



# Enterprise Act 2002 (repealed)

## 2002 CHAPTER 40

### PART 10

#### INSOLVENCY

VALID FROM 15/09/2003

#### *Individuals*

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

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

VALID FROM 01/04/2004

#### **256 Duration of bankruptcy**

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

##### **“279 Duration**

- (1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.
- (2) If before the end of that period the official receiver files with the court a notice stating that investigation of the conduct and affairs of the bankrupt

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under section 289 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.

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

VALID FROM 01/04/2004

## **257 Post-discharge restrictions**

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

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

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

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

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VALID FROM 01/04/2004

## **258 Investigation by official receiver**

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

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

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

VALID FROM 01/04/2004

## **259 Income payments order**

- (1) Section 310 of the Insolvency Act 1986 (income payments order) shall be amended as follows.
- (2) In subsection (1) omit “, on the application of the trustee,”.
- (3) After subsection (1) insert—

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

  - (a) by the trustee, and
  - (b) before the discharge of the bankrupt.”
- (4) For subsection (6) substitute—

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

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

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

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

VALID FROM 01/04/2004

## 260 Income payments agreement

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

### “310A Income payments agreement

- (1) In this section “income payments agreement” means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—
  - (a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt’s income for a specified period, or
  - (b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.
- (2) A provision of an income payments agreement of a kind specified in subsection (1)(a) or (b) may be enforced as if it were a provision of an income payments order.
- (3) While an income payments agreement is in force the court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.
- (4) The following provisions of section 310 shall apply to an income payments agreement as they apply to an income payments order—
  - (a) subsection (5) (receipts to form part of estate), and
  - (b) subsections (7) to (9) (meaning of income).
- (5) An income payments agreement must specify the period during which it is to have effect; and that period—
  - (a) may end after the discharge of the bankrupt, but
  - (b) may not end after the period of three years beginning with the date on which the agreement is made.
- (6) An income payments agreement may (subject to subsection (5)(b)) be varied—
  - (a) by written agreement between the parties, or
  - (b) by the court on an application made by the bankrupt, the trustee or the official receiver.

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(7) The court—

- (a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and
- (b) shall grant an application to vary an income payments agreement if and to the extent that the court thinks variation necessary to avoid the effect mentioned in section 310(2).”

VALID FROM 01/04/2004

## 261 Bankrupt’s home

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

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

- (1) This section applies where property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
- (a) the bankrupt,
  - (b) the bankrupt’s spouse, or
  - (c) a former spouse of the bankrupt.
- (2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall—
- (a) cease to be comprised in the bankrupt’s estate, and
  - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (3) Subsection (2) shall not apply if during the period mentioned in that subsection—
- (a) the trustee realises the interest mentioned in subsection (1),
  - (b) the trustee applies for an order for sale in respect of the dwelling-house,
  - (c) the trustee applies for an order for possession of the dwelling-house,
  - (d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or
  - (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.
- (4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application—
- (a) cease to be comprised in the bankrupt’s estate, and

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- (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—
- (a) shall not begin with the date of the bankruptcy, but
  - (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.
- (6) The court may substitute for the period of three years mentioned in subsection (2) a longer period—
- (a) in prescribed circumstances, and
  - (b) in such other circumstances as the court thinks appropriate.
- (7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).
- (8) The rules may also, in particular, make provision—
- (a) requiring or enabling the trustee of a bankrupt's estate to give notice that this section applies or does not apply;
  - (b) about the effect of a notice under paragraph (a);
  - (c) requiring the trustee of a bankrupt's estate to make an application to the Chief Land Registrar.
- (9) Rules under subsection (8)(b) may, in particular—
- (a) disapply this section;
  - (b) enable a court to disapply this section;
  - (c) make provision in consequence of a disapplication of this section;
  - (d) enable a court to make provision in consequence of a disapplication of this section;
  - (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation."

(2) Section 313 of the Insolvency Act 1986 (c. 45) (charge on bankrupt's home) shall be amended as follows—

    - (a) in subsection (2) for “, up to the value from time to time of the property secured,” substitute “, up to the charged value from time to time,”,
    - (b) after subsection (2) insert—
      - “(2A) In subsection (2) the charged value means—
        - (a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus
        - (b) interest on that amount from the date of the charging order at the prescribed rate.
      - (2B) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the rules.”,

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and

(c) at the end insert—

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

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

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

(1) This section applies where—

(a) property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(i) the bankrupt,

(ii) the bankrupt’s spouse, or

(iii) a former spouse of the bankrupt, and

(b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.

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

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

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

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

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

“section 313A;”.

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

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

(7) In subsection (8)—

(a) “pre-commencement bankrupt” means an individual who is adjudged bankrupt on a petition presented before subsection (1) above comes into force, and

(b) “the transitional period” is the period of three years beginning with the date on which subsection (1) above comes into force.

(8) If a pre-commencement bankrupt’s estate includes an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of him, his spouse or a former spouse of his, at the end of the transitional period that interest shall—

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- (a) cease to be comprised in the estate, and
  - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (9) But subsection (8) shall not apply if before or during the transitional period—
- (a) any of the events mentioned in section 283A(3) of the Insolvency Act 1986 (c. 45) (inserted by subsection (1) above) occurs in relation to the interest or the dwelling-house, or
  - (b) the trustee obtains any order of a court, or makes any agreement with the bankrupt, in respect of the interest or the dwelling-house.
- (10) Subsections 283A(4) to (9) of that Act shall have effect, with any necessary modifications, in relation to the provision made by subsections (7) to (9) above; in particular—
- (a) a reference to the period mentioned in section 283A(2) shall be construed as a reference to the transitional period,
  - (b) in the application of section 283A(5) a reference to the date of the bankruptcy shall be construed as a reference to the date on which subsection (1) above comes into force, and
  - (c) a reference to the rules is a reference to rules made under section 412 of the Insolvency Act 1986 (for which purpose this section shall be treated as forming part of Parts VIII to XI of that Act).

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

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

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

VALID FROM 01/04/2004

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

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

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

VALID FROM 01/04/2004

## **264 Individual voluntary arrangement**

- (1) Schedule 22 (which makes provision about individual voluntary arrangements) shall have effect.
- (2) The Secretary of State may by order amend the Insolvency Act 1986 so as to extend the provisions of sections 263B to 263G (which are inserted by Schedule 22 and



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provide a fast-track procedure for making an individual voluntary arrangement) to some or all cases other than those specified in section 263A as inserted by Schedule 22.

- (3) An order under subsection (2)—
- (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by each House of Parliament.
- (4) An order under subsection (2) may make—
- (a) consequential provision (which may include provision amending the Insolvency Act 1986 or another enactment);
  - (b) transitional provision.

VALID FROM 01/04/2004

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

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

VALID FROM 01/04/2004

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

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

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

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

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- (6) If the Secretary of State accepts a bankruptcy restrictions undertaking made by a member of the House of Commons or the House of Lords, the Secretary of State shall notify the Speaker of that House.

#### **426B Devolution**

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

#### **426C Irrelevance of privilege**

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

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### **267 Disqualification from office: local government**

- (1) The following shall be substituted for section 80(1)(b) of the Local Government Act 1972 (c. 70) (disqualification for membership of local authority: bankrupt)—  
“(b) is the subject of a bankruptcy restrictions order or interim order;”.
- (2) Section 81(1) and (2) of that Act (which amplify the provision substituted by subsection (1) above) shall cease to have effect.

VALID FROM 01/04/2004

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

- (1) The Secretary of State may make an order under this section in relation to a disqualification provision.
- (2) A “disqualification provision” is a provision which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a bankrupt or a class of bankrupts from—
  - (a) being elected or appointed to an office or position,
  - (b) holding an office or position, or
  - (c) becoming or remaining a member of a body or group.
- (3) In subsection (2) the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables him to be dismissed.
- (4) An order under subsection (1) may repeal or revoke the disqualification provision.
- (5) An order under subsection (1) may amend, or modify the effect of, the disqualification provision—
  - (a) so as to reduce the class of bankrupts to whom the disqualification provision applies;
  - (b) so as to extend the disqualification provision to some or all individuals who are subject to a bankruptcy restrictions regime;
  - (c) so that the disqualification provision applies only to some or all individuals who are subject to a bankruptcy restrictions regime;
  - (d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.
- (6) An order by virtue of subsection (5)(d) may provide for a discretion to be subject to—
  - (a) the approval of a specified person or body;
  - (b) appeal to a specified person or body.
- (7) An order by virtue of subsection (5)(d) made with the concurrence of the Lord Chancellor may provide for a discretion to be subject to appeal to a specified court or tribunal.

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- (8) The Secretary of State may specify himself for the purposes of subsection (5)(d) or (6)(a) or (b).
- (9) In this section “bankrupt” means an individual—
- (a) who has been adjudged bankrupt by a court in England and Wales or in Northern Ireland,
  - (b) whose estate has been sequestrated by a court in Scotland, or
  - (c) who has made an agreement with creditors of his for a composition of debts, for a scheme of arrangement of affairs, for the grant of a trust deed or for some other kind of settlement or arrangement.
- (10) In this section “bankruptcy restrictions regime” means an order or undertaking—
- (a) under Schedule 4A to the Insolvency Act 1986 (c. 45) (bankruptcy restrictions orders), or
  - (b) under any system operating in Scotland or Northern Ireland which appears to the Secretary of State to be equivalent to the system operating under that Schedule.
- (11) In this section—
- “body” includes Parliament and any other legislative body, and
- “provision” means—
- (a) a provision made by an Act of Parliament passed before or in the same Session as this Act, and
  - (b) a provision made, before or in the same Session as this Act, under an Act of Parliament.
- (12) An order under this section—
- (a) may make provision generally or for a specified purpose only,
  - (b) may make different provision for different purposes, and
  - (c) may make transitional, consequential or incidental provision.
- (13) An order under this section—
- (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (14) A reference in this section to the Secretary of State shall be treated as a reference to the National Assembly for Wales in so far as it relates to a disqualification provision which—
- (a) is made by the National Assembly for Wales, or
  - (b) relates to a function of the National Assembly.
- (15) Provision made by virtue of subsection (7) is subject to any order of the Lord Chancellor under section 56(1) of the Access to Justice Act 1999 (c. 22) (appeals: jurisdiction).

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

- C1 S. 268 applied (with modifications) (1.4.2004) by [Local Government Act 2003 \(c. 26\)](#), ss. 109(5), 129, [Sch. 4 para. 25](#); [S.I. 2003/2938](#), [art. 6\(a\)](#) (subject to transitional provisions and savings in [art. 8](#), [Sch.](#))

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**C2** S. 268 extended (with modifications) (1.4.2005) by [Human Tissue Act 2004 \(c. 30\)](#), ss. 56, 60, [Sch. 6 para. 6](#); [S.I. 2005/919](#), [art. 3](#), [Sch.](#) (with transitional provisions in [art. 2](#))

VALID FROM 01/04/2004

**269 Minor and consequential amendments**

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

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