



Insolvency Act 1985

1985 CHAPTER 65

PART III

INDIVIDUAL INSOLVENCY

CHAPTER III

PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS

Preliminary

130 Definition of bankrupt's estate

- (1) Subject to the following provisions of this section, a bankrupt's estate for the purposes of this Part shall comprise—
 - (a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy ;
 - (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 paragraph (a) above.
- (2) Subject to section 155 below, subsection (1) above 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.
- (3) Subsection (1) above does not apply to property held by the bankrupt on trust for any other person.
- (4) Subsection (1) above does not apply to the right of nomination to a vacant ecclesiastical benefice.

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- (5) References in this Part 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 146(2) below or a meeting summoned by the trustee of that estate under section 168 below 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 shall be deemed for the purposes of this Part 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).
- (6) For the purposes of this Part property comprised in a bankrupt's estate is so comprised subject to the rights of any person other than 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 120(5) (a) above 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.
- (7) 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.

Restrictions applying after presentation of petition

131 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 shall be 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) above 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 V of this Part, of the bankrupt's estate in a trustee.
- (4) The preceding provisions of this section shall 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 a 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 shall be deemed for the purposes of this Part to have been incurred before the commencement of the bankruptcy unless—

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- (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 shall be 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 shall affect any disposition made by any person of property held by him on trust for any other person.

132 Restrictions 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 undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit.
- (3) Subject to sections 179 and 180 below, 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.
- (4) Subject to subsection (5) below, subsection (3) above shall 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; and where such a notice has been given to any person, that person shall not, without the leave of the court, be entitled 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 a bankrupt are references to any of his property or goods, whether or not comprised in his estate.

Receivership

133 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.

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- (2) Where the court has, on a debtor's petition, appointed a person under section 123(2) above and it is shown to the court as mentioned in subsection (1) above, the court may, without making a bankruptcy order, appoint that person, 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 shall have, in relation to the debtor's property, all the rights, powers, duties and immunities of a receiver and manager under section 134 below.
- (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 under this section the debtor shall give the interim receiver such inventory of his property and such other information, and shall attend on the interim receiver at such times, as the interim receiver may for the purpose of carrying out his functions under this section reasonably require.
- (6) Where an interim receiver is appointed under this section, subsection (3) of section 132 above shall apply 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 shall cease 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 references to all his property, whether or not it would be comprised in his estate if he were adjudged bankrupt.

134 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 V of this Part the official receiver shall be the receiver and (subject to section 198 below) the manager of the bankrupt's estate and shall be 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 shall be to protect the bankrupt's estate and for this purpose—
 - (a) he shall have the same powers as if he were a receiver or manager appointed by the High Court; and
 - (b) he shall be entitled to sell or otherwise dispose of any perishable goods comprised in the bankrupt's 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 bankrupt's estate under this section 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.
- (4) The official receiver while acting as receiver or manager of the bankrupt's estate under this section shall not, except in pursuance of directions given by the Secretary of State, be required to do anything that involves his incurring expenditure.

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- (5) The official receiver while acting as the receiver or manager of the bankrupt's estate under this section may, if he thinks fit, at any time summon a general meeting of the bankrupt's creditors ; and the official receiver shall summon such a meeting if he is directed to do so by the court.
- (6) Where—
- (a) the official receiver acting as receiver or manager of the bankrupt's estate under this section 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 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 shall not 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 shall have 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.
- (7) This section shall not apply where by virtue of section 144 below a bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

Ascertainment and investigation of bankrupt's affairs

135 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 twenty-one 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) above; 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 without reasonable excuse fails to comply with the obligation imposed by this section or without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court and liable to be punished accordingly.

136 Investigatory duties of official receiver

- (1) Subject to subsection (5) below, it shall be 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.

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- (2) Where an application is made by the bankrupt under section 127 above for his discharge from bankruptcy, it shall be 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 therein.
- (4) In subsection (1) above the reference to the conduct and affairs of a bankrupt includes a reference to 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) above only if he thinks fit.

137 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) above if notice requiring him to do so is given to him, in accordance with the 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) above, 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 a bankrupt and may question the bankrupt 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 119(1)(d) above, 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 shall, in addition to any other punishment to which he may be subject, be guilty of contempt of court and liable to be punished accordingly.

Duties of bankrupt in relation to official receiver

138 Duties of bankrupt in relation to official receiver

- (1) Where a bankruptcy order has been made, the bankrupt shall be under a duty—
 - (a) to deliver possession of his estate to the official receiver;

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- (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); and
 - (c) in the case of any part of his 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 of that estate, to do all such things as may reasonably be required by the official receiver for the protection of those things or that property.
- (2) Subsection (1) above shall not apply where by virtue of section 144 below a bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.
 - (3) A 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.
 - (4) Subsection (3) above shall apply to a bankrupt after his discharge.
 - (5) If a bankrupt without reasonable excuse fails to comply with any obligation imposed by this section he shall, in addition to any other punishment to which he may be subject, be guilty of contempt of court and liable to be punished accordingly.