an offence if—
  - (a) either alone or jointly with any other person, he obtains credit to the extent of the prescribed amount or more without giving the person from whom he obtains it the relevant information about his status ; or
  - (b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.
- (2) The reference to the bankrupt obtaining credit includes the following cases—
  - (a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement, and
  - (b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in Northern Ireland, is guilty of an offence if, before his discharge, he does anything in England and Wales which would be an offence under subsection (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in Northern Ireland were an adjudication under this Part.
- (4) For the purposes of subsection (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

### **361 Failure to keep proper accounts of business**

- (1) Where the bankrupt has been engaged in any business for any of the period of 2 years before petition, he is guilty of an offence if he—
  - (a) has not kept proper accounting records throughout that period and throughout any part of the initial period in which he was so engaged, or

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- (b) has not preserved all the accounting records which he has kept.
- (2) The bankrupt is not guilty of an offence under subsection (1)-
  - (a) if his unsecured liabilities at the commencement of the bankruptcy did not exceed the prescribed amount, or
  - (b) if he proves that in the circumstances in which he carried on business the omission was honest and excusable.
- (3) For the purposes of this section a person is deemed not to have kept proper accounting records if he has not kept such records as are necessary to show or explain his transactions and financial position in his business, including—
  - (a) records containing entries from day to day, in sufficient detail, of all cash paid and received,
  - (b) where the business involved dealings in goods, statements of annual stock-takings, and
  - (c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.
- (4) In relation to any such records as are mentioned in subsection (3), subsections (2)(d) and (3)(b) of section 355 apply with the substitution of 2 years for 12 months.

### **362 Gambling**

- (1) The bankrupt is guilty of an offence if he has—
  - (a) in the 2 years before petition, materially contributed to, or increased the extent of, his insolvency by gambling or by rash and hazardous speculations, or
  - (b) in the initial period, lost any part of his property by gambling or by rash and hazardous speculations.
- (2) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the bankrupt at the time when he entered into them shall be taken into consideration.

## **CHAPTER VII**

### **POWERS OF COURT IN BANKRUPTCY**

### **363 General control of court**

- (1) Every bankruptcy is under the general control of the court and, subject to the provisions in this Group of Parts, the court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.
- (2) Without prejudice to any other provision in this Group of Parts, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter IV of this Part shall do all such things as he may be directed to do by the court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.
- (3) The official receiver or the trustee of a bankrupt's estate may at any time apply to the court for a direction under subsection (2).

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- (4) If any person without reasonable excuse fails to comply with any obligation imposed on him by subsection (2), he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

### **364 Power of arrest**

- (1) In the cases specified in the next subsection the court may cause a warrant to be issued to a constable or prescribed officer of the court—
- (a) for the arrest of a debtor to whom a bankruptcy petition relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered under Chapter IV of this Part, and
  - (b) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant,
- and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.
- (2) The powers conferred by subsection (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the presentation of the bankruptcy petition relating to him or the making of the bankruptcy order against him, it appears to the court—
- (a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs, or
  - (b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official receiver or the trustee of his estate, or
  - (c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate, or
  - (d) that he has, without the leave of the official receiver or the trustee of his estate, removed any goods in his possession which exceed in value such sum as may be prescribed for the purposes of this paragraph, or
  - (e) that he has failed, without reasonable excuse, to attend any examination ordered by the court.

### **365 Seizure of bankrupt's property**

- (1) At any time after a bankruptcy order has been made, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver or trustee.
- (2) Any person executing a warrant under this section may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating

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to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

- (3) If, after a bankruptcy order has been made, the court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to him, it may issue a warrant authorising any constable or prescribed officer of the court to search those premises for the property, books, papers or records.
- (4) A warrant under subsection (3) shall not be executed except in the prescribed manner and in accordance with its terms.

### **366 Inquiry into bankrupt's dealings and property**

- (1) At any time after a bankruptcy order has been made the court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—
  - (a) the bankrupt or the bankrupt's spouse or former spouse,
  - (b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,
  - (c) any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

The court may require any such person as is mentioned in paragraph (b) or (c) to submit an affidavit to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

- (2) Without prejudice to section 364, the following applies in a case where—
  - (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or
  - (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.
- (3) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—
  - (a) for the arrest of that person, and
  - (b) for the seizure of any books, papers, records, money or goods in that person's possession.
- (4) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

### **367 Court's enforcement powers under s. 366**

- (1) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person has in his possession any property comprised in the bankrupt's estate, the court may, on the application of the official receiver or the trustee

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of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or the trustee at such time, in such manner and on such terms as the court thinks fit.

- (2) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person is indebted to the bankrupt, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the court thinks fit.
- (3) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 366 shall be examined in any part of the United Kingdom where he may be for the time being, or in any place outside the United Kingdom.
- (4) Any person who appears or is brought before the court under section 366 or this section may be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

### **368 Provision corresponding to s. 366, where interim receiver appointed**

Sections 366 and 367 apply where an interim receiver has been appointed under section 286 as they apply where a bankruptcy order has been made, as if—

- (a) references to the official receiver or the trustee were to the interim receiver, and
- (b) references to the bankrupt and to his estate were (respectively) to the debtor and his property.

### **369 Order for production of documents by inland revenue**

- (1) For the purposes of an examination under section 290 (public examination of bankrupt) or proceedings under sections 366 to 368, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order an inland revenue official to produce to the court—
  - (a) any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official,
  - (b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official, or
  - (c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.
- (2) Where the court has made an order under subsection (1) for the purposes of any examination or proceedings, the court may, at any time after the document to which the order relates is produced to it, by order authorise the disclosure of the document, or of any part of its contents, to the official receiver, the trustee of the bankrupt's estate or the bankrupt's creditors.
- (3) The court shall not address an order under subsection (1) to an inland revenue official unless it is satisfied that that official is dealing, or has dealt, with the affairs of the bankrupt.

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- (4) Where any document to which an order under subsection (1) relates is not in the possession of the official to whom the order is addressed, it is the duty of that official to take all reasonable steps to secure possession of it and, if he fails to do so, to report the reasons for his failure to the court.
- (5) Where any document to which an order under subsection (1) relates is in the possession of an inland revenue official other than the one to whom the order is addressed, it is the duty of the official in possession of the document, at the request of the official to whom the order is addressed, to deliver it to the official making the request.
- (6) In this section " inland revenue official" means any inspector or collector of taxes appointed by the Commissioners of Inland Revenue or any person appointed by the Commissioners to serve in any other capacity.
- (7) This section does not apply for the purposes of an examination under sections 366 and 367 which takes place by virtue of section 368 (interim receiver).

### **370 Power to appoint special manager**

- (1) The court may, on an application under this section, appoint any person to be the special manager—
  - (a) of a bankrupt's estate, or
  - (b) of the business of an undischarged bankrupt, or
  - (c) of the property or business of a debtor in whose case the official receiver has been appointed interim receiver under section 286.
- (2) An application under this section may be made by the official receiver or the trustee of the bankrupt's estate in any case where it appears to the official receiver or trustee that the nature of the estate, property or business, or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.
- (3) A special manager appointed under this section has such powers as may be entrusted to him by the court.
- (4) The power of the court under subsection (3) to entrust powers to a special manager includes power to direct that any provision in this Group of Parts that has effect in relation to the official receiver, interim receiver or trustee shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the official receiver, interim receiver or trustee.
- (5) A special manager appointed under this section shall—
  - (a) give such security as may be prescribed,
  - (b) prepare and keep such accounts as may be prescribed, and
  - (c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

### **371 Re-direction of bankrupt's letters, etc.**

- (1) Where a bankruptcy order has been made, the court may from time to time, on the application of the official receiver or the trustee of the bankrupt's estate, order the Post Office to re-direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of the Post Office Act 1953) which would otherwise

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be sent or delivered by them to the bankrupt at such place or places as may be specified in the order.

- (2) An order under this section has effect for such period, not exceeding 3 months, as may be specified in the order.