
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force with minor exceptions the provisions of the Enterprise Act 2002 relating to insolvency.

The following provisions are brought into force on 15th September 2003 (“the first commencement date”):

- section 248 (replacement of Part II of the Insolvency Act 1986), and Schedules 16 and 17 (except paragraphs 14 and 59 of Schedule 17)
- section 249 (special administration regimes)
- section 250 (prohibition of appointment of administrative receivers) (to the extent it is not already in force) and Schedule 18
- section 251 (abolition of crown preference)
- section 252 (unsecured creditors)
- section 253 (liquidator’s powers)
- section 254 (application of insolvency law to foreign company)
- section 255 (application of law about company arrangement or administration to non-company)
- section 262 (powers of trustee in bankruptcy)
- section 278(2) and Schedule 26 (but only insofar as is necessary to give effect to the repeals relating to paragraphs 1 to 3 and 8 to 8C of Schedule 3 to the Bankruptcy (Scotland) Act 1985, sections 212, 230(1), 231, 232, 240(1), 245(3) and Schedule 10 to the Insolvency Act 1986 (except those relating to the entries relating to sections 31, 361 and 362), paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988, section 62(2)(a) of the Criminal Justice Act 1988, paragraphs 21A and 22 of Schedule 2 to the Finance Act 1991, paragraph 73 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992, sections 36(1) to (3) of the Finance Act 1993, paragraphs 13(1) and 13(2) of Schedule 6 and paragraph 7(2) of Schedule 7 to the Finance Act 1994, paragraph 8 of Schedule 14 to the Value Added Tax Act 1994, section 17 of the Finance Act 1995, paragraphs 12(1) and 12(2) of Schedule 5 to the Finance Act 1996, sections 166(7)(a), 183(3)(a) and 189(4) of the Employment Rights Act 1996, paragraph 6 of Schedule 2 to the Finance Act 1997, paragraphs 2 and 3 of Schedule 7 to the Finance Act 2000 and paragraphs 17(1) and (2) and 18 of Schedule 5 to the Finance Act 2001).

The following provisions are brought into force on 1st April 2004 (“the second commencement date”):

- section 256 (duration of bankruptcy) and Schedule 19 (except paragraph 8 of Schedule 19)
- section 257 (post discharge restrictions) and Schedules 20 and 21
- section 258 (investigation by official receiver)
- section 259 (income payments order)
- section 260 (income payments agreement)
- section 261 (bankrupt’s home)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

section 263 (repeal of certain bankruptcy offences)
section 264 (individual voluntary arrangements) and Schedule 22
section 265 (disqualification from office: justice of the peace)
section 266 (disqualification from office: Parliament)
section 267 (disqualification from office: local government)
section 268 (disqualification from office: general)
section 269 (minor and consequential amendments) and Schedule 23
section 270 (fees)
section 271 (Insolvency Services Account: interest)
section 272 (Insolvency Services Account)
section 278(2) and Schedule 26 (but only insofar as is necessary to give effect to the repeals relating to sections 81(1) and 82(2) of the Local Government Act 1972, paragraph 22 of Schedule 8 to the Insolvency Act 1985, sections 275, 282(5), 292(1)(a), 293(1), 294(1), 297, 298(3), 300, 310(1), 361, 362, 405, 427 of the Insolvency Act 1986, the entries relating to sections 31, 361 and 362 in Schedule 10 to the Insolvency Act 1986 and section 65 of the Justices of the Peace Act 1997).

The main features of the provisions brought into force by this Order on [] are the replacement of the provisions relating to the procedure of administration under Part II of the Insolvency Act 1986, the prohibition (subject to certain exceptions) on the appointment of administrative receivers, the abolition of Crown preference and the creation out of assets subject to a floating charge of a fund for the benefit of unsecured creditors. The remaining provisions of the Enterprise Act 2002 relating to individual insolvency in England and Wales and miscellaneous matters are brought into force from the 1st April 2004. These include the reduction in the period of bankruptcy for those bankrupts who co-operate with the Official Receiver from 3 years to a maximum of one year, the introduction of a procedure under which the court may make an order imposing restrictions on bankrupts who have been guilty of misconduct and provisions which provide for the official receiver to act in certain types of individual voluntary arrangement.

The Order contains a number of transitional and saving provisions. These are as follows.

Article 3 of the Order contains transitional provisions in relation to cases where petitions for administration orders were presented prior to the first commencement date. The old law will continue to apply in those cases. It also saves the operation of the old law for the purposes of giving effect to the Insolvent Partnerships Order 1994, regulation 5 of the Limited Liability Partnerships Regulations 2001; and the Financial Services and Markets Act 2000 (Administration Orders relating to Insurers) Order 2002. Article 4 of the Order contains transitional provisions in relation to the abolition of preferential status for Crown debts. Broadly speaking preferential status will continue to apply in those cases which were started before the first commencement date. The provisions of article 4 (and articles 5 and 6) apply in cases where the provisions of the Insolvency Act 1986 are applied to other situations, for example in relation to insolvent partnerships (*See article 1(5)*).

Articles 5 and 6 make transitional provisions in relation to certain types of proceedings taken by liquidators and trustees in bankruptcy. Section 253 of the Enterprise Act 2002 amends Schedule 4 to the Insolvency Act 1986 so that proceedings under sections 213, 214, 238, 239, 242, 243 or 423 can only be brought with sanction (usually from the creditors' committee). Similarly section 262 of the Enterprise Act 2002 amends Schedule 5 to the Insolvency Act 1986 to provide that a trustee in bankruptcy can only bring proceedings under sections 339, 340 or 423 with sanction (usually from the creditors' committee). Articles 5 and 6 provide that these amendments to the 1986 Act are not to affect any proceedings that are already on foot under the provisions of the Insolvency Act 1986 mentioned above.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Article 7 provides that where a court is considering whether to make a bankruptcy restrictions order it cannot take into account any conduct of the bankrupt which occurred prior to the second commencement date.

Article 8 contains transitional provisions in relation to existing bankruptcies in England and Wales where a certificate of summary administration was in force.

A regulatory impact assessment identifying the costs of the insolvency provisions of the Enterprise Act 2002 to business and the exchequer was published at the time the Act received Royal Assent in November 2002. It is available from www.dti.gov.uk/enterpriseact/rias.htm.