

SCHEDULES

SCHEDULE 2

CRIMINAL BANKRUPTCY ORDERS

PART I

GENERAL

Act of bankruptcy

- 1 Subject to the provisions of this Schedule, where a criminal bankruptcy order is made against any person he shall be treated as a debtor who has committed an act of bankruptcy on the date on which the order is made.

Creditors and criminal bankruptcy debts

- 2 A person specified in a criminal bankruptcy order as having suffered loss or damage of any amount shall be treated, for the purpose of any ensuing proceedings pursuant to—
- (a) a bankruptcy petition presented by virtue of paragraph 1 above ; or
 - (b) a petition under section 130 of the Bankruptcy Act 1914 (administration in bankruptcy of estate of deceased debtor) presented by virtue of this Schedule ;

as a creditor for a debt of that amount provable in the bankruptcy of the person against whom the order was made.

Rules

- 3 For the purposes of section 132 of the Bankruptcy Act 1914 (general rules for carrying the objects of that Act into effect) this Schedule, except paragraphs 8 and 10, shall be deemed to be part of that Act.

Interpretation

- 4 In Parts II and III of this Schedule—
- " the Act of 1914 " means the Bankruptcy Act 1914 ;
 - " criminal bankruptcy petition " means any such petition as is mentioned in paragraph 2(a) above and "criminal bankruptcy administration petition " means any such petition as is mentioned in paragraph 2(b) above ; and
 - " criminal bankruptcy debt " means a debt deemed to be due to any person by virtue of paragraph 2 above.

Status: This is the original version (as it was originally enacted).

PART II

PROCEEDINGS BASED ON A CRIMINAL BANKRUPTCY ORDER: APPLICATION OF THE ACT OF 1914, ETC.

Criminal bankruptcy petition

- 5 (1) A criminal bankruptcy petition shall be presented to the High Court, but without prejudice to any power of transferring bankruptcy proceedings to any other court.
- (2) No criminal bankruptcy petition shall be presented by the person who under paragraph 1 above is the debtor ; and, in relation to such a petition presented by a creditor, section 4 of the Act of 1914 shall have effect with the following modifications—
- (a) subsections (1)(a) and (b) and (2) (conditions as to nature of debt) shall not apply to a criminal bankruptcy debt; and
 - (b) subsection (1)(d) (domicile of debtor) shall be omitted.

Receiving order

- 6 For the purposes of section 5(2) and (3) of the Act of 1914 (matters to be proved before receiving order is made) the act of bankruptcy which a person is treated by this Schedule as having committed and any criminal bankruptcy debt shall be treated as conclusively proved by the production of a copy of the criminal bankruptcy order in question, and subsections (5) and (6) of that section shall not apply in relation to any such debt.
- 7 Section 12 of the Act of 1914 (power to rescind receiving order to enable bankruptcy proceedings to proceed in Scotland or Northern Ireland) shall not apply to a receiving order made on a criminal bankruptcy petition.

Trustee of criminal bankrupt's property

- 8 Where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition the official receiver (and not a person appointed under section 19 of the Act of 1914) shall in the bankruptcy be trustee of the property of the bankrupt.

Proof of criminal bankruptcy debt in bankruptcy proceedings

- 9 (1) For the purpose of proving a criminal bankruptcy debt in proceedings pursuant to a criminal bankruptcy petition, a copy of the criminal bankruptcy order specifying the amount deemed by virtue of paragraph 2 above to be due as a debt shall, subject to paragraph 6 above, be treated as sufficient evidence of the debt unless it is shown by any party to the proceedings that the amount of the relevant loss or damage is greater or less than the amount specified in the order or that the loss or damage did not in fact result from any offence specified in the order; and if it is shown by any party to the proceedings that the amount of the relevant loss or damage is greater than that specified in the order, paragraph 2 above shall have effect as if the greater amount had been specified in the order.
- (2) Nothing in this paragraph or paragraph 2 above shall be taken as prejudicing the proof in proceedings pursuant to a criminal bankruptcy petition of debts other than criminal bankruptcy debts.

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- (3) Nothing in sub-paragraph (1) above shall be construed as entitling any person to contend that the offence or offences specified in a criminal bankruptcy order were not committed by the person against whom the order was made.

Recovery of assets for benefit of criminal bankrupt's creditors

- 10 (1) Without prejudice to any provision of the Act of 1914, the following provisions of this paragraph shall apply, where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition, with respect to dispositions of property or any interest in property made by the bankrupt on or after the relevant date, either by way of gift or for an under-value.

In this sub-paragraph, "the relevant date" means the date specified in the order (in accordance with section 39(3)(d) of this Act) as the earliest date on which the offence or, as the case may be, the earliest of the offences, was committed.

- (2) On the application of the official receiver (in his capacity as trustee) the High Court may make orders requiring—
- (a) the person taking under any such disposition ; or
 - (b) subject to the following sub-paragraph, any other person who by virtue of any subsequent disposition acquired (whether or not from the person taking under the bankrupt's disposition) the whole or any part of the property or any interest therein;

to transfer the whole or any part of the property, or such interest as the order may specify, to the trustee, or to make such payments to the trustee as the court thinks just with a view to making available to the creditors the full value of the property or interest disposed of by the bankrupt (including any increase in its value since the disposition was made).

- (3) No order shall be made by virtue of sub-paragraph (2)(b) above against a person appearing to the court to have given full value for anything taken by him under a relevant disposition or to claim (directly or indirectly) through a person who gave full value.
- (4) An order of the High Court under this paragraph requiring a person to transfer any property or interest may include such consequential directions for giving effect to the order, and be made on such terms (including in particular terms allowing the person to retain or recover consideration given by him for any relevant disposition) as the court thinks just in all the circumstances.
- (5) In this paragraph "disposition" includes any conveyance or assurance of property of any description.

Administration in bankruptcy of deceased offender's estate

- 11 (1) Paragraph 5(1) above shall apply to a criminal bankruptcy administration petition as it applies to a criminal bankruptcy petition.
- (2) Where an order for administration is made under section 130 of the Act of 1914 on a criminal bankruptcy administration petition, so much of subsection (4) of that section as enables the creditors to appoint a trustee of the property of the debtor in place of the official receiver shall not apply.

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- (3) Paragraph 9 above shall apply in relation to proof of criminal bankruptcy debts in proceedings pursuant to a criminal bankruptcy administration petition as it applies in relation to proof of such debts in proceedings pursuant to a criminal bankruptcy petition.

Bankruptcy proceedings otherwise than by virtue of this Schedule

- 12 Where a criminal bankruptcy order has been made against any person and a bankruptcy petition has been presented in respect of him before the order was made, or is presented in respect of him thereafter otherwise than by virtue of paragraph 1 above, the court having jurisdiction in relation to the bankruptcy may, on the application of the Official Petitioner, dismiss the petition, rescind any receiving order made in pursuance thereof or, if that person has been adjudged bankrupt, annul the adjudication on such terms, if any, as the court thinks fit.

Effect of appeal against conviction

- 13 (1) Subject to the provisions of this paragraph, the fact that an appeal is pending against any conviction by virtue of which a criminal bankruptcy order was made shall not preclude the taking of any proceedings by virtue of this Schedule in consequence of the making of the order.
- (2) Where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition, no property shall be distributed by his trustee in bankruptcy and no order shall be made by the High Court under paragraph 10 above so long as an appeal is pending against his conviction of any offence by virtue of which the criminal bankruptcy order was made.
- (3) For the purposes of this paragraph 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 thereof, 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 this Act.
- (4) Where in consequence of an appeal a criminal bankruptcy order is rescinded—
- (a) any bankruptcy petition based on the order shall lapse and any receiving order or adjudication of bankruptcy made in consequence thereof shall cease to have effect, but without prejudice to anything previously done thereunder ;
 - (b) where any such adjudication ceases to have effect, the property of the person who was adjudicated bankrupt shall revert to him for all his estate or interest therein ; and
 - (c) the court which had jurisdiction in relation to the bankruptcy may, on his application or on the application of the official receiver, by order give such directions, if any, as appear to the court to be necessary or desirable in consequence of the preceding provisions of this paragraph.
- (5) Where in consequence of an appeal a criminal bankruptcy order is amended by the deletion of any amount specified therein as the loss or damage suffered by any person, paragraph 2 above shall not thereafter apply to that loss or damage but without prejudice to anything done before the amendment takes effect.

PART III

FUNCTIONS OF OFFICIAL PETITIONER

General

- 14 The functions of the Official Petitioner are as follows—
- (a) to consider whether, in a case in which a criminal bankruptcy order is made, it is in the public interest that he should himself present a criminal bankruptcy petition;
 - (b) to present a criminal bankruptcy petition in any such case where he determines it is in the public interest for him to do so ;
 - (c) to make payments, in such cases as he may determine, towards expenses incurred by other persons in connection with proceedings pursuant to a criminal bankruptcy petition or a criminal bankruptcy administration petition ;
 - (d) to exercise, so far as he considers it to be in the public interest to do so, any of the powers conferred on him by this Schedule.

Presentation of criminal bankruptcy petition by Official Petitioner

- 15 (1) The Official Petitioner may present a criminal bankruptcy petition, and a receiving order may be made on that petition.
- (2) Section 4 of the Act of 1914, as modified by paragraph 5(2) above, shall apply to a criminal bankruptcy petition presented by the Official Petitioner as it applies to a petition presented by a creditor, but the High Court may allow the petition to be presented later than required by subsection (1)(c) of that section.
- (3) A criminal bankruptcy petition presented by the Official Petitioner shall be served in the manner prescribed by rules made under the Act of 1914.
- (4) Section 5(2), (3) and (7) of the Act of 1914 (making of receiving order on, and withdrawal of, creditor's petition) shall apply also in relation to a criminal bankruptcy petition presented by the Official Petitioner but as if any reference to the debt of the petitioning creditor were a reference to any criminal bankruptcy debt within the meaning of this Schedule ; and paragraph 6 above shall have effect in relation to section 5(2) and (3) as they apply by virtue of this paragraph.

Presentation of criminal bankruptcy administration petition by Official Petitioner

- 16 (1) The Official Petitioner may present a petition under section 130 of the Act of 1914 in any case in which a creditor could do so by virtue of this Schedule, and an order may be made under that section on that petition.
- (2) Section 130(2) shall have effect in relation to a petition presented by the Official Petitioner as if the reference to the petitioner's debt were a reference to any criminal bankruptcy debt within the meaning of this Schedule.

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Participation of Official Petitioner in proceedings brought by virtue of this Schedule (whether by the Official Petitioner or by a creditor)

- 17 (1) In the case of proceedings pursuant to a criminal bankruptcy petition or a criminal bankruptcy administration petition, the Official Petitioner shall be entitled—
- (a) to attend any meeting of creditors and, before the meeting, to receive any notice or other document required to be sent before such a meeting to any creditor ;
 - (b) to be a member of any committee of inspection appointed under section 20 of the Act of 1914, but not so as to count towards the number of members mentioned in subsection (2) or (9), or to be subject to removal under subsection (7), of that section ;
 - (c) to be a party to any such proceedings before any court.
- (2) In the case of proceedings pursuant to a criminal bankruptcy petition or a criminal bankruptcy administration petition, the provisions mentioned in sub-paragraph (3) below shall have effect as if any reference to a creditor, or to a creditor who has proved or tendered a proof, included a reference to the Official Petitioner.
- (3) The provisions of the Act of 1914 referred to in sub-paragraph (2) above are sections 10 (appointment of special manager), 14(2) and (4) (debtor's statement of affairs), 15(4) and (8) (public examination of debtor), 16(5), (6) and (8) (compositions and schemes of arrangement), 26(7) (discharge of bankrupt), 37 (relation back of trustee's title), 74(1)(e) (report to creditors of debtor's proposal), 80 (appeal to court against act or decision of trustee), and 130(8) (effect of notice of creditor's petition under that section).
- (4) Any functions of the Official Petitioner under or by virtue of this Act may be discharged on his behalf by any person acting with his authority.