



# Insolvency Act 1976

## 1976 CHAPTER 60

### **1 Increase of monetary limits relating to bankruptcy and winding up**

- (1) For the sums specified in the provisions mentioned in the first column of Part I of Schedule 1 to this Act (which relate to bankruptcy and the winding up of companies and are concerned with the matters described in the second column of that Part) there shall be substituted the sums specified in the third column of that Part.
- (2) The Secretary of State may by regulations increase or reduce any of the sums for the time being specified in the provisions amended by subsection (1) above.
- (3) The transitional provisions in Part II of Schedule 1 to this Act shall have effect in relation to any increase or reduction by or under this section.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument; and no such regulations shall be made unless a draft of them has been approved by resolution of each House of Parliament.

### **2 Audit of accounts of trustees in bankruptcy and liquidators**

- (1) The Secretary of State may cause any accounts sent to him under section 92 of the Bankruptcy Act 1914 or section 249 of the Companies Act 1948 (periodic accounts of trustees in bankruptcy and liquidators) to be audited; and so much of subsection (3) of each of those sections as requires him to cause every such account to be audited shall cease to have effect.
- (2) So much of subsection (3) of each of those sections as enables the Secretary of State to call for vouchers and information and to require the production of and to inspect books and accounts shall apply whether or not he decides to cause an account to be audited and shall extend to production and inspection at the premises of the trustee or liquidator.
- (3) Where the Secretary of State decides not to cause an account to be audited, subsection (4) of each of those sections shall apply as if it required copies of the accounts to be filed or delivered for filing forthwith, and the liquidator shall comply with subsection (5) of the said section 249 when notified of the decision.

- (4) Only the copy filed with the court shall be open to inspection under subsection (4) of the said sections 92 and 249.

### **3 Insolvency Services Account**

- (1) The Bankruptcy Estates Account and the Companies Liquidation Account shall be replaced by a single account kept by the Secretary of State with the Bank of England and to be called the Insolvency Services Account.
- (2) All sums standing to the credit of the Bankruptcy Estates Account or the Companies Liquidation Account immediately before the date on which this section comes into force shall on that date be transferred to the Insolvency Services Account.
- (3) All money received by the Secretary of State in respect of proceedings—
- (a) under the Bankruptcy Act 1914 ; or
  - (b) under the Companies Act 1948 in connection with the winding up of companies in England and Wales,
- shall be paid into the Insolvency Services Account; and all payments out of money standing to the credit of the Secretary of State in that account shall be made by the Bank of England in such manner as he may direct.
- (4) Whenever the cash balance standing to the credit of the Insolvency Services Account is in excess of the amount which in the opinion of the Secretary of State is required for the time being to answer demands in respect of bankrupts' estates or companies' estates, the Secretary of State shall notify the excess to the National Debt Commissioners, and shall pay into the Insolvency Services Investment Account the whole or any part of that excess as the Commissioners may require for investment in accordance with the Insolvency Services (Accounting and Investment) Act 1970.
- (5) Whenever any part of the money so invested is, in the opinion of the Secretary of State, required to answer any demand in respect of bankrupts' estates or companies' estates, he shall notify to the National Debt Commissioners the amount so required and the Commissioners shall thereupon repay to him such sum as may be required to the credit of the Insolvency Services Account, and for that purpose may direct the sale of such part of the securities in which the money has been invested as may be necessary.
- (6) In consequence of the foregoing provisions of this section the enactments mentioned in Schedule 2 to this Act shall be amended in accordance with that Schedule.

### **4 Extension of time for complying with bankruptcy notice**

In section 1(1)(g) of the Bankruptcy Act 1914 (act of bankruptcy if debtor does not comply with bankruptcy notice within seven days) for the words " seven days " there shall be substituted the words " ten days ".

### **5 Proof of debts in bankruptcy**

- (1) For paragraph 2 of Schedule 2 to the Bankruptcy Act 1914 (debt to be proved by affidavit) there shall be substituted—
- “2 A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver or, if a trustee has been appointed, to the trustee—

- (a) in any case in which the official receiver or trustee so requires, an affidavit verifying the debt;
  - (b) in any other case, an unsworn claim to the debt.”
- (2) In paragraphs 3, 4 and 5 of that Schedule after the word " affidavit ", wherever it occurs, there shall be inserted the words " or claim ".
- (3) For section 45 of the Bankruptcy (Scotland) Act 1913 (evidence to be produced by creditor) there shall be substituted—

**“45 Method of making claims by creditors.**

- (1) Subject to section 118(3) of this Act, to entitle a creditor to vote or draw a dividend, he shall be bound to produce at the meeting, or in the hands of the trustee, the account and vouchers necessary to prove the debt claimed by the creditor, and either—
  - (a) a notice of claim to the debt in such form as the Secretary of State may by regulations made by statutory instrument prescribe; or
  - (b) in any case in which the trustee so requires, an oath to the effect and taken in manner hereinbefore appointed in the case of creditors petitioning for sequestration.
- (2) In this Act any reference—
  - (a) in sections 46, 55 to 58, 119 and 120 to " oath " shall include a reference to notice of claim under this section ;
  - (b) in sections 47, 48 and 53 to " oath and claim" or to " oath or claim" shall include a reference to notice of claim under this section;
  - (c) in section 176(4) to " oath and claim " shall include a reference to notice of claim and account and vouchers under this section;
  - (d) in section 123 to " oath " shall, except in so far as it relates to a mode of examination, include a reference to notice of claim under this section.”
- (4) For subsection (3) of section 118 of the said Act of 1913 (provision as to preferential payments) there shall be substituted—
  - “(3) Where in respect of any of the foregoing debts the trustee has not required an oath in terms of section 45(1)(b) of this Act he may, with the consent of the Commissioners, also dispense with any requirement to produce a notice of claim in respect of that debt.
  - (3A) The trustee may, with the consent of the Commissioners, pay any of the foregoing debts before the period for payment of the first dividend.”

**6 Power to dispense with public examination of debtor**

- (1) The court may, if it thinks fit, make an order dispensing with the public examination of a debtor under section 15 of the Bankruptcy Act 1914; and in determining whether to make an order the court shall have regard to all the circumstances of the case including, in particular—
  - (a) whether the debtor has made a full disclosure of his affairs ;
  - (b) whether he has been adjudged bankrupt on a previous occasion;
  - (c) the number and nature of his debts ;

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

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- (d) whether his bankruptcy would for any reason be a matter of public concern ;  
and
  - (e) such other matters as may be prescribed for the purposes of this subsection by  
rules made under section 132 of the said Act of 1914.
- (2) No order shall be made under subsection (1) above except on the application of the official receiver but the power of the court under section 108(1) of the said Act of 1914 to review or rescind any such order may be exercised either on the application of the official receiver or on the application of the debtor, a creditor or the trustee.
- (3) The foregoing provisions are without prejudice to subsection (10) of the said section 15 (power to dispense with public examination of debtor suffering from mental or physical disability).
- (4) Where an order is made under this section or the said subsection (10) dispensing with the public examination of the debtor, sections 16(2) and (6), 18(1) and 26(1) of the said Act of 1914 (which provide for certain things to be done before or after the conclusion of the debtor's public examination) shall have effect as if his public examination were concluded on the date on which the order is made.

## 7 Automatic discharge of bankrupt

- (1) Where the court makes an order—
- (a) declaring that a debtor's examination under section 15 of the Bankruptcy Act 1914 has been concluded; or
  - (b) dispensing with his examination under that section,
- the court may, if it thinks fit, make an order directing that subsection (2) below shall have effect if he is or has been adjudged bankrupt in the proceedings; and in determining whether to make such an order the court shall have regard to all the circumstances of the case, including in particular, any such facts as are stated in section 26(3) of the said Act of 1914 and whether the debtor has committed any offence under that Act or any other offence connected with his bankruptcy.
- (2) Where the court makes an order under subsection (1) above, then, if the debtor is or has been adjudged bankrupt in the proceedings and—
- (a) is not discharged in respect of the adjudication under section 26 of the said Act of 1914 before the fifth anniversary of the date of the adjudication; and
  - (b) the adjudication is not annulled before that anniversary under section 21(2) or 29 of that Act,
- the same results shall ensue as if the court had on that anniversary granted him an absolute order of discharge in respect of the adjudication under the said section 26.
- (3) Section 108(1) of the said Act of 1914 (power to review, rescind or vary an order) shall not apply to an order under subsection (1) above, but the court may on the application of the official receiver or the trustee rescind the order at any time before the fifth anniversary of the date of the adjudication.
- (4) Where a person has been adjudged bankrupt more than five years before the coming into force of this section and—
- (a) has not been discharged in respect of the adjudication under section 26 of the said Act of 1914 before the relevant date (that is to say, the coming into force of this section or the tenth anniversary of the date of the adjudication, whichever is the later); and

(b) the adjudication has not been annulled before the relevant date under section 21(2) or 29 of that Act,

the same results shall ensue as if the court had on the relevant date granted him an absolute order of discharge under the said section 26.

(5) In subsections (2)(a) and (4)(a) above references to discharge are references to discharge by an absolute order of discharge or by the expiration of the period, or satisfaction of any requirement, specified by a suspended or conditional order.

## **8 Discharge of bankrupt on application of official receiver**

(1) This section applies to any adjudication of bankruptcy made after, or within five years before, the coming into force of this section where—

- (a) the bankrupt has not applied under section 26 of the Bankruptcy Act 1914 for an order of discharge in respect of the adjudication ; and
- (b) the adjudication has not been annulled under section 21(2) or 29 of that Act; and
- (c) the court has not made an order under section 7(1) above in relation to the adjudication or any such order has been rescinded ; and
- (d) five years have elapsed since the date of the adjudication.

(2) Within twelve months after the fifth anniversary of the date of any adjudication to which this section applies, the official receiver shall make an application to the court in respect of the adjudication.

(3) The court shall appoint a day for the hearing of the application and notice of the appointment shall be published in the prescribed manner and sent fourteen days at least before the day so appointed to the bankrupt.

(4) On the hearing of the application the court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs, including a report as to the bankrupt's conduct during the proceedings under his bankruptcy; and for the purposes of this section that report shall be prima facie evidence of the statements therein contained.

(5) Except where the court otherwise directs, the application may be heard in the absence of the bankrupt; and the court may hear the trustee and any creditor, receive such other evidence as it thinks fit and, if the bankrupt is present, put questions to him.

(6) On any application under this section the court may—

- (a) grant or refuse an absolute order of discharge; or
- (b) suspend the discharge for such period as the court thinks proper or until a dividend of not less than 50p in the pound has been paid to the creditors; or
- (c) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the court may direct.

(7) Execution shall not be issued without the leave of the court on any judgment entered by virtue of subsection (6)(c) above; and leave may be given on proof that the bankrupt

has since his discharge acquired property or income available towards payment of his debts.

- (8) If at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of the order, the court may modify the terms of the order, or of any substituted order, in such manner and on such conditions as it thinks fit.
- (9) References to discharge and an order of discharge in sections 26(9) and 28 of the said Act of 1914 (ancillary provisions as to discharge) shall include references to discharge and an order of discharge under this section; and the powers conferred by this section shall be included in those mentioned in section 102(2) of that Act (powers exercisable by registrars).

## 9 Disqualification of directors of insolvent companies

- (1) Where on an application under this section it appears to the court—
- (a) that a person—
    - (i) is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or subsequently) and was insolvent at that time ; and
    - (ii) is or has been a director of another such company which has gone into liquidation within five years of the date on which the first-mentioned company went into liquidation ; and
  - (b) that his conduct as director of any of those companies makes him unfit to be concerned in the management of a company,
- the court may make an order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period beginning with the date of the order and not exceeding five years as may be specified in the order.
- (2) In the case of a person who is or has been a director of a company which has gone into liquidation as aforesaid and is being wound up by the court—
- (a) any application under this section shall be made by the official receiver or, in Scotland, the Secretary of State; and
  - (b) the power to make an order on the application shall be exercisable by the court by which the company is being wound up;
- and in any other case any application under this section shall be made by the Secretary of State and the power to make an order thereon shall be exercisable by the High Court or, in Scotland, the Court of Session.
- (3) Where the official receiver or Secretary of State intends to make an application under this section in respect of any person, he shall give not less than ten days' notice of his intention to that person, and on the hearing of the application that person may appear and himself give evidence or call witnesses.
- (4) On the hearing of an application under this section by the official receiver or Secretary of State, or of an application for leave under this section by a person in respect of whom an order has been made on the application of the official receiver or Secretary of State, the official receiver or Secretary of State shall appear and call the attention of the court to any matters which seem to him to be relevant and may himself give evidence or call witnesses.

- (5) If any person acts in contravention of an order made under subsection (1) above he shall in respect of each offence be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £400 or to both.
- (6) The Secretary of State may require the liquidator or former liquidator of any company—
- (a) to furnish him with such information with respect to the company's affairs ; and
  - (b) to produce and permit inspection of such books or documents of or relevant to the company,
- as the Secretary of State may reasonably require for the purpose of determining whether to make an application under this section in respect of any person who is or has been a director of that company ; and if a person makes default in complying with any such requirement the court may, on the application of the Secretary of State, make an order requiring that person to make good the default within such time as may be specified.
- (7) In this section—
- " company " includes an unregistered company (wherever incorporated) within the meaning of Part IX of the Companies Act 1948;
  - " director ", in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act; and for the purposes of this section a company goes into liquidation if it is wound up by the court, on the date of the winding up order and, in any other case, on the date of the passing of the resolution for voluntary winding up.
- (8) In Schedule 1 to the said Act of 1948, in regulation 88 of Part I of Table A and article 38 of Table C the references to an order under section 188 of that Act (disqualification of directors) shall include a reference to an order under this section.
- (9) Subsection (1) above does not apply unless at least one of the companies there mentioned has gone into liquidation after the date of the coming into force of this section ; and the conduct to which regard may be had under paragraph (b) of that subsection does not include conduct as director of a company that has gone into liquidation before that date.

## **10 Advisory committee on bankruptcy and winding up rules**

- (1) There shall be a committee appointed by the Lord Chancellor to keep under review the rules for the time being in force under—
- (a) section 132 of the Bankruptcy Act 1914 (bankruptcy rules); and
  - (b) section 365 of the Companies Act 1948 (winding up rules);
- and to make recommendations to the Lord Chancellor as to any changes in the rules that may from time to time appear to the committee to be desirable.
- (2) The Lord Chancellor shall consult the committee before making any rules under the provisions mentioned in subsection (1) above.

- (3) Subject to subsection (4) below, the committee shall consist of—
- (a) a judge of the High Court attached to the Chancery Division;
  - (b) a circuit judge ;
  - (c) a registrar in bankruptcy of the High Court;
  - (d) a registrar of a county court;
  - (e) a practising barrister ;
  - (f) a practising solicitor ; and
  - (g) a practising accountant.
- (4) The Lord Chancellor may appoint as additional members of the committee any persons appearing to him to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.

## **11 Power to replace administration order by receiving order**

- (1) Where a person fails to make any payment which he is required to make by virtue of an administration order, the appropriate court may, if it thinks fit, revoke the administration order and make a receiving order against that person.
- (2) In subsection (1) above " the appropriate court" means—
- (a) if the court administering the estate of the person in question under the administration order has bankruptcy jurisdiction, that court; and
  - (b) in any other case, a court having bankruptcy jurisdiction, being a court to which the matter is referred by the court mentioned in paragraph (a) above;
- and the powers of the High Court under this section may be exercised by the registrars in bankruptcy of that court.
- (3) Any fee payable in respect of the making of a receiving order under this section shall be a first charge on any money which has been paid into court under the administration order and not distributed at the time when that order is revoked.
- (4) The making of a receiving order under this section shall not affect any payment to a creditor made under the administration order before it is revoked.
- (5) Where a receiving order is made under this section against any person, he shall be deemed to have committed an act of bankruptcy at the time when the order is made and the provisions of the Bankruptcy Act 1914, except Part VII, shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.
- (6) In sections 37(2), 44(3), 154(1) paragraph (15), 157(3) and 158(5) of the said Act of 1914 (modification of provisions where receiving order is made against a judgment debtor under section 107 of that Act) references to a receiving order under section 107 shall include references to a receiving order under this section.
- (7) In this section " administration order" means an order under Part VII of the County Courts Act 1959 ; and for the purposes of section 132 of the said Act of 1914 (power to make rules) this section shall be treated as if contained in that Act.



## **12 Administration order rules**

- (1) The power to make rules under section 102 of the County Courts Act 1959 (county court rules) shall include power to make rules for the purposes of Part VII of that Act (administration orders), section 4 of the Attachment of Earnings Act 1971 and section 11 above.
- (2) Section 156 of the said Act of 1959 (administration order rules to be made by the Lord Chancellor) shall cease to have effect; and in section 20(3) and (6) of the Administration of Justice Act 1965 for the words " section 156 " there shall be substituted the words " section 102 ".

## **13 Other provisions about administration orders**

- (1) Section 21 of the Administration of Justice Act 1965 and section 4(3) of the Attachment of Earnings Act 1971 (under which an application for an administration order and the making of an order requiring the debtor to furnish a list of creditors with a view to the making of an administration order constitute an act of bankruptcy) shall cease to have effect.
- (2) In section 4(1)(a) of the said Act of 1971 (power to make administration order on application for attachment of earnings order) for the words " an order should be made for the administration of his estate " there shall be substituted the words " an administration order should be made ".

## **14 Short title and supplementary provisions**

- (1) This Act may be cited as the Insolvency Act 1976.
- (2) Except where the context otherwise requires, any reference in this Act to any enactment is a reference to that enactment as amended or extended by or under any other enactment, including this Act.
- (3) Sections 6, 7 and 8 above shall have effect as if contained in the Bankruptcy Act 1914; and section 9 above shall have effect as if contained in the Companies Act 1948.
- (4) The enactments mentioned in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (5) This Act shall come into force on such date as may be specified by the Secretary of State by order made by statutory instrument; and different dates may be specified for different provisions.
- (6) This Act does not extend to Northern Ireland; and only sections 1, 5, 9, and this section and Schedule 1 extend to Scotland.