



# Insolvency Act 1985

## 1985 CHAPTER 65

### PART I

#### INSOLVENCY PRACTITIONERS

##### *Qualification*

#### **1 Unqualified persons not to act as insolvency practitioners**

- (1) Any person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (2) A person acts as an insolvency practitioner in relation to a company by acting—
  - (a) as its liquidator, administrator or administrative receiver ; or
  - (b) as supervisor of a composition or scheme approved by it under Chapter II of Part II of this Act.
- (3) A person acts as an insolvency practitioner in relation to an individual by acting—
  - (a) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate;
  - (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors or, in Scotland, a trust deed for his creditors;
  - (c) as supervisor of a composition or scheme proposed by him and approved under Chapter I of Part III of this Act; or
  - (d) in the case of a deceased individual to the administration of whose estate this section applies by virtue of an order under section 228 below, as administrator of that estate.

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- (4) References in this section to an individual include, except in so far as the context otherwise requires, references to a partnership and to any debtor within the meaning of the Bankruptcy (Scotland) Act 1985.
- (5) In this section—
- " administrative receiver " has the same meaning as in Part II of this Act;
  - " company " means a company within the meaning given by section 735(1) of the 1985 Act or a company which may be wound up under Part XXI of that Act;
  - " interim trustee " and " permanent trustee " have the same meanings as in the Bankruptcy (Scotland) Act 1985 ;
  - " liquidator " includes provisional liquidator.
- (6) Nothing in this section shall apply in relation to anything done by the official receiver.

## **2      Qualification of insolvency practitioners**

- (1) A person who is not an individual is not qualified to act as an insolvency practitioner.
- (2) A person is not qualified to act as an insolvency practitioner at any time unless, at that time—
- (a) he is authorised to act as an insolvency practitioner by virtue of section 3 below; or
  - (b) he holds an authorisation granted under section 5 below.
- (3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
- (a) there is in force at that time security or, in Scotland, caution for the proper performance of his functions; and
  - (b) that security or caution meets the prescribed requirements with respect to his so acting in relation to that other person.
- (4) A person is not qualified to act as an insolvency practitioner at any time if, at that time—
- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged;
  - (b) he is subject to a disqualification order made under sections 296 to 299 of the 1985 Act or Chapter I of Part II of this Act; or
  - (c) he is a patient within the meaning of Part VII of the Mental Health Act 1983 or section 125(1) of the Mental Health (Scotland) Act 1984.

### *Authorisation of members of recognised professional bodies*

## **3      Authorisation of members of recognised professional bodies**

- (1) A member of a recognised professional body is authorised to act as an insolvency practitioner if he is permitted so to act by or under the rules of that body.
- (2) The Secretary of State may by order declare a body which appears to him to fall within subsection (3) below to be a recognised professional body for the purposes of this

section; and any such order may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within that subsection.

- (3) This subsection applies to any body which regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—
  - (a) are fit and proper persons so to act; and
  - (b) meet acceptable requirements as to education and practical training and experience.
- (4) Any order under subsection (2) above shall have effect from such date as is specified in the order ; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.
- (5) In this section references to members of a recognised professional body are references to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question.

#### *Authorisation by relevant authority*

### **4 Applications for authorisation**

- (1) An application for authorisation under section 5 below—
  - (a) shall be made in such manner as the relevant authority may direct;
  - (b) shall contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application; and
  - (c) shall be accompanied by the prescribed fee ;and the relevant authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.
- (2) At any time after receiving the application and before determining it the relevant authority may require the applicant to furnish additional information.
- (3) Directions and requirements given or imposed under subsection (1) or (2) above may differ as between different applications.
- (4) Any information to be furnished to the relevant authority under this section shall, if it so requires, be in such form or verified in such manner as it may specify,
- (5) An application for authorisation under section 5 below may be withdrawn before it is granted or refused.
- (6) Any sums received under this section by a relevant authority other than the Secretary of State may be retained by that authority; and any sums received under this section by the Secretary of State shall be paid into the Consolidated Fund.

### **5 Grant, refusal and withdrawal of authorisation**

- (1) The relevant authority may, on an application duly made in accordance with section 4 above and after being furnished with all such information as it may require under that section, grant or refuse the application.

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- (2) The relevant authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have—
  - (a) that the applicant is a fit and proper person to act as an insolvency practitioner; and
  - (b) that the applicant meets the prescribed requirements with respect to education and practical training and experience.
- (3) An authorisation shall, unless previously withdrawn, continue in force for such period not exceeding the prescribed maximum as may be specified in the authorisation.
- (4) An authorisation granted under this section may be withdrawn by the relevant authority if it appears to it—
  - (a) that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner; or
  - (b) without prejudice to paragraph (a) above, that the holder of the authorisation has failed to comply with any provision of this Part or of any regulations made under it or, in purported compliance with any such provision, has furnished the relevant authority with false, inaccurate or misleading information.
- (5) An authorisation granted under this section may be withdrawn by the relevant authority at the request or with the consent of the holder of the authorisation.

## **6 Notices**

- (1) Where the relevant authority grants an authorisation, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.
- (2) Where the relevant authority proposes to refuse an application or to withdraw an authorisation under section 5(4) above, it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.
- (3) In the case of a proposed withdrawal the notice under subsection (2) above shall state the date on which it is proposed that the withdrawal should take effect.
- (4) A notice under subsection (2) above shall give particulars of the rights exercisable under sections 7 and 8 below by a person on whom the notice is served.

## **7 Right to make representations**

- (1) A person on whom a notice is served under section 6(2) above may within fourteen days after the date of service make written representations to the relevant authority.
- (2) The relevant authority shall have regard to any representations made in accordance with this section in determining whether to refuse the application or withdraw the authorisation, as the case may be.

## **8 Reference to Tribunal**

- (1) Where a person is served with a notice under section 6(2) above, he may—
  - (a) at any time within twenty-eight days after the date of service of the notice; or

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- (b) at any time after the making by him of any representations in accordance with section 7 above and before the end of the period of twenty-eight days after the date of the service on him of a notice by the relevant authority that the authority does not propose to alter its decision in consequence of the representations give written notice to the relevant authority requiring the case to be referred to the Tribunal referred to in subsection (6) below.
- (2) Where a requirement is made in accordance with subsection (1) above, then, unless the relevant authority —
- (a) has decided or decides to grant the application or, as the case may be, not to withdraw the authorisation ; and
  - (b) within seven days after the date of the making of the requirement, gives written notice of that decision to the person by whom the requirement was made,
- it shall refer the case to the Tribunal.
- (3) On a reference under this section the Tribunal shall—
- (a) investigate the case ; and
  - (b) make a report to the relevant authority stating what would in their opinion be the appropriate decision in the matter and the reasons for that opinion ;
- and it shall be the duty of the relevant authority to decide the matter accordingly.
- (4) The Tribunal shall send a copy of the report to the applicant or, as the case may be, the holder of the authorisation; and the relevant authority shall serve him with a written notice of the decision made by it in accordance with the report.
- (5) The relevant authority may, if it thinks fit, publish the report of the Tribunal.
- (6) For the purposes Of this section there shall be a tribunal—
- (a) which shall be known as the Insolvency Practitioners Tribunal (in this Part referred to as " the Tribunal "); and
  - (b) in relation to which the provisions of Schedule 1 "to this Act shall apply.

## **9 Refusal or withdrawal without reference to Tribunal**

Where in the case of any proposed refusal or withdrawal of an authorisation either—

- (a) the period mentioned in paragraph (a) of subsection (1) of section 8 above has expired without the making of any requirement under that subsection or of any representations under section 7 above; or
- (b) the relevant authority has given a notice such as is mentioned in paragraph (b) of that subsection and the period so mentioned has expired without the, making of any such requirement,

the relevant authority May give written notice of the refusal or withdrawal to the person concerned in accordance with the proposal in the notice given by it under section 6(2) above.

*Supplemental*

## **10 Regulations, rules and orders**

- (1) The Secretary of State may make regulations for the purpose of giving effect to this Part.

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- (2) Without prejudice to the generality of subsection (1) above or to any provision of this Part by virtue of which regulations may be made with respect to any matter, regulations under this section may contain—
- (a) provision as to the matters to be taken into account in determining whether a person is a fit and proper person to act as an insolvency practitioner ;
  - (b) provision prohibiting a person from acting as an insolvency practitioner in prescribed cases, being cases in which a conflict of interest will or may arise;
  - (c) provision imposing requirements with respect to—
    - (i) the preparation and keeping by a person who acts as an insolvency practitioner of prescribed books, accounts and other records ; and
    - (ii) the production of those books, accounts and records to prescribed persons ;
  - (d) provision conferring power on prescribed persons—
    - (i) to require any person who acts or has acted as an insolvency practitioner to answer any inquiry in relation to a case in which he is so acting or has so acted ; and
    - (ii) to apply to a court to examine such a person or any other person on oath concerning such a case;
  - (e) provision making non-compliance with any of the regulations a criminal offence; and
  - (f) such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.
- (3) Any power conferred by this Part to make regulations, rules or orders shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any rule or regulation under this Part may make different provision with respect to different cases or descriptions of cases, including different provision for different areas.

## **11 Interpretation of Part I**

In this Part—

" prescribed " means prescribed by regulations made by the Secretary of State ;

" the relevant authority " means—

- (a) in relation to a case of any description specified in directions given by the Secretary of State, the body or person so specified in relation to cases of that description; and
- (b) in relation to a case not falling within paragraph above, the Secretary of State ;

" the Tribunal" means the Insolvency Practitioners Tribunal.

## PART II

### COMPANY INSOLVENCY ETC

#### CHAPTER I

##### DISQUALIFICATION AND PERSONAL LIABILITY OF DIRECTORS AND OTHERS

#### **12 Duty of court to disqualify unfit directors of insolvent companies**

- (1) The court shall make a disqualification order against a person in any case where, on an application under this section, the court is satisfied—
  - (a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently); and
  - (b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.
- (2) The period specified as the period of the disqualification in a disqualification order made under this section shall not be less than two years.
- (3) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under this section should be made against any person, an application for the making of such an order against that person may be made—
  - (a) by the Secretary of State ; or
  - (b) if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being wound up by the court in England and Wales, by the official receiver.
- (4) Except with the leave of the court, an application for the making under this section of a disqualification order against any person shall not be made after the end of the period of two years beginning with the day on which the company of which that person is or has been a director became insolvent.
- (5) If—
  - (a) in the case of a person who is or has been a director of a company which is being wound up by the court in England and Wales, it appears to the official receiver;
  - (b) in the case of a person who is or has been a director of a company which is being wound up otherwise than as mentioned in paragraph (a) above, it appears to the liquidator;
  - (c) in the case of a person who is or has been a director of a company in relation to which an administration order is in force, it appears to the administrator ; or
  - (d) in the case of a person who is or has been a director of a company of which there is an administrative receiver, it appears to that receiver,that the conditions mentioned in subsection (1) above are satisfied as respects that person, the official receiver, the liquidator, the administrator or, as the case may be, the administrative receiver, shall forthwith report the matter to the Secretary of State.
- (6) The Secretary of State or the official receiver may require the liquidator, administrator or administrative receiver of a company or the former liquidator, administrator or administrative receiver of a company—

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- (a) to furnish him with such information with respect to any person's conduct as a director of the company; and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

- (7) For the purposes of this section a company becomes insolvent if—
- (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up;
  - (b) an administration order is made in relation to the company ; or
  - (c) an administrative receiver of the company is appointed,

and references in this section to a person's conduct as a director of any company or companies include, where that company or any of those companies has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

- (8) In this section " the court" means—
- (a) in the case of a person who is or has been a director of a company which is being wound up by the court, the court by which the company is being wound up ;
  - (b) in the case of a person who is or has been a director of a company which is being wound up voluntarily, any court having jurisdiction to wind up the company;
  - (c) in the case of a person who is or has been a director of a company in relation to which an administration order is in force, the court by which that order was made; and
  - (d) in any other case, the High Court or, in Scotland, the Court of Session.

- (9) In this section and sections 13 to 15 below " director" includes a shadow director within the meaning given by section 741(2) of the 1985 Act.

### **13 Disqualification after investigation of company**

- (1) If it appears to the Secretary of State from a report made by inspectors under section 437 of the 1985 Act, or from information or documents obtained under section 447 or 448 of that Act, that it is expedient in the public interest that a disqualification order should be made against any person who is or has been a director of any company, he may apply to the court for such an order to be made against that person.
- (2) The court may make a disqualification order against a person where, on an application under this section, the court is satisfied that his conduct in relation to the company makes him unfit to be concerned in the management of a company.
- (3) In this section " the court" means the High Court or, in Scotland, the Court of Session.



## **14 Matters for determining unfitness of directors**

- (1) Where it falls to a court to determine whether a person's conduct as a director of any particular company or companies makes him unfit as mentioned in section 12(1) or 13(2) above, the court shall, as respects his conduct as a director of that company or, as the case may be, each of those companies, have regard in particular—
  - (a) to the matters mentioned in Part I of Schedule 2 to this Act; and
  - (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule ;and references in that Schedule to the director and to the company shall be construed accordingly.
- (2) Subsection (7) of section 12 above applies for the purposes of this section and Schedule 2 to this Act as it applies for the purposes of that section.
- (3) Subject to subsection (4) below, any reference in Schedule 2 to this Act to any enactment contained in the 1985 Act or this Act shall include, in relation to any time before the Coming into force of that enactment, a reference to the corresponding enactment in force at that time.
- (4) The Secretary of State may by order modify any of the provisions of Schedule 2 to this Act; and such an order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
- (5) The power to make orders under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **15 Responsibility for company's wrongful trading**

- (1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) below applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.
- (2) This subsection applies in relation to a person if—
  - (a) the company has gone into insolvent liquidation ;
  - (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and
  - (c) that person was a director of the company at that time.
- (3) The court shall not make a declaration under subsection (1) above with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) above was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.
- (4) For the purposes of subsections (2) and (3) above the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

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- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and
  - (b) the general knowledge, skill and experience that that director has.
- (5) The reference in subsection (4) above to the functions carried out in relation to a company by a director of the company includes a reference to any functions which he does not carry out but which have been entrusted to him.
- (6) Subsections (3) to (6) of section 630 of the 1985 Act (responsibility for company's fraudulent trading) shall have effect in relation to a declaration under subsection (1) above as they have effect in relation to a declaration under subsection (2) of that section, and this section is without prejudice to that section.
- (7) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

## **16 Disqualification of persons held to be liable to contribute to company's assets**

Where a court makes a declaration under section 15 above or section 630 of the 1985 Act that any person is to be liable to make a contribution to a company's assets, then, whether or not an application for such an order is made by any person, the court may, if it thinks fit, also make a disqualification order against the person to whom the declaration relates.

## **17 Restriction on use of company names**

- (1) This section applies to a person where a company (" the relevant company ") has gone into insolvent liquidation and he was a director or shadow director of the company at any time in the period of twelve months ending with the day before it went into liquidation; and for the purposes of this section a name is a prohibited name in relation to such a person if—
- (a) it is a name by which the relevant company was known at any time in the said period; or
  - (b) it is a name which is so similar to a name falling within paragraph (a) above as to suggest an association with the relevant company.
- (2) Except with the leave of the court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of five years beginning with the day on which the relevant company went into liquidation—
- (a) be a director of any other company that is known by a prohibited name; or
  - (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company; or
  - (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.
- (3) If a person acts in contravention of this section, he shall in respect of each offence, be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both ;

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) In subsection (2) above "the court" means any court having jurisdiction to wind up companies; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.
- (5) References in this section, in relation to any time, to a name by which a company is known are references to the name of the company at that time or to any name under which the company carries on business at that time.
- (6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (7) In this section " company " includes a company which may be wound up under Part XXI of the 1985 Act.

## **18 Personal liability of persons acting while disqualified**

- (1) A person shall be personally responsible for all the relevant debts of a company if at any time—
  - (a) in contravention of a disqualification order, of section 17 above or of section 302 of the 1985 Act (provision against undischarged bankrupt acting as director etc.), he is involved in the management of the company; or
  - (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time to be the subject of a disqualification order, to be in contravention in relation to that company of section 17 above or to be an undischarged bankrupt.
- (2) Where a person is personally responsible under this section for the relevant debts of a company he shall be jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.
- (3) For the purposes of this section the relevant debts of a company are—
  - (a) in relation to a person who is personally responsible under paragraph (a) of subsection (1) above, such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company ; and
  - (b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.
- (4) For the purposes of this section a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time to be the subject of a disqualification

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order, to be in contravention in relation to that company of section 17 above or to be an undischarged bankrupt shall be presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

- (6) In this section " company " includes a company which may be wound up under Part XXI of the 1985 Act.

## **19 Summary remedy against delinquent directors, liquidators etc.**

- (1) This section applies if in the course of the winding up of a company it appears that a person who—

- (a) is or has been an officer of the company ;
- (b) has acted as liquidator, administrator or administrative receiver of the company ; or
- (c) not being a person falling within paragraph (a) or (b) above, is or has been concerned, or has taken part, in the promotion, formation or management of the company,

has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

- (2) The reference in subsection (1) above to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator or administrator of the company, a reference to any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator or administrator of the company.

- (3) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) above and compel him—

- (a) to repay, restore or account for the money or property, or any part of it, with interest at such rate as the court thinks just; or
- (b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.

- (4) The power to make an application under subsection (3) above in relation to a person who has acted as liquidator or administrator of the company shall not be exercisable, except with the leave of the court, after that person has had his release.

- (5) The power of a contributory to make an application under subsection (3) above shall not be exercisable except with the leave of the court but shall be exercisable notwithstanding that he will not benefit from any order the court may make on the application.

## CHAPTER II

### VOLUNTARY ARRANGEMENTS

#### *Preliminary*

#### **20 Application of Chapter II**

This Chapter applies where

- (a) in the case of a company which is being wound up or in relation to which an administration order is in force, the liquidator or administrator intends; or
- (b) in the case of any other company, the directors intend,

to make a proposal to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs, being a proposal which provides for some person who is qualified to act as an insolvency practitioner in relation to the company (in this Chapter referred to as " the nominee ") to act in relation to the composition or scheme either as trustee or otherwise for the purpose of supervising its implementation.

#### *Procedure pending consideration of proposal*

#### **21 Report by nominee who is not liquidator or administrator**

- (1) Where the nominee is not the liquidator or administrator of the company, he shall, within twenty-eight days (or such longer period as the court may allow) after he is given notice of the proposal, submit a report to the court stating—
  - (a) whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal ; and
  - (b) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.
- (2) For the purposes of enabling the nominee to prepare his report the person intending to make the proposal shall submit to the nominee—
  - (a) a document setting out the terms of the composition or scheme which he is proposing ; and
  - (b) a statement of the company's affairs containing—
    - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed ; and
    - (ii) such other information as may be prescribed.
- (3) The court may, on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section, direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner in relation to the company.

#### **22 Summoning of meetings**

- (1) Where the nominee is not the liquidator or administrator of the company and a person has reported to the court under section 21 above that such meetings as are mentioned in subsection (1) of that section should be summoned, that person shall, unless the

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court otherwise directs, summon those meetings for the time, date and place proposed in his report.

- (2) Where the nominee is the liquidator or administrator of the company, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.
- (3) The persons who shall be summoned to a creditors' meeting under this section shall be every creditor of the company of whose claim and address the person summoning the meeting is aware.

### *Consideration and implementation of proposal*

## **23 Decisions of meetings**

- (1) The meetings summoned under section 22 above shall decide whether to approve the proposed composition or scheme (with or without modifications).
- (2) The modifications subject to which the proposed composition or scheme may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner in relation to the company but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 20 above.
- (3) Except with the concurrence of the secured creditor concerned, a meeting summoned under section 22 above shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security.
- (4) Except with the concurrence of the preferential creditor concerned, a meeting summoned under section 22 above shall not approve any proposal or modification under which—
  - (a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts; or
  - (b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.
- (5) Subject to subsections (1) to (4) above, a meeting summoned under section 22 above shall be conducted in accordance with the rules.
- (6) After the conclusion in accordance with the rules of a meeting summoned under section 22 above, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.
- (7) In this section " preferential debt " means any of the debts which in a winding up are, under section 89 below and Schedule 4 to this Act (read with Schedule 3 to the Social Security Pensions Act 1975), to be paid in priority to all other debts, and " preferential creditor " shall be construed accordingly.
- (8) For the purposes of this section, Schedule 4 to this Act and Schedule 3 to the said Act of 1975 shall each have effect, in relation to a company which is not being wound up, as if—

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- (a) references to the relevant date were references to the date of the making of the administration order or, where no such order has been made, the date of the approval of the proposal; and
- (b) references to the company being wound up were references to the administration order being made or, as the case may be, the proposal being approved.

## **24 Effect of an approval**

- (1) This section has effect where—each of the meetings summoned under section 22 above approves the proposed composition or scheme either with the same modifications or without modifications.
- (2) The approved composition or scheme shall take effect as if made by the company at the creditors' meeting and shall bind every person who in accordance with the rules had notice of, and was entitled to vote at, that meeting (whether or not he was present or represented at the meeting) as if he were a party to the composition or scheme.
- (3) Subject to subsection (4) below, if the company is being wound up or an administration order is in force in relation to the company, the court may do one or both of the following, namely—
  - (a) by order stay or sist all proceedings in the winding up or discharge the administration order ;
  - (b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the approved composition or scheme.
- (4) The court shall not make an order under subsection (3)(a) above—
  - (a) at any time before the end of the period of twenty-eight days beginning with the first day on which each of the reports required by section 23(6) above has been made to the court; or
  - (b) at any time when an application under section 25 below or an appeal in respect of such an application is pending or at any time in the period within which such an appeal may be brought

## **25 Challenge of decisions**

- (1) Subject to the provisions of this section, an application to the court may be made, by any of the persons specified in subsection (2) below, on one or both of the following grounds, namely—
  - (a) that a composition or scheme approved at the meetings summoned under section 22 above unfairly prejudices the interests of a creditor, member or contributory of the company;
  - (b) that there has been some material irregularity at or in relation to either of the meetings.
- (2) The persons who shall be entitled to make an application under this section shall be—
  - (a) a person entitled, in accordance with the rules, to vote at either of the meetings;
  - (b) the nominee or any person who has replaced him under section 21(3) or 23(2) above; and
  - (c) if the company is being wound up or an administration order is in force in relation to the company, the liquidator or administrator of the company.

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- (3) An application under this section shall not be made after the end of the period of twenty-eight days beginning with the first day on which each of the reports required by section 23(6) above has been made to the court.
- (4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1) above, it may do one or both of the following, namely—
  - (a) revoke or suspend the approvals given by the meetings or, in a case falling within subsection (1)(b) above, any approval given by the meeting in question ;
  - (b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within subsection (1)(b) above, a further company or, as the case may be, creditors' meeting to reconsider the original proposal.
- (5) Where at any time after giving a direction under subsection (4)(b) above for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meetings.
- (6) In any case where the court, on an application made under this section with respect to any meeting, gives a direction under subsection (4)(b) above or revokes or suspends an approval under subsection (4)(a) or (5) above, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done since the meeting under any composition or scheme approved by the meeting.
- (7) Except in pursuance of the preceding provisions of this section an approval given at a meeting summoned under section 22 above shall not be invalidated by any irregularity at or in relation to the meeting.

## **26 Implementation and supervision of approved composition or scheme**

- (1) This section applies where a composition or scheme approved by the meetings summoned under section 22 above has taken effect
- (2) The person who is for the time being carrying out in relation to the composition or scheme the functions conferred by virtue of the approval on the nominee, or by virtue of section 21(3) or 23(2) above on a person other than the nominee, shall be known as the supervisor of the composition or scheme.
- (3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the supervisor, may give him directions or may make such other order as it thinks fit.
- (4) The supervisor may apply to the court for directions in relation to any particular matter arising under the composition or scheme and shall be included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to the company.
- (5) The court may, whenever—
  - (a) it is expedient to appoint a person to carry out the functions of the supervisor; and



- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,  
make an order appointing a person who is qualified to act as an insolvency practitioner in relation to the company, either in substitution for the existing supervisor or to fill a vacancy.
- (6) The power conferred by subsection (5) above shall be exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

## CHAPTER III

### ADMINISTRATION ORDERS

#### *Making etc. of administration orders*

#### **27 Power to make order**

- (1) Subject to subsection (2) below, if the court—
- (a) is satisfied that a company is or is likely to become unable to pay its debts; and
  - (b) considers that the making of an order under this section would be likely to achieve one or more of the purposes mentioned in subsection (3) below,
- the court may make an administration order in relation to the company, that is to say, an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a person (to be known as "the administrator") appointed for the purpose by the court; and such an order shall specify the purpose or purposes for whose achievement it is made.
- (2) An administration order shall not be made in relation to a company—
- (a) after the company has gone into liquidation;
  - (b) where the company is an insurance company within the meaning of the Insurance Companies Act 1982 ; or
  - (c) where the company is a recognised bank or licensed institution within the meaning of the Banking Act 1979 or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution.
- (3) The purposes referred to in subsection (1)(b) above are—
- (a) the survival of the company, and the whole or any part of its undertaking, as a going concern ;
  - (b) the approval under section 23 above of a composition in satisfaction of the company's debts or a scheme of arrangement of its affairs ;
  - (c) the sanctioning under section 425 of the 1985 Act of a compromise or arrangement between the company and any such persons as are mentioned in that section ; and
  - (d) a more advantageous realisation of the company's assets than would be effected on a winding up.

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- (4) Section 518 of the 1985 Act (definition of inability to pay debts) shall apply for the purposes of this section as it applies for the purposes of Chapter II of Part XX of that Act.

## **28 Application for order**

- (1) An application to the court for an administration order shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any contingent or prospective creditor or creditors), or by all or any of those parties, together or separately.
- (2) Where a petition is presented to the court—
- (a) notice of the petition shall be given forthwith to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company and to such other persons as may be prescribed; and
  - (b) the petition shall not be withdrawn except with the leave of the court.
- (3) Where the court is satisfied that there is an administrative receiver of the company, the court shall dismiss the petition unless it is also satisfied either—
- (a) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order; or
  - (b) that, if an administration order were made, any security by virtue of which the receiver was appointed would be liable to be released or discharged under section 101 below, would be avoided under section 104 below or would be challengeable under section 615A or 615B of the 1985 Act or under any rule of law in Scotland.
- (4) Subject to subsection (3) above, on hearing a petition the court may dismiss the petition, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (5) Without prejudice to the generality of subsection (4) above, an interim order under that subsection may restrict the exercise of any powers of the directors or of the company (whether by reference to the consent of the court or of a person qualified to act as an insolvency practitioner in relation to the company or otherwise).

## **29 Effect of application**

- (1) During the period beginning with the presentation of a petition for an administration order and ending with the making of such an order or the dismissal of the petition—
- (a) no resolution may be passed or order made for the winding up of the company ;
  - (b) no steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose; and
  - (c) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as aforesaid.
- (2) Nothing in subsection (1) above shall require the leave of the court—
- (a) for the presentation of a petition for the winding up of the company;

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- (b) for the appointment of an administrative receiver of the company; or
  - (c) for the carrying out by such a receiver (whenever appointed) of any of his functions.
- (3) Where
- (a) a petition for an administration order is presented at a time when there is an administrative receiver of the company; and
  - (b) the person by or on whose behalf the receiver was appointed has not consented to the making of the order,
- the period mentioned in subsection (1) above shall be deemed not to begin unless and until that person so consents.
- (4) References in this section and section 30 below to hire-purchase agreements include references to conditional sale agreements, chattel leasing agreements and retention of title agreements.
- (5) In the application of this section and section 30 below to Scotland, references to execution being commenced or continued shall include references to diligence being carried out or continued and references to distress being levied shall be omitted.

### **30 Effect of order**

- (1) On the making of an administration order—
- (a) any petition for the winding up of the company shall be dismissed; and
  - (b) any administrative receiver of the company shall vacate office.
- (2) Where an administration order has been made, any receiver of part of the company's property shall vacate office on being required to do so by the administrator.
- (3) During the period for which an administration order is in force—
- (a) no resolution may be passed or order made for the winding up of the company ;
  - (b) no administrative receiver of the company may be appointed;
  - (c) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose; and
  - (d) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as aforesaid.
- (4) Where at any time an administrative receiver of the company has vacated office under subsection (1)(b) above or a receiver of part of the company's property has vacated office under subsection (2) above—
- (a) his remuneration and any expenses properly incurred by him; and
  - (b) any indemnity to which he is entitled out of the assets of the company,
- shall be charged on and, subject to subsection (3) above, paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

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- (5) Neither an administrative receiver of a company who vacates office under subsection (1)(b) above nor a receiver of part of a company's property who vacates office under subsection (2) above shall be required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by section 196 or 475 of the 1985 Act (duty to pay preferential creditors).

### **31 Notification of order**

- (1) Every invoice, order for goods or business letter which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.
- (2) If default is made in complying with this section, the company and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum.

#### *Administrators*

### **32 Appointment of administrator**

- (1) The administrator of a company shall be appointed either by the administration order or by an order under subsection (2) below.
- (2) If a vacancy occurs by death, resignation or otherwise in the office of administrator of a company, the court may by order fill the vacancy.
- (3) An application for an order under subsection (2) above may be made—
- (a) by any continuing administrator of the company ; or
  - (b) where there is no such administrator, by any committee established under section 43 below; or
  - (c) where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company.

### **33 General powers**

- (1) The administrator of a company—
- (a) may do all such things as may be necessary for the management of the affairs, business and property of the company; and
  - (b) without prejudice to the generality of paragraph (a) above, shall have the powers specified in Schedule 3 to this Act;
- and in the application of that Schedule to the administrator of a company the words " he " and " him " shall be taken to refer to the administrator.
- (2) The administrator of a company shall also have power—
- (a) to remove any director of the company and to appoint any person to be a director of the company, whether to fill any vacancy or otherwise ; and
  - (b) to call any meeting of the members or creditors of the company.

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- (3) The administrator may apply to the court for directions in relation to any particular matter arising in connection with the carrying out of his functions.
- (4) Any power conferred on the company or its officers, whether by this Part or the 1985 Act or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers shall not be exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.
- (5) In exercising his powers the administrator of a company shall be deemed to be acting as agent of the company.
- (6) A person dealing with the administrator of a company in good faith and for value shall not be concerned to inquire whether the administrator is acting within his powers.

### **34 Power to deal with charged property etc.**

- (1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies as if the property were not subject to the security.
- (2) Where, on an application by the administrator of a company, the court is satisfied that the disposal (with or without other assets) of—
  - (a) any property of the company subject to a security to which this subsection applies ; or
  - (b) any goods in the possession of the company under a hire purchase agreement, would be likely to promote the purpose or one or more of the purposes specified in the administration order, the court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.
- (3) Subsection (1) above applies to any security which, as created, was a floating charge and subsection (2) above applies to any other security.
- (4) Where any property is disposed of under subsection (1) above, the holder of the security shall have the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.
- (5) It shall be a condition of an order under subsection (2) above that—
  - (a) the net proceeds of the disposal; and
  - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.
- (6) Where a condition imposed in pursuance of subsection (5) above relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

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- (7) An office copy of an order under subsection (2) above shall, within fourteen days after the making of the order, be sent by the administrator to the registrar of companies.
- (8) If the administrator without reasonable excuse fails to comply with subsection (7) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.
- (9) Where any property is disposed of under this section in its application to Scotland, the administrator shall grant to the disponee an appropriate document of transfer or conveyance of the property, and—
  - (a) that document; or
  - (b) where any recording, intimation or registration of that document is a legal requirement for completion of title to the property, that recording, intimation or registration,has the effect of disencumbering the property of or, as the case may be, freeing the property from the security.
- (10) Where any goods in the possession of the company under a hire-purchase agreement are disposed of under this section in its application to Scotland, the disposal shall have the effect of extinguishing, as against the disponee, all rights of the owner of the goods under the hire-purchase agreement.
- (11) Nothing in this section shall be taken as prejudicing applications to the court under section 44 below.
- (12) References in this section to hire-purchase agreements include references to conditional sale agreements, chattel leasing agreements and retention of title agreements.

### **35 General duties**

- (1) The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.
- (2) The administrator of a company shall manage the affairs, business and property of the company—
  - (a) at any time before proposals have been approved (with or without modifications) under section 41 below, in accordance with any directions given by the court; and
  - (b) at any time after proposals have been so approved, in accordance with those proposals as from time to time revised, whether by him or a predecessor of his.
- (3) The administrator of a company shall summon a meeting of the company's creditors if—
  - (a) he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors ; or
  - (b) he is directed to do so by the court.

### **36 Applications for discharge or variation of administration order**

- (1) The administrator of a company may at any time apply to the court for the administration order to be discharged, or to be varied so as to specify an additional purpose.
- (2) The administrator of a company shall make an application under this section if—
  - (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement; or
  - (b) he is required to do so by a meeting of the company's creditors summoned for the purpose in accordance with the rules.
- (3) On the hearing of an application under this section, the court may by order discharge or vary the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.
- (4) Where the administration order is discharged or varied, the administrator shall, within fourteen days after the making of the order effecting the discharge or variation, send an office copy of that order to the registrar of companies.
- (5) If the administrator without reasonable excuse fails to comply with subsection (4) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

### **37 Vacation of office and release**

- (1) The administrator of a company may at any time be removed from office by order of the court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (2) The administrator of a company shall vacate office if—
  - (a) he ceases to be qualified to act as an insolvency practitioner in relation to the company; or
  - (b) the administration order is discharged.
- (3) Where at any time a person ceases to be the administrator of a company—
  - (a) his remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security to which section 34(1) above then applies; and
  - (b) any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into or contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall be charged on and paid out of any such property as is mentioned in paragraph (a) above in priority to any charge arising under that paragraph;and for the purposes of paragraph (b) above the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen days after his appointment.
- (4) A person who has ceased to be the administrator of a company shall have his release with effect from the following time, that is to say—

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- (a) in the case of a person who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
  - (b) in any other case, such time as the court may determine.
- (5) Where a person has his release under this section, he shall, with effect from the time specified in subsection (4) above, be discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under this section, of the court's powers under section 19 above.

*Ascertainment and investigation of company's affairs*

**38 Information to be given by administrator**

- (1) Where an administration order has been made, the administrator shall—
- (a) forthwith send to the company and publish in the prescribed manner a notice of the order ; and
  - (b) within twenty-eight days after the making of the order, unless the court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of their addresses).
- (2) Where an administration order has been made, the administrator shall also, within fourteen days after the making of the order, send an office copy of the order to the registrar of companies and to such other persons as may be prescribed.
- (3) If the administrator without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

**39 Statement of affairs to be submitted to administrator**

- (1) Where an administration order has been made, the administrator shall forthwith require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
- (a) particulars of the company's assets, debts and liabilities;
  - (b) the names and addresses of its creditors ;
  - (c) the securities held by them respectively;
  - (d) the dates when the securities were respectively given; and
  - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) above are—
- (a) those who are or have been officers of the company;
  - (b) those who have taken part in the company's formation at any time within one year before the date of the administration order;
  - (c) those who are in the company's employment or have been in its employment within that year, and are in the administrator's opinion capable of giving the information required;



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- (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company ;  
and in this subsection " employment" includes employment under a contract for services.
- (4) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to subsection (5) below) before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrator.
- (5) The administrator, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
  - (b) either when giving the notice mentioned in subsection (4) above or subsequently, extend the period so mentioned ;
- and where the administrator has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
  - (b) on conviction on indictment, to a fine.

#### *Administrators' proposals*

### **40 Statement of proposals**

- (1) Where an administration order has been made, the administrator shall, within three months (or such longer period at the court may allow) after the making of the order—
- (a) send to the registrar of companies and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving the purpose or purposes specified in the order; and
  - (b) lay a copy of the statement before a meeting of the Company's creditors summoned for the purpose on not less than fourteen days' notice.
- (2) The administrator shall also, within three months (or such longer period as the court may allow after the making of the order, either—
- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company ; or
  - (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.
- (3) Subsection (3) of section 38 above applies for the purposes of this section as it applies for the purposes of that section.

### **41 Consideration of proposals by creditors' meeting**

- (1) A meeting of creditors summoned under section 40 above shall decide whether to approve the administrator's proposals.

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- (2) Such a meeting may approve the proposals with modifications but shall not do so unless the administrator consents to each modification.
- (3) Subject to subsections (1) and (2) above, a meeting summoned under section 40 above shall be conducted in accordance with the rules.
- (4) After the conclusion in accordance with the rules of a meeting summoned under section 40 above, the administrator shall report the result of the meeting to the court and shall give notice of that result to the registrar of companies and to such persons as may be prescribed.
- (5) If a report is given to the court under subsection (4) above that the meeting has declined to approve the administrator's proposals (with or without modifications), the court may by order discharge the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (6) Where the administration order is discharged, the administrator shall, within fourteen days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies.
- (7) If the administrator without reasonable excuse fails to comply with subsection (6) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

#### **42 Approval of substantial revisions**

- (1) This section applies where—
  - (a) proposals have been approved (with or without modifications) under section 41 above ; and
  - (b) the administrator proposes to make revisions of those proposals which appear to him substantial.
- (2) The administrator shall—
  - (a) send to all creditors of the company (so far as he is aware of their addresses) a statement in the prescribed form of his proposed revisions ; and
  - (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than fourteen days' notice ;and shall not make the proposed revisions unless they are approved by the meeting.
- (3) The administrator shall also either—
  - (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company ; or
  - (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.
- (4) A meeting of creditors summoned under subsection (2) above may approve the proposed revisions with modifications but shall not do so unless the administrator consents to each modification.
- (5) Subject to subsections (2) and (4) above, such a meeting shall be conducted in accordance with the rules.

- (6) After the conclusion in accordance with the rules of a meeting summoned under subsection (2) above, the administrator shall give notice of the result of the meeting to the registrar of companies and to such persons as may be prescribed.

### *Miscellaneous*

#### **43 Committee of creditors**

- (1) Where a meeting of creditors summoned under section 40 above has approved the administrator's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it by or under this Part.
- (2) If such a committee is established, the committee may, on giving not less than seven days' notice, require the administrator to attend before it at any reasonable time and furnish it with such information relating to the carrying out of his functions as it may reasonably require.

#### **44 Protection of interests of creditors and members**

- (1) At any time when an administration order is in force, a creditor or member of the company may apply to the court by petition for an order under this section on the ground—
- (a) that the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members (including at least himself); or
  - (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial.
- (2) On an application for an order under this section the court may, subject to subsection (3) below, make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (3) An order under this section shall not prejudice or prevent—
- (a) the implementation of any composition or scheme approved under section 23 above or any compromise or arrangement sanctioned under section 425 of the 1985 Act; or
  - (b) where the application for the order was made more than twenty-eight days after the approval of any proposals or revised proposals under section 41 or 42 above, the implementation of those proposals or revised proposals.
- (4) Subject to subsection (3) above, an order under this section may in particular—
- (a) regulate the future management by the administrator of the company's affairs, business and property ;
  - (b) require the administrator to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained he has omitted to do;
  - (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct;

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- (d) discharge the administration order and make such consequential provision as it thinks fit.
- (5) Where the administration order is discharged, the administrator shall, within fourteen days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies.
- (6) If the administrator without reasonable excuse fails to comply with subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a fine not exceeding one-fiftieth of the statutory maximum.

## CHAPTER IV

### RECEIVERS AND MANAGERS (ENGLAND AND WALES)

#### *Preliminary*

#### **45 Preliminary**

- (1) This Chapter does not apply to receivers appointed under section 467 of the 1985 Act (power to appoint receivers under law of Scotland).
- (2) In this Chapter " administrative receiver " means—
  - (a) a receiver or manager of the whole (or substantially the whole) of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or
  - (b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property.

#### *Receivers and managers appointed out of court*

#### **46 Appointment of receiver or manager**

- (1) The appointment of a person as the receiver or manager of a company's property under powers contained in an instrument—
  - (a) shall be of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf; and
  - (b) subject to paragraph (a) above, shall be deemed to be made at the time at which the instrument of appointment is so received.
- (2) This section shall apply to the appointment of two or more persons as joint receivers or managers of a company's property under powers contained in an instrument subject to such modifications as may be prescribed by the rules.

#### **47 Liability for invalid appointment**

Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by

virtue of the invalidity of the instrument or otherwise), the court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

*Administrative receivers: general*

**48 General powers**

- (1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed shall be deemed to include, except in so far as they are inconsistent with any of the provisions of those debentures, the powers specified in Schedule 3 to this Act; and in the application of that Schedule to the administrative receiver of a company—
  - (a) the words " he " and " him " shall be taken to refer to the administrative receiver ; and
  - (b) references to the property of the company shall be construed as references to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.
- (2) A person dealing with the administrative receiver of a company in good faith and for value shall not be concerned to inquire whether the administrative receiver is acting within his powers.

**49 Power to dispose of charged property etc.**

- (1) Where, on an application by the administrative receiver of a company, the court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security other than one to which subsection (2) below applies would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.
- (2) This subsection applies to—
  - (a) any security held by the person by or on whose behalf the administrative receiver was appointed; and
  - (b) any security to which a security falling within paragraph (a) above has priority.
- (3) It shall be a condition of an order under this section that—
  - (a) the net proceeds of the disposal; and
  - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,shall be applied towards discharging the sums secured by the security.
- (4) Where a condition imposed in pursuance of subsection (3) above relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

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- (5) An office copy of an order under this section shall, within fourteen days of the making of the order, be sent by the administrative receiver to the registrar of companies.
- (6) If the administrative receiver without reasonable excuse fails to comply with subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.
- (7) In this section " relevant property ", in relation to the administrative receiver of a company, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

## **50 Agency and liability for contracts**

- (1) The administrative receiver of a company—
  - (a) shall be deemed to be the agent of the company unless and until the company goes into liquidation ;
  - (b) shall be personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the carrying out of those functions ; and
  - (c) shall be entitled in respect of that liability to an indemnity out of the assets of the company ;

and for the purposes of paragraph (b) above the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen days after his appointment.
- (2) This section does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

## **51 Vacation of office**

- (1) An administrative receiver of a company may at any time be removed from office by order of the court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.
- (2) An administrative receiver of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (3) Where at any time an administrative receiver of a company vacates office—
  - (a) his remuneration and any expenses properly incurred by him; and
  - (b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.
- (4) Where an administrative receiver of a company vacates office otherwise than by death, he shall, within fourteen days after his vacation of office, send a notice to that effect to the registrar of companies.

- (5) If an administrative receiver of a company without reasonable excuse fails to comply with subsection (4) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

*Administrative receivers: ascertainment and investigation of company's affairs*

## **52 Information to be given by administrative receiver**

- (1) Where an administrative receiver of a company is appointed, the administrative receiver shall—
- (a) forthwith send to the company and publish in the prescribed manner a notice of his appointment; and
  - (b) within twenty-eight days after his appointment, unless the court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).
- (2) This section and section 53 below do not apply in relation to the appointment of an administrative receiver to act—
- (a) with an existing administrative receiver ; or
  - (b) in place of an administrative receiver dying or ceasing to act,
- except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this section and section 53 below to the administrative receiver include (subject to subsection (3) below) his successor and any continuing administrative receiver.
- (3) If the company is being wound up, this section and section 53 below apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (4) If the administrative receiver without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

## **53 Statement of affairs to be submitted to administrative receiver**

- (1) Where an administrative receiver of a company is appointed, the administrative receiver shall forthwith require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
- (a) particulars of the company's assets, debts and liabilities;
  - (b) the names and addresses of its creditors;
  - (c) the securities held by them respectively ;
  - (d) the dates when the securities were respectively given; and
  - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) above are—

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- (a) those who are or have been officers of the company ;
  - (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver ;
  - (c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;
  - (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company ;
- and in this subsection " employment" includes employment under a contract for services.
- (4) Where any persons are required under this section to submit a statement of affairs to the administrative receiver, they shall do so (subject to subsection (5) below) before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver.
- (5) The administrative receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
  - (b) either when giving the notice mentioned in subsection (4) above or subsequently, extend the period so mentioned ;
- and where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
  - (b) on conviction on indictment, to a fine.

#### **54 Report by administrative receiver**

- (1) Where an administrative receiver of a company is appointed, he shall, within three months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—
- (a) the events leading up to his appointment, so far as he is aware of them ;
  - (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
  - (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors in accordance with section 89 below ; and
  - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The administrative receiver shall also, within three months (or such longer period as the court may allow) after his appointment, either—
- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company; or



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- (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,
- and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than fourteen days' notice.
- (3) The court shall not give a direction under subsection (2) above unless—
- (a) the report states the intention of the administrative receiver to apply for the direction ; and
- (b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than fourteen days before the hearing of the application.
- (4) Where the company has gone or goes into liquidation, the administrative receiver—
- (a) shall, within seven days after his compliance with subsection (1) above or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator; and
- (b) where he does so within the time limited for compliance with subsection (2) above, shall not be required to comply with that subsection.
- (5) A report under this section shall include a summary of the statement of affairs made out and submitted to the administrative receiver under section 53 above and of his comments (if any) on it.
- (6) Nothing in this section shall be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.
- (7) Subsections (2) and (4) of section 52 above shall apply for the purposes of this section as they apply for the purposes of that section.

## **55 Committee of creditors**

- (1) Where a meeting of creditors is summoned under section 54 above, the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it by or under this Part.
- (2) If such a committee is established, the committee may on giving not less than seven days' notice require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

## **CHAPTER V**

### **RECEIVERS (SCOTLAND)**

## **56 Appointment of receiver**

In section 469 of the 1985 Act (mode of appointment of receiver by holder of a charge)

- (a) for subsection (6) there shall be substituted the following subsection—

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- “(6) The appointment of a person as a receiver by an instrument of appointment in accordance with subsection (1) above—
- (a) shall be of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf; and
  - (b) subject to paragraph (d) above, shall be deemed to be made on the day on and at the time at which the instrument of appointment is so received, as evidenced by a written docquet by that person or on his behalf ;
- and this subsection shall apply to the appointment of joint receivers subject to such modifications as may be prescribed.”; and
- (b) after subsection (7) there shall be inserted the following subsection—
- “(8) In this section ' business day ' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain.”

## 57 Powers of receiver

Section 471 of the 1985 Act (which sets out the powers of receivers in Scotland) shall be amended as follows—

- (a) in paragraph (c) of subsection (1) after the word "to " there shall be inserted the words " raise or ";
- (b) paragraph (e) of that subsection shall be omitted ;
- (c) in paragraph (f) of that subsection, for the words " discharge servants " there shall be substituted the words " dismiss employees ";
- (d) for paragraph (m) of that subsection there shall be substituted the following paragraph—
  - “(m) power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property ;”;
- (e) in paragraph (o) of that subsection, for the words " so far as he thinks it desirable to do so " there shall be substituted the words " or any part of it " ; (ft for paragraph (p) of that subsection there shall be substituted the following paragraphs—
  - “(p) power to grant or accept a surrender of a lease or tenancy of any of the property, and to take a lease or tenancy of any property required or convenient for the business of the company ;
  - (pp) power to make any arrangement or compromise on behalf of the company;
  - (ppp) power to call up any uncalled capital of the company;
  - (pppp) power to establish subsidiaries of the company;
  - (ppppp) power to transfer to subsidiaries of the company the business of the company or any part of it and any of the property ;”;
- (g) after paragraph (r) of that subsection there shall be inserted the following paragraph—

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“(rr) power to change the situation of the company's registered office ;”;

(h) for subsection (3) there shall be substituted the following subsection—

“(3) A person dealing with a receiver in good faith and for value shall not be concerned to inquire whether the receiver is acting within his powers.”

## **58 Agency and liability of receiver for contracts**

(1) Section 473 of the 1985 Act (agency and liability of receiver for contracts) shall be amended as follows.

(2) In subsection (2)—

- (a) the words " Subject to subsection (1) " shall be omitted ; and
- (b) after the word " provides " there shall be inserted the words " , and on any contract of employment adopted by him in the carrying out of those functions "

(3) After subsection (4) there shall be inserted the following subsections—

“(4A) For the purposes of subsection (2), a receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.

(4B) This section does not limit any right to indemnity which the receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.”

## **59 Disposal of interest in property**

(1) Section 477 of the 1985 Act (disposal of interest in property) shall be amended as follows.

(2) In subsection (2)—

- (a) at the beginning there shall be inserted the words " Subject to subsection (2A) below, " ; and
- (b) the words from " But that authorisation " to the end of the subsection shall be omitted.

(3) After subsection (2) there shall be inserted the following subsections—

“(2A) In the case of an application where a fixed security over the property or interest in question which ranks prior to the floating charge has not been met or provided for in full, the court shall not authorise the sale or disposal of the property or interest in question unless it is satisfied that the sale or disposal would be likely to provide a more advantageous realisation of the company's assets than would otherwise be effected.

(2B) It shall be a condition of an authorisation to which subsection (2A) above applies that—

- (a) the net proceeds of the disposal; and
- (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale

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of the property or interest in the open market by a willing seller, such sums as may be required to make good the deficiency,  
shall be applied towards discharging the sums secured by the fixed security.

- (2C) Where a condition imposed in pursuance of subsection (2B) above relates to two or more such fixed securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those fixed securities in the order of their priorities.
- (2D) A copy of an authorisation under subsection (2) above certified by the clerk of court shall, within 14 days of the granting of the authorisation, be sent by the receiver to the registrar of companies.
- (2E) If the receiver without reasonable excuse fails to comply with subsection (2D) above, he is liable to a fine and, for continued contravention, to a daily default fine.”

## **60 Vacation of appointment by receiver**

- (1) Section 478 of the 1985 Act (vacation of appointment by receiver) shall be amended as follows.
- (2) For subsections (1) and (2) there shall be substituted the following subsections—
- “(1) A receiver may be removed from office by the court under subsection (3) below and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.
- (2) A receiver shall vacate office if he ceases to be qualified (within the meaning of the Insolvency Act 1985) to act as an insolvency practitioner in relation to the company.”
- (3) For subsection (4) there shall be substituted the following subsection—
- “(4) Where at any time a receiver vacates office—
- (a) his remuneration and any expenses properly incurred by him; and
- (b) any indemnity to which he is entitled out of the property of the company,
- shall be paid out of the property of the company which is subject to the floating charge and shall have priority as provided for in section 476(1).”
- (4) In subsection (5) for the words " 7 days " there shall be substituted the words " 14 days ".

## **61 Powers of court**

For section 479 of the 1985 Act there shall be substituted the following section—

### **“479 Powers of court.**

- (1) The court on the application of—
- (a) the holder of a floating charge by virtue of which a receiver was appointed ; or

(b) a receiver appointed under section 467,  
may give directions to the receiver in respect of any matter arising in connection  
with the performance by him of his functions.

- (2) Where the appointment of a person as a receiver by the holder of a floating charge is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the holder of the floating charge to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.”

## 62 Information to be given by receiver

For section 481 of the 1985 Act there shall be substituted the following section—

### “481 Information to be given by receiver.

- (1) Where a receiver is appointed, he shall—
- (a) forthwith send to the company and publish notice of his appointment;  
and
  - (b) within 28 days after his appointment, unless the court otherwise directs,  
send such notice to all the creditors of the company (so far as he is  
aware of their addresses).
- (2) This section and section 482 do not apply in relation to the appointment of a receiver to act—
- (a) with an existing receiver, or
  - (b) in place of a receiver dying or ceasing to act,
- except that, where they apply to a receiver who dies or ceases to act before they have been fully complied with, the references in this section and section 482 to the receiver include (subject to subsection (3) below) his successor and any continuing receiver.
- (3) If the company is being wound up, this section and section 482 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (4) If a person without reasonable excuse fails to comply with this section, he shall be liable to a fine and, for continued contravention, to a daily default fine.”

## 63 Company's statement of affairs

For section 482 of the 1985 Act there shall be substituted the following section—

### “482 Company's statement of affairs.

- (1) Where a receiver of a company is appointed, the receiver shall forthwith require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
- (a) particulars of the company's assets, debts and liabilities;

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- (b) the names and addresses of its creditors ;
  - (c) the securities held by them respectively ;
  - (d) the dates when the securities were respectively given; and
  - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) above are—
- (a) those who are or have been officers of the company;
  - (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the receiver;
  - (c) those who are in the company's employment, or have been in its employment within that year, and are in the receiver's opinion capable of giving the information required ;
  - (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company ;
- and in this subsection " employment" includes employment under a contract for services.
- (4) Where any persons are required under this section to submit a statement of affairs to the receiver they shall do so (subject to subsection (5) below) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the receiver.
- (5) The receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
  - (b) either when giving the notice mentioned in subsection (4) above or subsequently extend the period so mentioned,
- and where the receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable to a fine and, for continued contravention, to a daily default fine.”

## 64 Report by receiver

After section 482 of the 1985 Act there shall be inserted the following section—

### “482A Report by receiver.

- (1) Where a receiver is appointed under section 467 he shall within 3 months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to the holder of the floating charge by virtue of which he was appointed and to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—
- (a) the events leading up to his appointment, so far as he is aware of them;
  - (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company ;

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- (c) the amounts of principal and interest payable to the holder of the floating charge by virtue of which he was appointed and the amounts payable to preferential creditors in accordance with section 89 of the Insolvency Act 1985; and
  - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The receiver shall also, within 3 months (or such longer period as the court may allow) after his appointment, either—
- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company ; or
  - (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,
- and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.
- (3) The court shall not give a direction under subsection (2) above unless—
- (a) the report states the intention of the receiver to apply for the direction ; and
  - (b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than 14 days before the hearing of the application.
- (4) Where the company has gone or goes into liquidation, the receiver—
- (a) shall, within 7 days after his compliance with subsection (1) above or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator ; and
  - (b) where he does so within the time limited for compliance with subsection (2) above, shall not be required to comply with that subsection.
- (5) A report under this section shall include a summary of the statement of affairs made out and submitted to the receiver under section 482 and of his comments (if any) on it.
- (6) Nothing in this section shall be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the receiver of his functions.
- (7) Subsections (2) and (4) of section 481 shall apply for the purposes of this section as they apply for the purposes of that section.
- (8) In this section 'secured creditor', in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and 'unsecured creditor' shall be construed accordingly.”

## 65 Committee of creditors

After section 482A of the 1985 Act there shall be inserted the following section—

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**“482B Committee of creditors.**

- (1) Where a meeting of creditors is summoned under section 482A above, the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it by or under this Act or Part II of the Insolvency Act 1985.
- (2) If such a committee is established, the committee may on giving not less than 7 days' notice require the receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.”

## CHAPTER VI

### WINDING UP

#### *Winding up by the court*

#### **66 Company's statement of affairs**

- (1) Where the court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
  - (a) particulars of the company's assets, debts and liabilities ;
  - (b) the names and addresses of the company's creditors;
  - (c) the securities held by them respectively ;
  - (d) the dates when the securities were respectively given; and
  - (e) such further or other information as may be prescribed or as the official receiver may require.
- (3) The persons referred to in subsection (1) above are—
  - (a) those who are or have been officers of the company;
  - (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
  - (c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
  - (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.
- (4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to subsection (5) below) before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.
- (5) The official receiver, if he thinks fit, may—



- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
- (b) either when giving the notice mentioned in subsection (4) above or subsequently, extend the period so mentioned ;

and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) In this section—

" employment" includes employment under a contract for services; and

" the relevant date " means—

- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
- (b) in a case where no such appointment is made, the date of the winding-up order.

(7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
- (b) on conviction on indictment, to a fine.

(8) In the application of this section to Scotland references to the official receiver shall be construed as references to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

## **67 Investigation by the official receiver**

(1) Where a winding-up order is made by the court in England and Wales, it shall be the duty of the official receiver to investigate—

- (a) if the company has failed, the causes of the failure ; and
- (b) generally, the promotion, formation, business, dealings and affairs of the company,

and to make such report (if any) to the court as he thinks fit.

(2) A report by the official receiver under this section shall, in any proceedings, be prima facie evidence of the facts stated therein.

## **68 Public examination of officers**

(1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who—

- (a) is or has been an officer of the company ; or
- (b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or
- (c) not being a person falling within paragraph (a) or (b) above, is or has been concerned, or has taken part, in the promotion, formation or management of the company.

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- (2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) above if he is requested in accordance with the rules to do so by—
- (a) one-half, in value, of the company's creditors ; or
  - (b) three-quarters, in value, of the company's contributories.
- (3) On an application under subsection (1) above, the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs or his conduct or dealings in relation to the company.
- (4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3) above, namely—
- (a) the official receiver ;
  - (b) the liquidator of the company ;
  - (c) any person who has been appointed as special manager of the company's property or business ;
  - (d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up;
  - (e) any contributory of the company.
- (5) If a person without reasonable excuse fails at any time to attend his public examination under this section, he shall be guilty of contempt of court and liable to be punished accordingly.
- (6) In a case where a person without reasonable excuse fails at any time to attend his examination under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under this section, the court may cause a warrant to be issued to a constable or prescribed officer of the court—
- (a) for the arrest of that person ; and
  - (b) for the seizure of any books, papers, records, money or goods in that person's possession ;
- and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

## **69 General functions of liquidators**

- (1) The functions of the liquidator of a company which is being wound up by the court shall be to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.
- (2) It shall be the duty of the liquidator of a company which is being wound up by the court in England and Wales, if he is not the official receiver—
- (a) to furnish the official receiver with such information;
  - (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records; and
  - (c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

- (3) The provisional liquidator of a company shall carry out such functions as the court may confer on him.

## **70 Functions of official receiver in relation to office of liquidator**

- (1) The following provisions of this section have effect, subject to section 73 below, on a winding-up order being made by the court in England and Wales.
- (2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the following provisions of this Chapter.
- (3) The official receiver is, by virtue of his office, the liquidator during any vacancy.
- (4) At any time when he is the liquidator of the company, the official receiver may—
- (a) summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver; or
  - (b) apply to the Secretary of State for the appointment of a person as liquidator of the company in place of the official receiver.
- (5) It shall be the duty of the official receiver—
- (a) as soon as practicable in the period of twelve weeks beginning with the day on which the winding-up order was made to decide whether to exercise his power under subsection (4)(a) above to summon meetings and
  - (b) if in pursuance of paragraph (a) above he decides not to exercise that power, to give notice of his decision, before the end of that period, to the court and to the company's creditors and contributories; and
  - (c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under subsection (4)(a) above if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of the company's creditors;
- and, accordingly, where the duty imposed by paragraph (c) above arises before the official receiver has performed a duty imposed by paragraph (a) or (b) above, he shall not be required to perform the latter duty.
- (6) A notice given under subsection (5)(b) above to the company's creditors shall contain an explanation of the creditors' power under subsection (5)(c) above to require the official receiver to summon meetings of the company's creditors and contributories.
- (7) If meetings are held in pursuance of a decision under subsection (5)(a) above but no person is chosen to be liquidator of the company as a result of those meetings, it shall be the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (8) On an application under subsection (4)(b) above, or a reference made in pursuance of a decision under subsection (7) above, the Secretary of State shall either make an appointment or decline to make one.
- (9) Where a liquidator has been appointed by the Secretary of State under subsection (8) above, the liquidator shall give notice of his appointment to the company's creditors or,

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if the court so allows, shall advertise his appointment in accordance with the directions of the court and in that notice or advertisement shall—

- (a) state whether he proposes to summon a general meeting of the company's creditors under section 74 below for the purpose of determining (together with any meeting of contributories) whether a committee should be established under that section ; and
- (b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that section to require him to summon one.

## **71 Appointment of liquidator in Scotland**

- (1) Where a winding-up order has been made by the court in Scotland, the liquidator appointed by the court under section 535 of the 1985 Act (in this section referred to as " the interim liquidator ") shall continue in office until another person becomes liquidator in his place under this section or section 72 below.
- (2) The interim liquidator shall, subject to subsection (3) below, as soon as practicable in the period of twenty-eight days beginning with the day on which the winding-up order was made or such longer period as the court may allow, summon separate meetings of the company's creditors and contributories for the purpose of choosing a person (who may be the person who is the interim liquidator) to be liquidator of the company in place of the interim liquidator.
- (3) If it appears to the interim liquidator, in any case where a company is being wound up on grounds including its inability to pay its debts, that it would be inappropriate to summon under subsection (2) above a meeting of the company's contributories, he may summon only a meeting of the company's creditors for the purpose mentioned in that subsection.
- (4) If one or more meetings are held in pursuance of this section but no person is appointed or nominated by the meeting or meetings, the interim liquidator shall make a report to the court which shall appoint either the interim liquidator or some other person to be liquidator of the company.
- (5) A person who becomes liquidator of the company in place of the interim liquidator shall, unless he is appointed by the court, forthwith notify the court of that fact.

## **72 Choice of liquidator at meetings of creditors and contributories**

- (1) This section applies where a company is being wound up by the court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.
- (2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator of the company.
- (3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.
- (4) In the case of different persons being nominated, any contributory or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either—
  - (a) appointing the person nominated as liquidator by the contributories to be liquidator instead of, or jointly with, the person nominated by the creditors; or

- (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

### **73 Appointment of liquidator by the court following administration or voluntary arrangement**

- (1) Where a winding-up order is made immediately upon the discharge of an administration order, the court may appoint as liquidator of the company the person who has ceased on the discharge of the administration order to be the administrator of the company.
- (2) Where a winding-up order is made at a time when there is a supervisor of a composition or scheme approved in relation to the company under Chapter II of this Part, the court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made.
- (3) Where the court makes an appointment under subsection (1) or (2) above, subsections (2) and (5)(a) and (b) of section 70 above shall not apply in relation to the winding up.

### **74 Committee of creditors etc. in England and Wales**

- (1) Where a winding-up order has been made by the court in England and Wales and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator of the company, those meetings may establish a committee to exercise the functions conferred on it by or under this Part or the 1985 Act.
- (2) The liquidator of a company, not being the official receiver, may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is determined that one should be established, of establishing it; and the liquidator of a company who is not the official receiver shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.
- (3) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator of a company, and either the meeting of creditors or the meeting of contributories decides that a committee should be established under this section but the other meeting does not so decide or decides that a committee should not be so established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (4) A committee established under this section shall not be able or required to carry out its functions at any time when the official receiver is the liquidator of the company; but at any such time the functions of such a committee shall be vested in the Secretary of State except to the extent that the rules otherwise provide.
- (5) Where in the case of any winding up there is for the time being no committee established under this section and the liquidator is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State except to the extent that the rules otherwise provide.

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## **75 Committee of creditors etc. in Scotland**

- (1) Where a winding-up order has been made by the court in Scotland and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator of the company or, under section 71(3) above, only a meeting of the company's creditors has been summoned for that purpose, those meetings or, as the case may be, that meeting may establish a committee to exercise the functions conferred on it by or under this Part or the 1985 Act.
- (2) The liquidator of the company may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is determined that one should be established, of establishing it.
- (3) A liquidator appointed by the court otherwise than under section 72(4)(a) above shall be required to summon meetings under subsection (2) above if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.
- (4) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator of a company, and either the meeting of creditors or the meeting of contributories decides that a committee should be established under this section but the other meeting does not so decide or decides that a committee should not be so established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (5) Where in the case of any winding up there is for the time being no committee established under this section, the functions of such a committee shall be vested in the court except to the extent that the rules otherwise provide.
- (6) In addition to the powers and duties conferred and imposed on it by this Act and the 1985 Act, a committee established under this section shall have such of the powers and duties of commissioners in a sequestration as may be conferred and imposed on such committees by the rules.

## **76 Power of official receiver to apply for early dissolution**

- (1) The official receiver may at any time apply to the registrar of companies for the early dissolution of a company in respect of which a winding-up order has been made by the court in England and Wales if—
  - (a) he is the liquidator of the company ; and
  - (b) it appears to him—
    - (i) that the realisable assets of the company are insufficient to cover the expenses of the winding up; and
    - (ii) that the affairs of the company do not require any further investigation.
- (2) Before making an application to the registrar under subsection (1) above, the official receiver shall give not less than twenty-eight days' notice of his intention to do so to the company's creditors and contributories and, if there is an administrative receiver of the company, to that receiver.
- (3) With the giving with respect to a company of a notice under subsection (2) above the official receiver shall (subject to any directions under this section) cease to be required to perform any duties imposed on him in relation to the company, its creditors or its

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contributories by virtue of any provision of this Part or the 1985 Act, apart from a duty to make an application under subsection (1) above.

- (4) Where a notice has been given with respect to a company under subsection (2) above, the official receiver or any creditor or contributory of the company or the administrative receiver of the company (if there is one) may apply to the Secretary of State for directions under this section.
- (5) The grounds on which an application for directions may be made under subsection (4) above are—
  - (a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;
  - (b) that the affairs of the company do require further investigation; or
  - (c) that for any other reason the early dissolution of the company is inappropriate.
- (6) On the receipt of an application under subsection (1) above the registrar shall forthwith register it and, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved; but the Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give directions under this section at any time before the end of that period.
- (7) Directions under this section are directions making such provision as the Secretary of State thinks fit for enabling the winding up of the company to proceed as if no notice had been given under subsection (2) above and may, in the case of an application under subsection (6) above, include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.
- (8) An appeal to the court shall lie from any decision of the Secretary of State on an application for directions under this section.
- (9) It is the duty of the person on whose application any directions are given under this section, or in whose favour an appeal with respect to an application for such directions is determined, within seven days after the giving of the directions or the determination of the appeal, to deliver to the registrar for registration such a copy of the directions or determination as is prescribed.
- (10) If a person without reasonable excuse fails to deliver a copy as required by subsection (9) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

## **77 Early dissolution of company in Scotland**

- (1) Where a winding-up order has been made by the court in Scotland, if after a meeting or meetings have been held under section 71 above it appears to the liquidator that the realisable assets of the company are insufficient to cover the expenses of the winding up, he may apply to the court for an order that the company be dissolved.
- (2) Where the liquidator makes an application under subsection (1) above, if the court is satisfied that the realisable assets of the company are insufficient to cover the expenses of the winding up and it appears to the court appropriate to do so, the court shall make an order that the company be dissolved in accordance with this section.

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- (3) A copy of the order shall within fourteen days from its date be forwarded by the liquidator to the registrar of companies who shall forthwith register it; and, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved.
- (4) The court may, on an application by any person who appears to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.
- (5) It is the duty of the person on whose application an order is made under subsection (4) above, within seven days after the making of the order, to deliver to the registrar of companies such a copy of the order as is prescribed.
- (6) If the liquidator without reasonable excuse fails to comply with the requirements of subsection (3) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.
- (7) If a person without reasonable excuse fails to deliver a copy as required by subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum, and for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

#### **78 Duty of liquidator to summon final meeting**

- (1) Subject to subsection (2) below, if it appears to the liquidator of a company which is being wound up by the court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's Creditors which—
  - (a) shall receive the liquidator's report of the winding up; and
  - (b) shall determine whether the liquidator should have his release under section 80 below.
- (2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.
- (3) In the carrying out of his functions in the winding up it shall be the duty of the liquidator of a company to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this section.

#### **79 Removal of liquidator and vacation of office**

- (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the court or of a provisional liquidator.
- (2) Subject to the following provisions of this section, a liquidator may be removed from office only by an order of the court or by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules and a provisional liquidator may be removed from office only by an order of the court



- (3) Where—
- (a) the official receiver is a liquidator otherwise than in succession under section 70(3) above to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories; or
  - (b) a liquidator was appointed by the court otherwise than under section 72(4)(a) or 73(1) above, or was appointed by the Secretary of State,
- a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if the liquidator thinks fit or the court so directs or the meeting is requested, in accordance with the rules, by not less than one-quarter, in value, of the company's creditors.
- (4) A liquidator who was appointed by the Secretary of State may be removed from office by a direction of the Secretary of State.
- (5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (7) Where an order is made under section 77-above for the dissolution of the company, the liquidator shall vacate office when the dissolution of the company takes effect in accordance with that section.
- (8) Where a final meeting has been held under section 78 above, the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the court and the registrar of companies that the meeting has been held and of the decisions (if any) of the meeting.

## **80 Release of liquidator**

- (1) This section applies with respect to the release of the liquidator of a company which is being wound up by the court or of a provisional liquidator.
- (2) Where the official receiver has ceased to be a liquidator and a person becomes liquidator in his stead, the official receiver shall have his release with effect from the following time, that is to say—
- (a) in a case where that person was nominated by a general meeting of the company's creditors or contributories or was appointed by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced ;
  - (b) in a case where that person is appointed by the court, such time as the court may determine.
- (3) If the official receiver while he is a liquidator gives notice to the Secretary of State that the winding up is for practical purposes complete, he shall have his release with effect from such time as the Secretary of State may determine.
- (4) A person other than the official receiver who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—
- (a) in the case of a person who has been removed from office by a general meeting of the company's creditors that has not resolved against his release or who has

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- died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release or by the court or the Secretary of State or who has vacated office under section 79(5) or (7) above, such time as the Secretary of State may, on an application by that person, determine ;
  - (c) in the case of a person who has resigned, such time as may be prescribed;
  - (d) in the case of a person who has vacated office under subsection (8) of section 79 above—
    - (i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine ; and
    - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.
- (5) A person who has ceased to hold office as a provisional liquidator shall have his release with effect from such time as the court may, on an application by that person, determine.
- (6) Where the official receiver or a liquidator or provisional liquidator has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, be discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under this section, of the court's powers under section 19 above.
- (7) In the application of this section to a case where the order for winding up has been made by the court in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator shall have his release shall be construed as references to such a determination by the Accountant of Court.

## **81      Dissolution of company**

- (1) On the receipt by the registrar of companies of a notice served for the purposes of section 79(8) above or of a notice from the official receiver that the winding up of a company by the court is complete, the registrar shall forthwith register the notice and, subject to subsections (2) and (4) below, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved.
- (2) The Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.
- (3) An appeal to the court shall lie from any decision of the Secretary of State on an application for a direction under subsection (2) above.
- (4) Subsection (2) above shall not apply in a case where the winding-up order was made by the court in Scotland, but in such a case the court may, on an application by any person appearing to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.

- (5) It is the duty of the person—
- (a) on whose application a direction is given under subsection (2) above;
  - (b) in whose favour an appeal with respect to an application for such a direction is determined; or
  - (c) on whose application an order is made under subsection (4) above,
- within seven days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the registrar for registration such a copy of the direction, determination or order as is prescribed.
- (6) If a person without reasonable excuse falls to deliver a copy as required by subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

### *Voluntary winding Up*

## **82 No liquidator appointed or nominated by company in voluntary winding up**

- (1) This Section applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.
- (2) The powers of the directors of the company shall not be exercised, except with the sanction of the court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with section 85 below, during the period before the appointment or nomination of a liquidator of the company.
- (3) Subsection (2) above does not apply in relation to the powers of the directors of the company—
- (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
  - (b) to do all such other things as may be necessary for the protection of the company's assets.
- (4) If the directors of the company without reasonable excuse fall to comply with this section, they shall be liable on summary conviction to a fine not exceeding the statutory maximum.

## **83 Effect of insolvency on members' voluntary winding up**

- (1) This section applies where, in the case of a members' voluntary winding up, the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the rate applicable under section 93 below) within the period stated in the directors' declaration under section 577 of the 1985 Act
- (2) The liquidator shall—
- (a) summon a meeting of creditors for a day not later than the twenty-eighth day after the day on which he formed the opinion mentioned in subsection (1) above ;
  - (b) send notices of the creditors' meeting to the creditors by post not less than seven days before the day on which that meeting is to be held;

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- (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality, that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period; and
  - (d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;
- and the notice of the creditors' meeting shall state the duty imposed by paragraph (d) above.
- (3) The liquidator shall also—
- (a) make out a statement in the prescribed form as to the affairs of the company;
  - (b) lay that statement before the creditors' meeting; and
  - (c) attend and preside at that meeting.
- (4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator and shall show—
- (a) particulars of the company's assets, debts and liabilities;
  - (b) the names and addresses of the company's creditors;
  - (c) the securities held by them respectively;
  - (d) the dates when the securities were respectively given ; and
  - (e) such further or other information as may be prescribed.
- (5) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duty imposed by subsection (2)(c) above shall apply separately in relation to each of those localities.
- (6) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (5) above to the company's principal place of business in Great Britain shall be construed as references to the company's registered office.
- (7) As from the day on which the creditors' meeting is held, this Part and the 1985 Act shall have effect as if—
- (a) the directors' declaration under section 577 of that Act had not been made ; and
  - (b) the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 85 below;
- and, accordingly, the winding up shall become a creditors' voluntary winding up and any appointment made or committee established by the creditors' meeting shall be deemed to have been made or established by the creditors' meeting so mentioned.
- (8) Where the creditors' meeting is held three months or less before the end of the first year from the commencement of the winding up, nothing in section 594 of the 1985 Act (as applied by subsection (7) above) shall require the liquidator to summon a meeting of creditors at the end of that year.
- (9) In this section " the relevant period " means the period of six months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.
- (10) If the liquidator without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding the statutory maximum.

#### **84 Liquidator nominated by company in creditors' voluntary winding up**

- (1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.
- (2) The powers conferred on the liquidator by section 598 of the 1985 Act shall not be exercised, except with the sanction of the court, during the period before the holding of the creditors' meeting mentioned in section 85 below.
- (3) Subsection (2) above does not apply in relation to the power of the liquidator—
  - (a) to take into his custody or under his control all the property to which the company is or appears to be entitled;
  - (b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
  - (c) to do all such other things as may be necessary for the protection of the company's assets.
- (4) The liquidator shall attend the creditors' meeting held under section 85 below and shall report to the meeting on any exercise by him of his powers (whether or not under this section or under section 598 or 602 of the 1985 Act).
- (5) If default is made—
  - (a) by the company in complying with subsection (2) or (3) of section 85 below ;  
or
  - (b) by the directors in complying with subsection (4) or (5) of that section,the liquidator shall, within seven days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.
- (6) In subsection (5) above "the relevant day" means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.
- (7) If the liquidator without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding the statutory maximum.

#### **85 Meeting of creditors in creditors' voluntary winding up**

- (1) This section applies in relation to a creditors' voluntary winding up.
- (2) The company shall—
  - (a) cause a meeting of its creditors to be summoned for a day not later than the fourteenth day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed ;
  - (b) cause the notices of the creditors' meeting to be sent by post to the creditors not less than seven days before the day on which that meeting is to be held ; and
  - (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality, that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period.
- (3) The notice of the creditors' meeting shall state either—
  - (a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such

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- information concerning the company's affairs as they may reasonably require ;  
or
- (b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.
- (4) The directors of the company shall—
- (a) make out a statement in the prescribed form as to the affairs of the company ;
  - (b) cause that statement to be laid before the creditors' meeting; and
  - (c) appoint one of their number to preside at that meeting;
- and it is the duty of the director so appointed to attend the meeting and preside over it.
- (5) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors of the company and shall show—
- (a) particulars of the company's assets, debts and liabilities;
  - (b) the names and addresses of the company's creditors ;
  - (c) the securities held by them respectively ;
  - (d) the dates when the securities were respectively given; and
  - (e) such further or other information as may be prescribed.
- (6) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (2)(c) and (3) (b) above shall apply separately in relation to each of those localities.
- (7) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (6) above to the company's principal place of business in Great Britain shall be construed as references to the company's registered office.
- (8) In this section " the relevant period " means the period of six months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.
- (9) If—
- (a) the company without reasonable excuse fails to comply with subsection (2) or (3) above ;
  - (b) the directors without reasonable excuse fail to comply with subsection (4) or (5) above ; or
  - (c) any director without reasonable excuse fails to comply with subsection (4) above, so far as requiring him to attend and preside at the creditors' meeting,
- the company, the directors or the director (as the case may be) shall be guilty of an offence.
- (10) A person guilty of an offence under subsection (9) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

## **86 Removal etc. of liquidator in voluntary winding up**

- (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.
- (2) Subject to subsection (3) below, a liquidator may be removed from office only by an order of the court or—
  - (a) in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose ; or
  - (b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.
- (3) Where a liquidator was appointed by the court under section 599 of the 1985 Act, a meeting such as is mentioned in subsection (2) above shall be summoned for the purpose of replacing him only if the liquidator thinks fit or the court so directs or the meeting is requested, in accordance with the rules—
  - (a) in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting ; or
  - (b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors.
- (4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar of companies.
- (6) Where—
  - (a) in the case of a members' voluntary winding up, a final meeting of the company has been held under section 585 of the 1985 Act; or
  - (b) in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under section 595 of that Act,the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with subsection (3) of that section and has given notice to the registrar of companies that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.

## **87 Release of liquidator in voluntary winding up**

- (1) This section applies with respect to the release of the liquidator of a company which is being wound up voluntarily.
- (2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—
  - (a) in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the registrar of companies in accordance with the rules that that person has ceased to hold office;
  - (b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release or by the court

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- or who has vacated office under subsection (4) of section 86 above, such time as the Secretary of State may, on the application of that person, determine ;
- (c) in the case of a person who has resigned, such time as may be prescribed;
  - (d) in the case of a person who has vacated office under subsection (6)(a) of section 86 above, the time at which he vacated office;
  - (e) in the case of a person who has vacated office under subsection (6)(b) of that section—
    - (i) if the final meeting of the creditors referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine ; and
    - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.
- (3) In the application of subsection (2) above to the winding up of a company registered in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator shall have his release shall be construed as references to such a determination by the Accountant of Court.
- (4) Where a liquidator has his release under subsection (2) above, he shall, with effect from the time specified in that subsection, be discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under subsection (2) above, of the court's powers under section 19 above.

*Winding up subject to supervision of court*

**88 Abolition of winding up subject to supervision of court**

No order shall be made under section 606 of the 1985 Act (power to order winding up under supervision of court) after the coming into force of this section.

*Provisions applicable to every mode of winding up*

**89 Preferential debts**

- (1) In a winding up the preferential debts listed in Part I of Schedule 4 to this Act shall be paid in priority to all other debts; and Part II of that Schedule shall have effect for the interpretation of the said Part I.
- (2) Preferential debts—
- (a) shall rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
  - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, shall have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.
- (3) Without prejudice to section 523 of the 1985 Act, where in the case of a company which is being wound up by the court in England and Wales, any person (whether or



not a landlord or person entitled to rent) has distrained upon the goods or effects of the company in the period of three months ending with the date of the winding-up order, those goods or effects, or the proceeds of sale of those goods or effects, shall be charged for the benefit of the company with the preferential debts of the company to the extent that the property of the company is for the time being insufficient for meeting them.

- (4) Where by virtue of any charge under subsection (3) above any person surrenders any goods or effects to a company or makes a payment to a company, that person shall, in respect of the amount of the proceeds of the sale of those goods or effects by the liquidator of the company or, as the case may be, the amount of the payment, rank as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

## **90 Power to appoint special manager**

- (1) Where a company has gone into liquidation or a provisional liquidator of a company has been appointed, the court may, on an application under this section, appoint any person to be the special manager of the business or property of the company.
- (2) An application under this section may be made by the liquidator or provisional liquidator of the company in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors, contributories or members generally, require the appointment of another person to manage the business or property of the company.
- (3) A special manager appointed under this section shall have such powers as may be entrusted to him by the court.
- (4) The power of the court under subsection (3) above to entrust powers to a special manager shall include power to direct that any provision of this Part or of the 1985 Act that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the provisional liquidator or liquidator.
- (5) A special manager appointed under this section shall—
  - (a) give such security or, in Scotland, caution as may be prescribed;
  - (b) prepare and keep such accounts as may be prescribed; and
  - (c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

## **91 Power to disclaim onerous property**

- (1) Subject to the provisions of this section, the liquidator of a company that is being wound up in England and Wales may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this section, that is to say—
  - (a) any unprofitable contract; and

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- (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) A disclaimer under this section—
- (a) shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
  - (b) shall not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.
- (4) A notice of disclaimer shall not be given under this section in respect of any property if—
- (a) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not; and
  - (b) the period of twenty-eight days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.
- (5) The disclaimer under this section of any property of a leasehold nature shall not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—
- (a) no application under section 92 below is made with respect to that property before the end of the period of fourteen days beginning with the day on which the last notice served under this subsection was served; or
  - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (6) Where the court gives a direction under subsection (5) (b) above it may also, instead of or in addition to any order it makes under section 92 below, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.
- (7) Where, in consequence of the disclaimer under this section of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person, the Crown or that person and the successors in title of the Crown or that person shall not be subject to any personal liability in respect of any sums becoming due under that rentcharge except sums becoming due after the Crown or that person or some person claiming under or through the Crown or that person has taken possession or control of the land or has entered into occupation of it.
- (8) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

## **92 Powers of court in respect of disclaimed property**

- (1) This section applies where the liquidator of a company has disclaimed any property under section 91 above.
- (2) An application may be made to the court under this section by—

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- (a) any person who claims an interest in the disclaimed property; or
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (3) Subject to subsections (4) and (5) below, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
- (a) a person entitled to it or a trustee for such a person ; or
  - (b) a person subject to such a liability as is mentioned in subsection (2)(b) above or a trustee for such a person.
- (4) The court shall not make an order by virtue of paragraph (b) of subsection (3) above except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The court shall not make an order under this section vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—
- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up ; or
  - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.
- (6) For the purposes of an order under this section relating to only part of any property comprised in a lease, the requirements of subsection (5) above shall apply as if the lease comprised only the property to which the order relates.
- (7) Where subsection (5) above applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under this section on the terms required by virtue of that subsection, the court may, by order under this section, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the company) to perform the lessee's covenants in the lease; and the court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.
- (8) Where subsection (5) above applies and a person claiming under the company as underlessee or mortgagee declines to accept any order under this section, that person shall be excluded from all interest in the property.
- (9) The effect of any order under this section shall be taken into account in assessing for the purpose of section 91(8) above the extent of any loss or damage sustained by any person in consequence of the disclaimer
- (10) An order under this section vesting any property in any person shall not need to be completed by any conveyance, assignment or transfer.

### **93 Interest on debts**

- (1) In a winding up interest shall be payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.

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- (2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.
- (3) All interest under this section shall rank equally, whether or not the debts on which it is payable rank equally.
- (4) The rate of interest payable under this section in respect of any debt shall be whichever is the greater of—
  - (a) the rate specified in section 17 of the Judgments Act 1838 on the day on which the company went into liquidation; and
  - (b) the rate applicable to that debt apart from the winding up.
- (5) In the application of this section to Scotland—
  - (a) references to a debt proved in a winding up have effect as references to a claim accepted in a winding up ; and
  - (b) the reference to section 17 of the Judgments Act 1838 shall have effect as a reference to the rules.

#### **94 Style and title of liquidators**

The liquidator of a company shall be described—

- (a) where a person other than the official receiver is liquidator, by the style of " the liquidator " of the particular company; or
- (b) where the official receiver is liquidator, by the style of " the official receiver and liquidator" of the particular company;

and in neither case shall he be described by an individual name.

## **CHAPTER VII**

### GENERAL

#### *Preliminary*

#### **95 Preliminary**

- (1) The following provisions of this Chapter shall apply—
  - (a) where a company goes into liquidation;
  - (b) where an administration order is made in relation to a company; and
  - (c) except in the case of sections 101 to 105, where an administrative receiver of a company is appointed;

and in those provisions " the office holder " means the liquidator, the administrator or the administrative receiver, as the case may be.
- (2) Sections 96 to 100 and 105 below shall apply where a provisional liquidator is appointed as they apply where a company goes into liquidation, and references in those sections to the office holder shall be construed accordingly.

- (3) Section 97 below shall apply where a composition or scheme approved by meetings summoned under section 22 above has taken effect as it applies where a company goes into liquidation as if references in that section to the office holder were references to the supervisor of the composition or scheme.

*Provisions applying generally*

**96 General provisions as to office holders**

- (1) Without prejudice to any enactment under which the official receiver is to be, or may be, liquidator of a company, the office holder must be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (2) If an appointment or nomination of any person to the office relates to more than one person or has the effect that the office is to be held by more than one person, the appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the office holder is to be done by all or any one or more of the persons for the time being holding the office.
- (3) The acts of an individual as the office holder shall be valid notwithstanding any defect in his appointment, nomination or qualifications.

**97 Supplies by utilities**

- (1) If a request is made by or with the concurrence of the office holder for the giving after the relevant date of any of the supplies mentioned in subsection (2) below, the supplier—
- (a) may make it a condition of the giving of the supply that the office holder personally guarantees the payment of any charges in respect of the supply; but
  - (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the relevant date are paid.
- (2) The supplies referred to in subsection (1) above are—
- (a) a supply of gas by the British Gas Corporation;
  - (b) a supply of electricity by an Electricity Board (within the meaning of the Energy Act 1983);
  - (c) a supply of water by statutory water undertakers or, in Scotland, a water authority within the meaning of the Water (Scotland) Act 1980;
  - (d) a supply of telecommunication services (within the meaning of the Telecommunications Act 1984) by a public telecommunications operator (within the meaning Of that Act).
- (3) In subsection (2) above the reference to telecommunication services does not include a reference to services consisting in the conveyance of cable programmes, that is to say programmes included in cable programme services (within the meaning of the Cable and Broadcasting Act 1984).
- (4) For the purposes of this section "the relevant date" is whichever is applicable of the following dates, namely—
- (a) the date on which the company went into liquidation;

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- (b) the date on which the administration order was made;
- (c) the date on which the administrative receiver was appointed or if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed;
- (d) the date on which the provisional liquidator was appointed ; and
- (e) the date on which the composition or scheme was approved by the meetings summoned under section 22 above.

## **98 Delivery and seizure of property**

(1) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office holder.

(2) Where

- (a) the office holder seizes or disposes of any property which is not property of the company ; and
- (b) at the time of seizure or disposal the office holder 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 office holder 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 the negligence of the office holder and shall have a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

## **99 Duty to co-operate with office holder**

(1) Each of the persons mentioned in subsection (2) below shall—

- (a) give to the office holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office holder may at any time after the relevant date reasonably require; and
- (b) attend on the office holder at such times as the office holder may reasonably require.

(2) The persons referred to in subsection (1) above are—

- (a) those who are or have at any time been officers of the company;
- (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) those who are in the employment of the company, or have been in its employment within that year, and are in the office holder's opinion capable of giving information which he requires; and
- (d) those who are, or have within that year been, officers of, or in the employment of, another company which is, or within that year was, an officer of the company in question.

(3) For the purposes of subsection (2) above " the relevant date " is whichever is applicable of the following dates, namely—

- (a) the date on which the company went into liquidation ;
- (b) the date on which the administration order was made ;

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- (c) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed; and
  - (d) the date on which the provisional liquidator was appointed;
- and in that subsection " employment" includes employment under a contract for services.
- (4) This section shall apply in the case of a company that is being wound up by the court—
- (a) as if the persons referred to in subsection (2) above included any person who has acted as liquidator, administrator or administrative receiver of the company; and
  - (b) where the court is in England and Wales, as if references to the office holder included references to the official receiver, whether or not he is the liquidator of the company.
- (5) If a person without reasonable excuse fails to comply with any obligation imposed by this section, he shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
  - (b) on conviction on indictment, to a fine.

## **100 Inquiry into company's dealings etc.**

- (1) The court may, on the application of the office holder, summon to appear before it—
- (a) any officer of the company ;
  - (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company ; or
  - (c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company;
- and the court may require any such person as is mentioned in paragraphs (a) to (c) above to submit an affidavit to the court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) above.
- (2) In a case where a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section, the court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—
- (a) for the arrest of that person; and
  - (b) for the seizure of any books, papers, records, money or goods in that person's possession ;
- and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

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- (3) Any person who appears or is brought before the court under this section may be examined on oath, either orally or (except in Scotland) by interrogatories, concerning the company or the matters mentioned in subsection (1)(c) above.
- (4) If it appears to the court, on consideration of any evidence obtained under this section, that any person has in his possession any property of the company, the court may, on the application of the office holder, order that person to deliver the whole or any part of the property to the office holder at such time, in such manner and on such terms as the court thinks fit.
- (5) If it appears to the court, on consideration of any evidence obtained under this section, that any person is indebted to the company, the court may, on the application of the office holder, order that person to pay to the office holder, at such time and in such manner as the court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the court thinks fit.
- (6) This section shall apply in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office holder included references to the official receiver whether or not he is the liquidator of the company.
- (7) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under this section shall be examined in any part of the United Kingdom where he may for the time being be, or in a place outside the United Kingdom.

*Provisions applying to liquidations and administrations*

**101 Transactions at an undervalue and preferences (England and Wales)**

- (1) Subject to the following provisions of this section and to section 102 below, where a company has at a relevant time entered into a transaction with any person at an undervalue or given a preference to any person—
  - (a) the office holder may apply to the court for an order under this section; and
  - (b) the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction or, as the case may be, had not given that preference.
- (2) For the purposes of this section and section 102 below a company enters into a transaction with a person at an undervalue if—
  - (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or
  - (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.
- (3) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—
  - (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and



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- (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.
- (4) For the purposes of this section and section 102 below a company gives a preference to a person if—
  - (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and
  - (b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.
- (5) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b) above.
- (6) A company which has given a preference to a person connected with the company at the time the preference was given shall be presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5) above.
- (7) The fact that something has been done in pursuance of the order of a court shall not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.
- (8) Subject to subsection (9) below, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time for the purposes of this section if the transaction is entered into or the preference is given—
  - (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company, at a time in the period of two years ending with the commencement date; or
  - (b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of six months ending with that date; or
  - (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (9) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (8)(a) or (b) above, that time shall not be a relevant time for the purposes of this section unless the company—
  - (a) is unable to pay its debts within the meaning of section 518 of the 1985 Act at that time; or
  - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference ;but the requirements of this subsection shall be presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.
- (10) For the purposes of subsection (8) above the commencement date is—
  - (a) in a case where this section applies by reason of the making of an administration order or of a company's going into liquidation immediately

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upon the discharge of an administration order, the date of the presentation of the petition on which the administration order was made; and

- (b) in a case where this section applies by reason of a company's going into liquidation at another time, the date of the commencement of the winding up.

- (11) For the purposes of this section a person who is connected with a company by reason only of being its employee shall be deemed not to be connected with the company.

## **102 Orders under s. 101**

- (1) Without prejudice to the generality of subsection (1)(b) of section 101 above, an order under that section with respect to a transaction or preference entered into or given by a company may (subject to subsection (2) below)—
  - (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company;
  - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
  - (c) release or discharge (in whole or in part) any security given by the company;
  - (d) require any person to pay, in respect of benefits received by him from the company, such sums to the office holder as the court may direct;
  - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate;
  - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference ; and
  - (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.
- (2) An order under section 101 above may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or, as the case may be, the person to whom the preference was given ; but such an order—
  - (a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; and
  - (b) shall not require a person who received a benefit from the transaction or preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the office holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.
- (3) For the purposes of this section the relevant circumstances, in relation to a transaction or preference, are—

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- (a) the circumstances by virtue of which an order under section 101 above could be made in respect of the transaction or preference if the company were to go into liquidation, or an administration order were made in relation to the company, within a particular period after the transaction is entered into or the preference given; and
  - (b) if that period has expired, the fact that the company has gone into liquidation or that such an order has been made.
- (4) The provisions of section 101 above and this section shall apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

### **103 Extortionate credit transactions**

- (1) This section applies where the company is, or has been a party to a transaction for, or involving, the provision of credit to the company.
- (2) The court may, on the application of the office holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of three years ending with the day on which the company went into liquidation or, as the case may be, the administration order was made.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
  - (b) it otherwise grossly contravened ordinary principles of fair dealing;
- and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—
- (a) provision setting aside the whole or part of any obligation created by the transaction;
  - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held ;
  - (c) provision requiring any person who is or was a party to the transaction to pay to the office holder any sums paid to that person, by virtue of the transaction, by the company;
  - (d) provision requiring any person to surrender to the office holder any property held by him as security for the purposes of the transaction;
  - (e) provision directing accounts to be taken between any persons.
- (5) The powers conferred by this section shall be exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue or under section 615A of the 1985 Act (gratuitous alienations in Scotland).

#### **104 Avoidance of certain floating charges**

- (1) Subject to the provisions of this section, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—
  - (a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge;
  - (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company; and
  - (c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) above in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.
- (2) Subject to subsection (3) below, the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created—
  - (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of two years ending with the commencement date;
  - (b) in the case of a charge which is created in favour of any other person, at a time in the period of twelve months ending with that date ; or
  - (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (3) Where a company creates a floating charge at a time mentioned in subsection (2)(b) above and the person in favour of whom the charge is created is not connected with the company, that time shall not be a relevant time for the purposes of this section unless the company—
  - (a) is unable to pay its debts within the meaning of section 518 of the 1985 Act at that time; or
  - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.
- (4) For the purposes of subsection (2) above the commencement date is—
  - (a) in a case where this section applies by reason of the making of an administration order, the date of the presentation of the petition on which the order was made; and
  - (b) in a case where this section applies by reason of a company's going into liquidation, the date of the commencement of the winding up.
- (5) For the purposes of subsection (1)(a) above the value of any goods or services supplied by way of consideration for a floating charge shall be the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

### **105 Unenforceability of liens on books etc.**

- (1) Subject to subsection (2) below, a lien or other right to retain possession of any of the books, papers or other records of the company shall be unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office holder.
- (2) Subsection (1) above does not apply to a lien on documents which give a title to property and are held as such.

## **CHAPTER VIII**

### **SUPPLEMENTAL**

### **106 Company insolvency rules**

- (1) Rules may be made—
  - (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of the Secretary of State; or
  - (b) in relation to Scotland, by the Secretary of State,for the purpose of giving effect to this Part and the 1985 Act so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.
- (2) Without prejudice to the generality of subsection (1) above or to any provision of this Part or of the 1985 Act by virtue of which rules under this section may be made with respect to any matter, rules under this section may contain—
  - (a) any such provision as is specified in Schedule 5 to this Act or corresponds to provision contained immediately before the coming into force of this section in rules made, or having effect as if made, under section 663(1) or (2) of the 1985 Act; and
  - (b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Secretary of State necessary or expedient;and in Schedule 5 to this Act " liquidator " includes a provisional liquidator.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Regulations made by the Secretary of State under a power conferred by rules under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (5) Nothing in this section or section 107 below shall be taken as prejudicing any power to make rules of court.

### **107 Fees orders**

- (1) There shall be paid in respect of—
  - (a) proceedings under this Part or the 1985 Act so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies ;  
and

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- (b) the performance by the official receiver or the Secretary of State of functions under this Part or that Act so far as so relating, such fees as the Lord Chancellor in relation to England and Wales, or the Secretary of State in relation to Scotland, may with the sanction of the Treasury by order direct; and the Treasury may by order direct by whom and in what manner the fees are to be collected and accounted for.
- (2) The Lord Chancellor may, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for fees payable by virtue of this section.
- (3) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor, the Secretary of State or, as the case may be, the Treasury necessary or expedient.
- (4) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (5) Fees payable by virtue of this section shall be paid into the Consolidated Fund.
- (6) The application of this section to Scotland shall be without prejudice to the provisions of section 2 of the Courts of Law Fees (Scotland) Act 1895.

## **108 Construction of Part II**

- (1) The provisions of this Part shall be construed as one with the 1985 Act and—
  - (a) so far as relating to the disqualification of directors and others involved in the management of companies, with Part IX of that Act;
  - (b) so far as relating to receivers or managers, with Part XIX of that Act; and
  - (c) so far as relating to the winding up of companies, with Part XX of that Act,
 and references in that Act to itself and to any of those Parts of that Act shall be construed accordingly.
- (2) The following provisions, namely—
  - (a) sections 295 and 301 of the 1985 Act (disqualification orders and register of such orders); and
  - (b) paragraphs 1 and 3 to 5 of Part I of Schedule 12 to that Act (procedure for applying for and obtaining disqualification orders and applications for leave under such orders),
 shall apply for the purposes of sections 12, 13 and 16 above; and references in those provisions to sections 296 to 299 of that Act shall be construed accordingly.
- (3) In this Part, except in so far as the context otherwise requires—
  - " administrative receiver " means—
    - (a) an administrative receiver within the meaning of Chapter IV of this Part; or
    - (b) a receiver appointed under section 467 of the 1985 Act in a case where the whole (or substantially the whole) of the company's property is attached by the floating charge;
  - " business day " means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain ;

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" chattel leasing agreement" means an agreement for the bailment or, in Scotland, the hiring of goods which is capable of subsisting for more than three months;

" floating charge " means a charge which, as created, was a floating charge;

" insolvency", in relation to a company, includes the approval of a composition or scheme under Chapter II of this Part, the making of an administration order or the appointment of an administrative receiver;

" office copy ", in relation to Scotland, means a copy certified by the clerk of court;

" preferential debt" means a debt listed in Part I of Schedule 4 to this Act and " preferential creditor " shall be construed accordingly;

" prescribed " means prescribed by the rules ;

" receiver ", in the expression " receiver or manager ", does not include a receiver appointed under section 467 of the 1985 Act;

" retention of title agreement " means an agreement for the sale of goods to a company, being an agreement—

(a) which does not constitute a charge on the goods; but

(b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods ;

" the rules " means rules under section 106 above ;

" secured creditor ", in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and " unsecured creditor " shall be construed accordingly ;

" security " means—

(a) in relation to England and Wales, any mortgage, charge, lien or other security ;

(b) in relation to Scotland, any security (whether heritable or movable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off).

- (4) For the purposes of this Part a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution.
- (5) For the purposes of this Part a person is connected with a company if—
- (a) he is a director or shadow director of the company or an associate of such a director or shadow director; or
  - (b) he is an associate of the company.
- (6) For the purposes of this Part a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, shall be regarded as a member of the company, and references to a member or members shall be construed accordingly.
- (7) Where any provision of this Part provides that a person is liable to a daily default fine of any amount for continued contravention of any offence, that person shall be liable on a second or subsequent summary conviction of the offence to a fine of that amount for each day on which the contravention is continued (instead of to any other penalty specified in that provision).

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### **109 Minor and consequential amendments of 1985 Act**

- (1) The 1985 Act shall have effect with the amendments specified in Schedule 6 to this Act (being minor and consequential amendments relating to the disqualification of directors and others involved in the management of companies and the insolvency and winding up of companies).
- (2) In the 1985 Act references to general rules under section 663(1) or (2) of that Act shall have effect as references to rules under section 106 above.
- (3) In the 1985 Act " administrative receiver" has the same meaning as in this Part.

## **PART III**

### INDIVIDUAL INSOLVENCY

## **CHAPTER I**

### VOLUNTARY ARRANGEMENTS

#### *Preliminary*

### **110 Application of Chapter I**

This Chapter applies where an individual intends to make a proposal to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs, being a proposal which provides for some person (in this Chapter referred to as " the nominee ") to act in relation to the composition or scheme either as trustee or otherwise for the purpose of supervising its implementation.

#### *Procedure pending consideration of proposal*

### **111 Application for interim order**

- (1) An application to the court for an order under section 112 below (in this Chapter referred to as an "interim order ") may be made—
  - (a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate or the official receiver ; and
  - (b) in any other case, by the debtor.
- (2) An application for an interim order shall not be made under subsection (1)(a) above unless the debtor has given notice of his proposal to the official receiver and, if there is one, to the trustee of his estate.
- (3) An application for an interim order shall not be made while a bankruptcy petition presented by the debtor is pending if the court has made an appointment under subsection (2) of section 123 below; and if the court has made such an appointment, it may make an interim order under subsection (5) of that section without an application being made under this section.



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- (4) At any time when an application under this section for an interim order is pending the court may stay any action, execution or other legal process against the property or person of the debtor.
- (5) Any court in which proceedings are pending against an individual may, on proof that an application under this section has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

## **112 Interim orders**

- (1) On an application under section 111 above or in a case falling within section 123(5) below, the court may make an interim order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposals.
- (2) The court shall not make an interim order on an application under section 111 above unless it is satisfied—
  - (a) that the debtor intends to make such a proposal as is mentioned in section 110 above ;
  - (b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy ;
  - (c) that no previous application has been made by the debtor for an interim order in the period of twelve months ending with that day ; and
  - (d) that the nominee is a person who is for the time being qualified to act as an insolvency practitioner in relation to the debtor and is willing to act in relation to the debtor's proposal.
- (3) An interim order shall have the effect that during the period for which it is in force—
  - (a) no bankruptcy petition relating to the debtor may be presented or proceeded with ; and
  - (b) no other proceedings and no execution or other legal process may be commenced or continued against the debtor or his property except with the leave of the court.
- (4) Where the debtor is an undischarged bankrupt an interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.
- (5) Subject to subsection (6) below, the provision contained in an interim order by virtue of subsection (4) above may include provision staying proceedings in the bankruptcy or modifying the provisions of this Part and the rules in their application to the debtor's bankruptcy.
- (6) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of this Part or of the rules unless the court is satisfied that the provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.
- (7) Subject to the following provisions of this Chapter, an interim order shall cease to have effect—
  - (a) if made on an application under section 111 above, at the end of the period of fourteen days beginning with the day after the making of the order ;

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- (b) if made in pursuance of section 123(5) below, at the end of such period as the court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Chapter.

### **113 Report by nominee**

- (1) This section applies where an interim order has been made on an application under section 111 above.
- (2) The nominee shall, before the order ceases to have effect, submit a report to the court stating—
  - (a) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and
  - (b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (3) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—
  - (a) a document setting out the terms of the composition or scheme which the debtor is proposing ; and
  - (b) a statement of his affairs containing—
    - (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed; and
    - (ii) such other information as may be prescribed.
- (4) The court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, do one or both of the following, namely—
  - (a) direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner in relation to the debtor ;
  - (b) direct that the order mentioned in subsection (1) above shall continue, or (if it has ceased to have effect) shall be renewed, for such further period as the court may specify in the direction.
- (5) The court may, on the application of the nominee, extend the period for which the order mentioned in subsection (1) above has effect so as to enable the nominee to have more time to prepare the report required by this section.
- (6) If the court is satisfied on receiving the report required by this section that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the court shall direct that the period for which the order mentioned in subsection (1) above has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Chapter.
- (7) The court may discharge the order mentioned in subsection (1) above if it is satisfied, on the application of the nominee—
  - (a) that the debtor has failed to comply with his obligations under subsection (3) above ; or
  - (b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

#### **114 Summons of creditors' meeting**

- (1) Where the court has made an interim order and after the making of the order or, as the case may be, with a view to its being made a person has reported to the court under section 113 above or section 123(3) below that a meeting of the debtor's creditors should be summoned, that person shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.
- (2) The persons who shall be summoned to a meeting of creditors under this section shall be every creditor of the debtor of whose claim and address the person summoning the meeting is aware.
- (3) For the purposes of a meeting under this section the creditors of a debtor who is an undischarged bankrupt shall include every person who is a creditor of the bankrupt in respect of a bankruptcy debt and every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

#### *Consideration and implementation of proposal*

#### **115 Decision of creditors' meeting**

- (1) A meeting summoned under section 114 above shall decide whether to approve the composition or scheme proposed by the debtor.
- (2) Such a meeting may approve the proposed composition or scheme with modifications but shall not do so unless the debtor consents to each modification.
- (3) The modifications subject to which the proposed composition or scheme may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner in relation to the debtor but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 110 above.
- (4) Except with the concurrence of the secured creditor concerned, a meeting summoned under section 114 above shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security.
- (5) Except with the concurrence of the preferential creditor concerned, a meeting summoned under section 114 above shall not approve any proposal or modification under which—
  - (a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts; or
  - (b) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.
- (6) Subject to subsections (1) to (5) above, a meeting summoned under section 114 above shall be conducted in accordance with the rules.
- (7) After the conclusion in accordance with the rules of a meeting summoned under section 114 above, the chairman of the meeting shall report the result of the meeting to the court and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

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- (8) If a report is given to the court under subsection (7) above that the meeting has declined (with or without modifications) to approve the debtor's proposal the court may discharge any interim order which is in force in relation to the debtor.
- (9) In this section " preferential debt" means any of the debts which in the distribution of a bankrupt's estate are, under section 166 below and Schedule 4 to this Act (read with Schedule 3 to the Social Security Pensions Act 1975), to be paid in priority to all other debts, and " preferential creditor " shall be construed accordingly.
- (10) For the purposes of this section Schedule 4 to this Act and Schedule 3 to the said Act of 1975 shall each have effect, in relation to a debtor who is not an undischarged bankrupt, as if—
  - (a) references to the relevant date were references to the date of the interim order made with respect to his proposal; and
  - (b) references to the debtor being adjudged bankrupt were references to the making of that order.

## **116 Effect of approval**

- (1) This section has effect where a meeting summoned under section 114 above approves a proposed composition or scheme (with or without modifications).
- (2) The approved composition or scheme shall take effect as if made by the debtor at the meeting and shall bind every person who in accordance with the rules had notice of, and was entitled to vote at, the meeting (whether or not he was present or represented at the meeting) as if he were a party to the composition or scheme.
- (3) The Deeds of Arrangement Act 1914 shall not apply to the approved composition or scheme.
- (4) Subject to subsection (5) below, if the debtor is an undischarged bankrupt the court may do one or both of the following, namely—
  - (a) annul the bankruptcy order by which he was adjudged bankrupt;
  - (b) give such directions with respect to the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved composition or scheme.
- (5) The court shall not annul a bankruptcy order under subsection (4) above—
  - (a) at any time before the end of the period of twenty-eight days beginning with the day on which the report with respect to the meeting was made to the court under section 115(7) above ; or
  - (b) at any time when an application under section 117 below or an appeal in respect of such an application is pending or at any time in the period within which such an appeal may be brought.
- (6) Except to such extent as the court may direct for the purposes of any application under section 117 below, any interim order in force in relation to the debtor immediately before the end of the period of twenty-eight days beginning with the day on which the report with respect to the meeting was made to the court under section 115(7) above shall cease to have effect at the end of that period.
- (7) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (6) above, that petition shall be deemed, unless the court otherwise orders, to have been dismissed.

## 117 Challenge of meeting's decision

- (1) Subject to the provisions of this section, an application to the court may be made, by any of the persons specified in subsection (2) below, on one or both of the following grounds, namely—
  - (a) that a composition or scheme approved at a meeting summoned under section 114 above unfairly prejudices the interests of a creditor of the debtor ;
  - (b) that there has been some material irregularity at or in relation to such a meeting.
- (2) The persons who shall be entitled to make an application under this section shall be—
  - (a) the debtor;
  - (b) a person entitled, in accordance with the rules, to vote at the meeting in question ;
  - (c) the nominee or any person who has replaced him under section 113(4)(a) or 115(3) above ; and
  - (d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.
- (3) An application under this section shall not be made after the end of the period of twenty-eight days beginning with the day on which the report with respect to the meeting in question was made to the court under section 115(7) above.
- (4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1) above, it may do one or both of the following, namely—
  - (a) revoke or suspend any approval given by the meeting in question;
  - (b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b) above, to reconsider his original proposal.
- (5) Where at any time after giving a direction under subsection (4)(b) above for the summoning of a meeting to consider a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.
- (6) Where the court gives a direction under subsection (4)(b) above, it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.
- (7) In any case where the court, on an application made under this section with respect to any meeting, gives a direction under subsection (4)(b) above or revokes or suspends an approval under subsection (4)(a) or (5) above, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—
  - (a) things done since the meeting under any composition or scheme approved by the meeting ; and
  - (b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.
- (8) Except in pursuance of the preceding provisions of this section, an approval given at a meeting summoned under section 114 above shall not be invalidated by any irregularity at or in relation to the meeting.

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## **118 Implementation and supervision of approved composition or scheme**

- (1) This section applies where a composition or scheme approved by a meeting summoned under section 114 above has taken effect.
- (2) The person who is for the time being carrying out in relation to the composition or scheme the functions conferred by virtue of the approval on the nominee, or by virtue of section 113(4)(a) or 115(3) above on a person other than the nominee, shall be known as the supervisor of the composition or scheme.
- (3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the supervisor, may give him directions or may make such other order as it thinks fit.
- (4) The supervisor may apply to the court for directions in relation to any particular matter arising under the composition or scheme.
- (5) Without prejudice to section 41(2) of the Trustee Act 1925 (power of court to appoint trustees of deeds of arrangement), the court may, whenever—
  - (a) it is expedient to appoint a person to carry out the functions of the supervisor ; and
  - (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,
 make an order appointing a person who is qualified to act as an insolvency practitioner in relation to the debtor, either in substitution for the existing supervisor or to fill a vacancy.
- (6) The power conferred by subsection (5) above shall be exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

## **CHAPTER II**

### **BANKRUPTCY ORDERS**

#### *Preliminary*

## **119 Preliminary**

- (1) A petition for a bankruptcy order to be made against an individual may be presented to the court in accordance with the following provisions of this Part—
  - (a) by one of the individual's creditors or jointly by more than one of them ;
  - (b) by the individual himself ;
  - (c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a composition or scheme proposed by the individual and approved under Chapter I of this Part; or
  - (d) where a criminal bankruptcy order has been made against the individual, by the Official Petitioner or by any person specified in the order in pursuance of section 39(3)(b) of the Powers of Criminal Courts Act 1973 ;

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- and, subject to those provisions, the court may make a bankruptcy order on any such petition.
- (2) A bankruptcy petition shall not be presented to the court under subsection (1)(a) or (b) above unless the debtor—
- (a) is domiciled in England and Wales ;
  - (b) is personally present in England and Wales on the day on which the petition is presented ; or
  - (c) at any time in the period of three years ending with that day—
    - (i) has been ordinarily resident, or has had a place of residence, in England and Wales ; or
    - (ii) has carried on business in England and Wales.
- (3) The reference in subsection (2)(c) above to an individual's carrying on business includes a reference to the carrying on of business by a firm or partnership of which the individual is a member and a reference to the carrying on of business by an agent or manager for the individual or for such a firm or partnership.
- (4) Where a bankruptcy petition relating to an individual is presented by a person who is entitled to present a petition under two or more paragraphs of subsection (1) above, the petition shall be treated for the purposes of this Part as a petition under such one of those paragraphs as may be specified in the petition.
- (5) A bankruptcy petition shall not be withdrawn without the leave of the court.
- (6) The court shall have a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss a bankruptcy petition or to stay proceedings on such a petition; and, where it stays proceedings on a bankruptcy petition, it may do so on such terms and conditions as it thinks fit.
- (7) Without prejudice to subsection (6) above, where a petition under paragraph (a), (b) or (c) of subsection (1) above in respect of an individual is pending at a time when a criminal bankruptcy order is made against him, or is presented after such an order has been so made, the court may on the application of the Official Petitioner dismiss the petition if it appears to it appropriate to do so.

### *Creditor's petition*

## **120 Creditor's petition**

- (1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or, as the case may be, at least one of the debts is owed.
- (2) Subject to subsections (3) to (6) below, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—
- (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level;
  - (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time and is unsecured ;

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- (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay ; and
  - (d) there is no outstanding application to set aside a demand served for the purposes of subsection (3)(a) or (4) below in respect of the debt or any of the debts.
- (3) For the purposes of subsection (2)(c) above the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—
- (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least three weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules; or
  - (b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed, has been returned unsatisfied in whole or in part.
- (4) For the purposes of subsection (2)(c) above the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—
- (a) the petitioning creditor to whom it is owed has served on the debtor a demand in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due ;
  - (b) at least three weeks have elapsed since the demand was served; and
  - (c) the demand has been neither complied with nor set aside in accordance with the rules.
- (5) A debt which is the debt, or one of the debts, in respect of which a creditor's petition is presented need not be unsecured if either—
- (a) the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors; or
  - (b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt;
- and in a case falling within paragraph (b) above the secured and unsecured parts of the debt shall be treated for the purposes of this section as separate debts.
- (6) In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of such a demand as is mentioned in subsection (3) (a) or (4) above, the petition may be presented before the end of the three week period so mentioned if there is a serious possibility that the debtor's property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect,
- (7) A debt shall not be regarded for the purposes of this section as a debt for a liquidated sum by reason only that the amount of the debt is specified in a criminal bankruptcy order.
- (8) In this section " the bankruptcy level" means £750; but the Secretary of State may by order made by statutory instrument substitute any amount specified in the order for



that amount or, as the case may be, for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

- (9) An order shall not be made under subsection (8) above unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

## **121 Proceedings on creditor's petition**

- (1) The court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—
- (a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for ; or
  - (b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.
- (2) In a case in which a creditor's petition contains such a statement as is required by section 120(6) above, the court shall not make a bankruptcy order until at least three weeks have elapsed since the service of any demand required by virtue of section 120(3)(a) or (4) above.
- (3) The court may dismiss a creditor's petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—
- (a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented ;
  - (b) that the acceptance of that offer would have required the dismissal of the petition ; and
  - (c) that the offer has been unreasonably refused ;
- and, in determining for the purposes of this subsection whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.
- (4) In determining for the purposes of this section what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it shall be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.
- (5) Nothing in this section or section 120 above shall prejudice the power of the court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of this section or that section had been done only by or in relation to the remaining creditors or debts.

### *Debtor's petition*

## **122 Debtor's petition**

- (1) A debtor's petition may be presented to the court only on the grounds that the debtor is unable to pay his debts.
- (2) A debtor's petition shall be accompanied by a statement of the debtor's affairs containing—
- (a) such particulars of the debtor's creditors and of his debts and other liabilities and of his assets as may be prescribed; and

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- (b) such other information as may be prescribed.

### **123 Proceedings on debtor's petition**

- (1) Subject to subsection (5) below, on the hearing of a debtor's petition the court shall not make a bankruptcy order if it appears to the court—
- (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts so far as unsecured would be less than the small bankruptcies level;
  - (b) that if a bankruptcy order were made the value of the bankrupt's estate would be equal to or more than the minimum amount;
  - (c) that within the period of five years ending with the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs; and
  - (d) that it would be appropriate to appoint a person to prepare a report under subsection (3) below.
- (2) Where, on the hearing of a debtor's petition, it appears to the court as mentioned in subsection (1)(a) to (d) above, the court shall appoint a person who is qualified to act as an insolvency practitioner in relation to the debtor to prepare a report under subsection (3) below and, subject to section 115(3) above, to act in relation to any composition or scheme to which the report relates either as trustee or otherwise for the purpose of supervising its implementation.
- (3) A person appointed under subsection (2) above shall inquire into the debtor's affairs and, within such period as the court may direct, shall submit a report to the court stating whether the debtor is willing, for the purposes of Chapter I of this Part, to make a proposal for a composition in satisfaction of his debts or for a scheme of arrangement of his affairs.
- (4) A report under subsection (3) above which states that the debtor is willing to make a proposal for the purposes of Chapter I of this Part shall also state—
- (a) whether, in the opinion of the person making the report, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and
  - (b) if in that person's opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (5) On considering a report under subsection (3) above the court may—
- (a) make an order under section 112 above ; or
  - (b) if it thinks it would be inappropriate to make an order under that section, make a bankruptcy order.
- (6) Where—
- (a) the court makes a bankruptcy order in a case in which it appears to the court as mentioned in paragraphs (a) and (c) of subsection (1) above (whether it makes the order because it does not appear to the court as mentioned in paragraph (b) or
  - (a) of that subsection or it makes it under subsection (5) (b) above); and
  - (b) it appears to the court appropriate to do so,
- the court shall issue a certificate for the summary administration of the bankrupt's estate.

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- (7) The court may at any time revoke a certificate issued under subsection (6) above if it appears to the court that, on any grounds existing at the time the certificate was issued, the certificate ought not to have been issued.
- (8) In this section " the minimum amount" and " the small bankruptcies level" mean such amounts as may for the time being be prescribed for the purposes of this section.

*Petition for default in connection with voluntary arrangement*

**124 Petition for default in connection with voluntary arrangement**

- (1) The court shall not make a bankruptcy order on a petition under section 119(1)(c) above unless it is satisfied—
  - (a) that the debtor has failed to comply with his obligations under the composition or scheme in question ;
  - (b) that information which was false or misleading in any material particular or which contained material omissions—
    - (i) was contained in any statement of affairs or other document supplied by the debtor under Chapter I of this Part to any person ; or
    - (ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under that Chapter ; or
  - (c) that the debtor has failed to do all such things as may for the purposes of the composition or scheme have been reasonably required of him by the supervisor of the composition or scheme.
- (2) Where a bankruptcy order is made on a petition under section 119(1)(c) above, any expenses properly incurred as expenses of the administration of the composition or scheme in question shall be a first charge on the bankrupt's estate.

*Petition based on criminal bankruptcy order*

**125 Petition based on criminal bankruptcy order**

- (1) Subject to subsection (6) of section 119 above, the court shall make a bankruptcy order on a petition under subsection (1)(d) of that section on production of a copy of the criminal bankruptcy order on which the petition is based, unless it appears to the court that the criminal bankruptcy order has been rescinded in consequence of an appeal.
- (2) Subject to the provisions of this Part, the fact that an appeal is pending against any conviction by virtue of which a criminal bankruptcy order was made shall not affect any proceedings on a petition under section 119(1)(d) above based on that order.
- (3) For the purposes of this section an appeal against a conviction is pending—
  - (a) in any case, until the expiration of the period of twenty eight 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 the Powers of Criminal Courts Act 1973.

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### *Duration of bankruptcy*

#### **126 Period of bankruptcy**

- (1) The bankruptcy of an individual against whom a bankruptcy order has been made—
  - (a) shall commence with the day on which that order is made; and
  - (b) shall continue until that individual is discharged from bankruptcy under this Chapter.
- (2) Subject to subsection (4) below, a bankrupt is discharged from bankruptcy—
  - (a) in the case of an individual who was adjudged bankrupt on a petition under section 119(1)(d) above or who had been an undischarged bankrupt at any time in the period of fifteen years ending with the commencement of the bankruptcy, by an order of the court under section 127 below ; and
  - (b) in any other case, by the expiration of the relevant period.
- (3) Subject to subsection (4) below, the relevant period for the purposes of subsection (2) (b) above is—
  - (a) where a certificate for the summary administration of the bankrupt's estate has been issued and is not revoked before the bankrupt's discharge, the period of two years beginning with the commencement of the bankruptcy; and
  - (b) in any other case, the period of three years beginning with the commencement of the bankruptcy.
- (4) Where the court is satisfied on the application of the official receiver that an undischarged bankrupt in relation to whom subsection (2)(b) above applies has failed or is failing to comply with any of his obligations under this Part, the court may order that the relevant period shall cease to run for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter), as may be specified in the order.
- (5) This section is without prejudice to any power of the court to annul a bankruptcy order.

#### **127 Discharge by order of the court**

- (1) An application for an order of the court discharging an individual from bankruptcy in a case falling within section 126(2)(a) above may be made by the bankrupt at any time after the end of the period of five years beginning with the commencement of the bankruptcy.
- (2) On an application under this section the court may—
  - (a) refuse to discharge the bankrupt from bankruptcy;
  - (b) make an order discharging him from bankruptcy absolutely ; or
  - (c) make an order discharging him from bankruptcy subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order;

and the court may provide for an order falling within paragraph (b) or (c) above to have immediate effect or to have its effect suspended for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter), as may be specified in the order.

## **128 Effect of discharge**

- (1) Subject to subsections (2) to (6) below, where a bankrupt is discharged from his bankruptcy, the discharge shall release him from all the bankruptcy debts but shall have no effect on the functions (so far as they remain to be carried out) of the trustee of his estate or on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part and, in particular, shall not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.
- (2) Discharge from bankruptcy shall not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.
- (3) Discharge from bankruptcy shall not release a bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party.
- (4) Discharge from bankruptcy shall not release a bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under any enactment relating to the public revenue or of a recognisance, with the consent of the Treasury.
- (5) Discharge from bankruptcy shall not, except to such extent and on such conditions as the court may direct, release a bankrupt from any bankruptcy debt which—
  - (a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, being damages in respect of personal injuries to any person; or
  - (b) arises under any order made in family proceedings or in domestic proceedings.
- (6) Discharge from bankruptcy shall not release a bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.
- (7) Discharge from bankruptcy shall not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge or from any liability as surety for the bankrupt or as a person in the nature of such a surety.
- (8) In this section—
  - " domestic proceedings " means domestic proceedings within the meaning of the Magistrates' Courts Act 1980 and any proceedings which would be such proceedings but for section 65(1)(ii) of that Act (proceedings for variation of order for periodical payments);
  - " family proceedings " has the same meaning as in Part V of the Matrimonial and Family Proceedings Act 1984 ;
  - " fine " has the same meaning as in the said Act of 1980 ;
  - " personal injuries " includes death and any disease or other impairment of a person's physical or mental condition.

## **129 Power to annul bankruptcy order in certain cases**

- (1) The court may annul a bankruptcy order if it at any time appears to the court—
  - (a) that, on any grounds existing at the time the order was made, the order ought not to have been made ; or

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- (b) that, to the extent required by the rules, the bankruptcy debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the court.
- (2) The court may annul a bankruptcy order made against an individual on a petition under paragraph (a), (b) or (c) of subsection (1) of section 119 above if it at any time appears to the court, on an application by the Official Petitioner—
- (a) that the petition was pending at a time when a criminal bankruptcy order was made against the individual or was presented after such an order was so made; and
- (b) no appeal is pending (within the meaning of section 125 above) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made;
- and the court shall annul a bankruptcy order made on a petition under paragraph (d) of that subsection if it at any time appears to the court that the criminal bankruptcy order on which the petition was based has been rescinded in consequence of an appeal.
- (3) The court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.
- (4) Where the court annuls a bankruptcy order (whether under this section or section 116 above)—
- (a) any sale or other disposition of property, payment made or other thing duly done under this Part by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the court shall be valid ; but
- (b) if any of the bankrupt's estate is then vested under this Part, in such a trustee, it shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms, if any, as the court may direct;
- and the court may include in its order such supplemental provisions as may be authorised by the rules.
- (5) In determining for the purposes of section 126 above whether a person was an undischarged bankrupt at any time, any time when he was a bankrupt by virtue of an order that was subsequently annulled shall be disregarded.

## 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.

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- (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.
- (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.

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- (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—
  - (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



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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.
- (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,

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- (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.
- (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—

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- (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.
- (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 ;

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- (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;
  - (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.

**CHAPTER IV**

TRUSTEES IN BANKRUPTCY

*Tenure of office as trustee*

**139 Power to make appointments**

- (1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) shall be exercisable—
- (a) except at a time when a certificate for the summary administration of the bankrupt's estate is in force, by a general meeting of the bankrupt's creditors;
  - (b) under section 142(2), 143(2) or 147(6) below, by the Secretary of State; or

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- (c) under section 144 below, by the court.
- (2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.
- (3) Any power to appoint a person as trustee of a bankrupt's estate shall include power to appoint two or more persons as joint trustees of that estate; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.
- (4) The appointment of any person as trustee of a bankrupt's estate shall take effect only if that person accepts the appointment in accordance with the rules.
- (5) Subject to subsection (4) above, the appointment of any person as trustee of a bankrupt's estate shall take effect at the time specified in his certificate of appointment.
- (6) This section is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of a bankrupt's estate.

#### **140 Summing of meeting to appoint first trustee**

- (1) Subject to sections 141(3) and 144(6) below, where a bankruptcy order has been made otherwise than on a petition under section 119(1)(d) above and no certificate for the summary administration of the bankrupt's estate has been issued, it shall be the duty of the official receiver, as soon as practicable in the period of twelve weeks beginning with the day on which the order was made, to decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.
- (2) Subject to section 141(3) below, if the official receiver decides not to summon such a meeting, he shall, before the end of the said period of twelve weeks, give notice of his decision to the court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.
- (3) As from the giving to the court of a notice under subsection (2) above, the official receiver shall be trustee of the bankrupt's estate.

#### **141 Power of creditors to require meeting to be summoned**

- (1) Where in the case of any bankruptcy—
  - (a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee of the bankrupt's estate ; and
  - (b) a certificate for the summary administration of the bankrupt's estate is not for the time being in force. any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.
- (2) If such a request appears to the official receiver to be made with the concurrence of not less than one-quarter, in value, of the bankrupt's creditors (including the creditor making the request), it shall be the duty of the official receiver to summon the requested meeting.
- (3) Accordingly, where the duty imposed by subsection (2) above has arisen, the official receiver shall be required neither to reach a decision for the purposes of

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subsection (1) of section 140 above nor (if he has reached one) to serve any notice under subsection (2) of that section.

#### **142 Failure of meeting to appoint trustee**

- (1) If a meeting summoned under section 140 or 141 above is held but no appointment of a person as trustee of the bankrupt's estate is made, it shall be the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (2) On a reference made in pursuance of a decision under subsection (1) above, the Secretary of State shall either make an appointment or decline to make one.
- (3) If—
  - (a) the official receiver decides not to refer the need for an appointment to the Secretary of State; or
  - (b) on such a reference the Secretary of State declines to make an appointment, the official receiver shall give notice of his decision or, as the case may be, of the Secretary of State's decision to the court.
- (4) As from the giving of a notice under subsection (3) above in a case in which no notice has been given under section 140(2) above, the official receiver shall be trustee of the bankrupt's estate.

#### **143 Appointment of trustee by Secretary of State**

- (1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter other than section 144(1) below he may apply to the Secretary of State for the appointment of a person as trustee of that estate instead of the official receiver.
- (2) On an application under subsection (1) above the Secretary of State shall either make an appointment or decline to make one.
- (3) An application may be made under subsection (1) above notwithstanding that the Secretary of State has declined to make an appointment either on a previous application under that subsection or on a reference made in pursuance of section 142 above or section 147(4) below.
- (4) Where the trustee of a bankrupt's estate has been appointed by the Secretary of State (whether under this section or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the directions of the court and in that notice or advertisement shall—
  - (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a committee under section 148 below; and
  - (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

#### **144 Special cases**

- (1) Where a bankruptcy order is made on a petition under section 119(1)(d) above, the official receiver shall be trustee of the bankrupt's estate.

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- (2) Subject to subsection (3) below, where the court issues a certificate for the summary administration of a bankrupt's estate, the official receiver shall, as from the issue of that certificate, be trustee of the bankrupt's estate.
- (3) Where such a certificate is issued or is in force, the court may, if it thinks fit, appoint a person other than the official receiver as trustee of the bankrupt's estate.
- (4) Where a bankruptcy order is made in a case in which a report has been submitted to the court under section 123(3) above but no certificate for the summary administration of the bankrupt's estate is issued, the court, if it thinks fit, may on making the order appoint the person who made the report as trustee of the bankrupt's estate.
- (5) Where a bankruptcy order is made (whether or not on a petition under section 119(1) (c) above) at a time when there is a supervisor of a composition or scheme approved in relation to the bankrupt under Chapter I of this Part, the court, if it thinks fit, may on making the order appoint the supervisor of the composition or scheme as trustee of the bankrupt's estate.
- (6) Where an appointment is made under subsection (4) or (5) above, the official receiver shall not be under the duty imposed by section 140(1) above.
- (7) Where the trustee of a bankrupt's estate has been appointed by the court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the directions of the court and in that notice or advertisement shall—
  - (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a committee under section 148 below ; and
  - (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

#### **145 Removal of trustee and vacation of office**

- (1) Subject to the following provisions of this section, the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the rules.
- (2) Where the official receiver is trustee of a bankrupt's estate by virtue of section 144(1) above, he shall not be removed from office under this section.
- (3) A general meeting of the bankrupt's creditors shall not be held for the purpose of removing the trustee of his estate at any time when a certificate for the summary administration of that estate is in force.
- (4) Where the official receiver is the trustee of a bankrupt's estate by virtue of section 140(3) or 142(4) above or a trustee is appointed by the Secretary of State or, otherwise than under section 144(5) above, by the court, a general meeting of the bankrupt's creditors shall be summoned for the purpose of replacing the trustee only if the trustee thinks fit or the court so directs or the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one-quarter, in value, of those creditors (including the creditor making the request).
- (5) The trustee of a bankrupt's estate who was appointed by the Secretary of State may be removed from office by a direction of the Secretary of State.

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- (6) The trustee of a bankrupt's estate, not being the official receiver, shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.
- (7) The trustee of a bankrupt's estate may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (8) The trustee of a bankrupt's estate shall vacate office on giving notice to the court that a final meeting has been held under section 168 below and of the decisions (if any) of that meeting.
- (9) The trustee of a bankrupt's estate shall vacate office if the bankruptcy order is annulled.

#### **146 Release of trustee**

- (1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—
  - (a) where that person is appointed by a general meeting of the bankrupt's creditors or by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced ; and
  - (b) where that person is appointed by the court, such time as the court may determine.
- (2) If the official receiver while he is the trustee of a bankrupt's estate gives notice to the Secretary of State that the administration of the bankrupt's estate in accordance with Chapter V of this Part is for practical purposes complete, he shall have his release with effect from such time as the Secretary of State may determine.
- (3) A person other than the official receiver who has ceased to be the trustee of a bankrupt's estate shall have his release with effect from the following time, that is to say—
  - (a) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has not resolved against his release or who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office ;
  - (b) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has resolved against his release or by the court or the Secretary of State or who has vacated office under section 145(6) above, such time as the Secretary of State may, on an application by that person, determine;
  - (c) in the case of a person who has resigned, such time as may be prescribed;
  - (d) in the case of a person who has vacated office under subsection (8) of section 145 above—
    - (i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine; and
    - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.
- (4) Where a bankruptcy order is annulled the trustee of the bankrupt's estate at the time of the annulment shall have his release with effect from such time as the court may determine.



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- (5) Where the official receiver or the trustee of a bankrupt's estate has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, be discharged from all liability both in respect of acts or omissions of his in the administration of the bankrupt's estate and otherwise in relation to his conduct as trustee; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under this section, of the court's powers under section 151 below.

#### **147 Vacancy in office of trustee**

- (1) This section applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee of a bankrupt's estate.
- (2) The official receiver shall be trustee until the vacancy is filled.
- (3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of section 160(8) below.
- (4) If at the end of the period of twenty-eight days beginning with the day on which the vacancy first came to the official receiver's attention he has not summoned, and is not proposing to summon, a general meeting of creditors for the purpose of filling the vacancy, he shall refer the need for an appointment to the Secretary of State.
- (5) Where a certificate for the summary administration of the bankrupt's estate is for the time being in force—
- (a) the official receiver may refer the need to fill any vacancy to the court or, if the vacancy arises because a person appointed by the Secretary of State has ceased to hold office, to the court or the Secretary of State; and
  - (b) subsections (3) and (4) above shall not apply.
- (6) On a reference to the Secretary of State under subsection (4) or (5) above the Secretary of State shall either make an appointment or decline to make one.
- (7) If on a reference under subsection (4) or (5) above no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate but without prejudice to his power to make a further reference.
- (8) References in this section to a vacancy include references to a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under section 168 below or the giving of a notice under section 146(2) above.

#### *Control of trustee*

#### **148 Committee of creditors**

- (1) Subject to subsection (2) below, a general meeting of a bankrupt's creditors (whether summoned under the preceding provisions of this Chapter or otherwise) may, in accordance with the rules, establish a committee to exercise the functions conferred on it by or under this Part.

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- (2) A general meeting of a bankrupt's creditors shall not establish a committee under this section, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt's estate, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver.

#### **149 Exercise by Secretary of State of functions of committee of creditors**

- (1) A committee established under section 148 above by a general meeting of a bankrupt's creditors shall not be able or required to carry out its functions at any time when the official receiver is the trustee of the bankrupt's estate, but at any such time the functions of that committee under this Part shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.
- (2) Where in the case of any bankruptcy there is for the time being no committee established under section 148 above and the trustee of the bankrupt's estate is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.

#### **150 General control of trustee by court**

- (1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.
- (2) The trustee of a bankrupt's estate may apply to the court for directions in relation to any particular matter arising under the bankruptcy.

#### **151 Liability of trustee**

- (1) Without prejudice to any liability arising apart from this section, where on an application under this section the court is satisfied—
- (a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate ; or
  - (b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of that estate in the carrying out of his functions,
- the court may order the trustee, for the benefit of the bankrupt's estate, to repay, restore or account for money or other property (together with interest at such rate as the court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.
- (2) An application under this section may be made by the official receiver, the Secretary of State, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of section 167(5) below) the bankrupt himself, but the leave of the court shall be required for the making of an application if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under section 146 above.
- (3) Where—

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- (a) the trustee of a bankrupt's estate 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 trustee 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 trustee shall not be liable to any person (whether under this section or otherwise) 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 the negligence of the trustee 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.

## CHAPTER V

### ADMINISTRATION BY TRUSTEE

#### *Preliminary*

#### **152 Preliminary**

- (1) This Chapter applies in relation to any bankruptcy where either—
  - (a) the appointment of a person as trustee of a bankrupt's estate takes effect; or
  - (b) the official receiver becomes trustee of a bankrupt's estate.
- (2) The function of the trustee shall be to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee shall be entitled, subject to those provisions, to use his own discretion.
- (3) It shall be the duty of the trustee, if he is not the official receiver—
  - (a) to furnish the official receiver with such information;
  - (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records; and
  - (c) to give the official receiver such other assistance,as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.
- (4) The official name of the trustee shall be " the trustee of the estate of , a bankrupt" (inserting the name of the bankrupt); but he may be referred to as " the trustee in bankruptcy " of the particular bankrupt.

#### *Vesting of property in trustee etc.*

#### **153 Vesting of bankrupt's estate in trustee**

- (1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.
- (2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this section or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

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#### **154 After-acquired property**

- (1) Subject to the following provisions of this section, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.
- (2) A notice under subsection (1) above shall not be served in respect of—
  - (a) any property falling within subsections (2) to (4) of section 130 above;
  - (b) any property which by virtue of any other enactment is excluded from the bankrupt's estate; or
  - (c) without prejudice to section 127(2)(c) above, any property which is acquired by, or devolves upon, the bankrupt after his discharge.
- (3) Subject to subsection (4) below, upon the service on the bankrupt of a notice under subsection (1) above the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property shall have relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.
- (4) Where, whether before or after the service of a notice under this section—
  - (a) a person acquires property in good faith, for value and without notice of the bankruptcy ; or
  - (b) a banker enters into a transaction in good faith and without such notice,the trustee shall not in respect of that property or transaction be entitled by virtue of this section to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.
- (5) Except with the leave of the court, a notice under subsection (1) above shall not be served after the end of the period of forty-two days beginning with the day on which it first came to the knowledge of the trustee that the property in question had been acquired by, or had devolved upon, the bankrupt.
- (6) For the purposes of subsection (5) above—
  - (a) anything which comes to the knowledge of the trustee shall be deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and
  - (b) anything which comes, otherwise than under paragraph (a) above, to the knowledge of a person before he is the trustee shall be deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.
- (7) References in this section to property shall not include any property which, as part of the bankrupt's income, may be the subject of an order under section 156 below.

#### **155 Vesting in trustee of tools, clothes etc. that exceed value of reasonable replacement**

- (1) Where—
  - (a) property is excluded by virtue of section 130(2) above from the bankrupt's estate; and
  - (b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

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the trustee may by notice in writing claim that property or, as the case may be, that part of it for the bankrupt's estate.

- (2) Upon the service on the bankrupt of a notice under subsection (1) above, the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property shall have relation back to the commencement of the bankruptcy.
- (3) Except with the leave of the court, a notice under subsection (1) above shall not be served after the end of the period of forty-two days beginning with the day on which the property in question first came to the knowledge of the trustee; and subsection (6) of section 154 above shall apply for the purposes of this subsection as it applies for the purposes of subsection (5) of that section.
- (4) The trustee shall apply funds comprised in the bankrupt's estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this section ; and the duty imposed by this subsection shall have priority over the obligation of the trustee to distribute the bankrupt's estate.
- (5) For the purposes of this section property shall be a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

## **156 Income payments orders**

- (1) The court may, on the application of the trustee, make an order (" an income payments order ") claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.
- (2) The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.
- (3) An income payments order shall, in respect of any payment of income to which it is to apply, either—
  - (a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order; or
  - (b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.
- (4) Where the court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.
- (5) Sums received by the trustee under an income payments order shall form part of the bankrupt's estate.
- (6) An income payments order shall not be made after the discharge of the bankrupt, and if made before, shall not have effect after his discharge except—
  - (a) in the case of a discharge under section 126(2)(a) above, by virtue of a condition imposed under section 127(2)(c) above; or
  - (b) in the case of a discharge under section 126(2)(b) above, by virtue of a provision of the order requiring it to continue in force for a period ending after the discharge but no later than three years after the making of the order.

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- (7) For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to the bankrupt or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment.

*Control and realisation of bankrupt's estate etc.*

### **157 Acquisition by trustee of control**

- (1) The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings).
- (2) The trustee shall, in relation to, and for the purpose of acquiring or retaining possession of, the bankrupt's estate, be in the same position as if he were a receiver of property appointed by the High Court; and the court may, on his application, enforce such acquisition or retention accordingly.
- (3) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.
- (4) Where any part of the bankrupt's estate consists of things in action, they shall be deemed to have been assigned to the trustee; but notice of the deemed assignment shall not be required to be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself, for protecting the priority of the trustee.
- (5) Where any goods comprised in the bankrupt's estate are held by any person by way of pledge, pawn or other security and no notice has been served in respect of those goods by the official receiver under subsection (5) of section 132 above, the trustee may serve such a notice in respect of those goods; and whether or not a notice has been served under this subsection or that subsection, the trustee may, if he thinks fit, exercise the bankrupt's right of redemption in respect of any such goods.
- (6) A notice served by the trustee under subsection (5) above shall have the same effect as a notice served by the official receiver under section 132(5) above.

### **158 Obligations to surrender control to trustee**

- (1) Without prejudice to his general duties under section 169 below, the bankrupt shall deliver up to the trustee possession of any property, books, papers or other records of which the trustee is required to take possession and of which the bankrupt has possession or control.
- (2) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—
- (a) the official receiver ;
  - (b) a person who has ceased to be trustee of the bankrupt's estate; or
  - (c) a person who has been the supervisor of a composition or scheme approved in relation to the bankrupt under Chapter I of this Part,

the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

- (3) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee.
- (4) If any person 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.

### **159 Charge on dwelling house**

- (1) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the court for an order imposing a charge on the property for the benefit of the bankrupt's estate.
- (2) If on an application under this section the court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and shall be enforceable, up to the value from time to time of the property secured, for the payment of any amount which is payable otherwise than to the bankrupt out of the bankrupt's estate and of interest on that amount at the prescribed rate.
- (3) An order under this section made in respect of property vested in the trustee shall provide, in accordance with the rules, for the property to cease to be comprised in the bankrupt's estate and, subject to the charge (and any prior charge), to vest in the bankrupt.
- (4) Subsections (1) and (2) and (4) to (6) of section 3 of the Charging Orders Act 1979 (which contain supplemental provisions with respect to charging orders) shall have effect in relation to orders under this section as they have effect in relation to charging orders under that Act.

### **160 General powers of trustee**

- (1) The trustee may—
  - (a) sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business ;
  - (b) give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application ;
  - (c) prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in the bankrupt's estate;
  - (d) exercise in relation to any property comprised in the bankrupt's estate any powers the capacity to exercise which is vested in the trustee under this Part;
  - (e) deal with any property comprised in the bankrupt's estate to which a bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

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- (2) With the permission of the committee established under section 148 above or the court, the trustee may—
- (a) carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as he is able to do so without contravening any requirement imposed by or under any enactment;
  - (b) bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate;
  - (c) accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the committee or the court thinks fit;
  - (d) mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts;
  - (e) where any right, option or other power forms part of the bankrupt's estate, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power;
  - (f) refer to arbitration, or compromise on such terms as may be agreed on, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt;
  - (g) make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts ;
  - (h) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person or by the trustee on any person.
- (3) With the permission of the committee established under section 148 above or the court, the trustee may appoint the bankrupt
- (a) to superintend the management of the bankrupt's estate, or any part of it;
  - (b) to carry on his business (if any) for the benefit of his creditors; or
  - (c) in any other respect to assist in administering that estate in such manner and on such terms as the trustee may direct.
- (4) A permission given for the purposes of subsection (2) or (3) above shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value shall not be concerned to enquire whether any permission required by either of those subsections has been given.
- (5) Where the trustee has done anything without the permission required by subsection (2) or (3) above, the court or the committee established under section 148 above may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done; but that committee shall not do so unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay.
- (6) For the purposes of, or in connection with, the exercise of any of his powers under this Part, the trustee shall be able, by his official name, to hold property of every description, to make contracts, to sue and be sued, to enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office, to employ an agent, to execute any power of attorney, deed or other instrument and to



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do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

- (7) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by this Part—
- (a) disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt; or
  - (b) employs a solicitor,
- he shall, if there is for the time being a committee established under section 148 above, give notice to the committee of that exercise of his powers.
- (8) Without prejudice to the generality of subsection (6) above, the trustee may, if he thinks fit, at any time summon a general meeting of the bankrupt's creditors; and, subject to the preceding provisions of this Part, the trustee shall summon such a meeting if he is requested to do so by a creditor of the bankrupt and the request is made with the concurrence of not less than one-tenth, in value, of the bankrupt's creditors (including the creditor making the request).
- (9) Nothing in this Act shall be construed as restricting the capacity of the trustee to exercise any of his powers outside England and Wales.

## **161 Power to disclaim onerous property**

- (1) Subject to the provisions of this section, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this section, that is to say—
- (a) any unprofitable contract; and
  - (b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) A disclaimer under this section shall—
- (a) operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed; and
  - (b) discharge the trustee from all personal liability in respect of that property as from the commencement of his trusteeship;
- but shall not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.
- (4) A notice of disclaimer shall not be given under this section in respect of any property that has been claimed for the bankrupt's estate under section 154 or 155 above except with the leave of the court.
- (5) A notice of disclaimer shall not be given under this section in respect of any property if—
- (a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee or that predecessor to decide whether he will disclaim or not; and

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- (b) the period of twenty-eight days beginning with the day on which that application was made has expired without a notice of disclaimer having been given under this section in respect of that property ;  
and the trustee shall be deemed to have adopted any contract which by virtue of the preceding provisions of this subsection he is not entitled to disclaim.
- (6) The disclaimer of any property of a leasehold nature shall not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee or as mortgagee and either—
- (a) no application under section 162 below is made with respect to that property before the end of the period of fourteen days beginning with the day on which the last notice served under this subsection was served ; Or
  - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (7) Where the court gives a direction under subsection (6)(b) above it may also, instead of or in addition to any order it makes under section 162 below, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.
- (8) Without prejudice to subsection (6) above, the disclaimer of any property in a dwelling house shall not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—
- (a) no application under section 162 below is made with respect to that property before the end of the period of fourteen days beginning with the day on which the last notice served under this subsection was served; or
  - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (9) Where, in consequence of the disclaimer under this section of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person, the Crown or that person and the successors in title of the Crown or that person shall not be subject to any personal liability in respect of any sums becoming due under that rentcharge except sums becoming due after the Crown or that person or some person claiming under or through the Crown or that person has taken possession or control of the land or has entered into occupation of it.
- (10) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

## **162 Powers of court in respect of disclaimed property**

- (1) This section applies where the trustee has disclaimed any property under section 161 above.
- (2) An application may be made to the court under this section by—
  - (a) any person who claims an interest in the disclaimed property;
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer; or

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- (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (3) Subject to subsections (4) and (5) below, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
- (a) a person entitled to it or a trustee for such a person;
  - (b) a person subject to such a liability as is mentioned in subsection (2)(b) above or a trustee for such a person; or
  - (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (4) The court shall not make an order by virtue of paragraph (b) of subsection (3) above except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The court shall not make an order under this section vesting property of a leasehold nature in any person, except on terms making that person—
- (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented ; or
  - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him on that day.
- (6) For the purposes of an order under this section relating to only part of any property comprised in a lease, the requirements of subsection (5) above shall apply as if the lease comprised only the property to which the order relates.
- (7) Where subsection (5) above applies and no person is willing to accept an order under this section on the terms required by virtue of that subsection, the court may, by order under this section, vest the estate or interest of the bankrupt in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease ; and the court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.
- (8) Where subsection (5) above applies and a person declines to accept any order under this section, that person shall be excluded from all interest in the property.
- (9) The effect of any order under this section shall be taken into account in assessing for the purposes of section 161(10) above the extent of any loss or damage sustained by any person in consequence of the disclaimer.
- (10) An order under this section vesting any property in any person shall not need to be completed by any conveyance, assignment or transfer.

#### *Distribution of bankrupt's estate*

### **163 Proof of debts**

- (1) Subject to the following provisions of this section and to section 164 below, the proof of any bankruptcy debt by any secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.

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- (2) Where a bankruptcy debt bears interest, that interest shall be provable as part of that debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.
- (3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.
- (4) Where the value of any bankruptcy debt is estimated by the trustee under subsection (3) above or, by virtue of section 150 above, by the court, the amount provable in the bankruptcy in respect of that debt shall be the amount of the estimate.

#### **164 Mutual credit and set off**

- (1) This section applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.
- (2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.
- (3) Sums due from the bankrupt to another party shall not be included in the account taken under subsection (2) above if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.
- (4) Only the balance (if any) of the account taken under subsection (2) above shall be provable as a bankruptcy debt or, as the case may be, be paid to the trustee as part of the bankrupt's estate.

#### **165 Manner of distribution of estate**

- (1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.
- (2) The trustee shall give notice of his intention to declare and distribute a dividend.
- (3) Where the trustee has declared a dividend he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this subsection shall contain the prescribed particulars of the bankrupt's estate.
- (4) In the calculation and distribution of a dividend the trustee shall make provision—
  - (a) for any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs ;
  - (b) for any bankruptcy debts which are the subject of claims which have not yet been determined; and
  - (c) for disputed proofs and claims.
- (5) A creditor who has not proved his debt before the declaration of any dividend shall not be entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

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- (a) when he has proved that debt he shall be entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive ; and
  - (b) any dividend or dividends payable under paragraph (a) above shall be paid before that money is applied to the payment of any such further dividend.
- (6) No action shall lie against the trustee for a dividend, but if the trustee refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—
- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time it was withheld ; and
  - (b) the costs of the proceedings in which the order to pay is made.
- (7) Without prejudice to section 161 above, the trustee may, with the permission of the committee established under section 148 above, divide in its existing form amongst the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.
- (8) Subsections (4) and (5) of section 160 above shall have effect in relation to the power conferred by subsection (7) above as they have effect in relation to the powers conferred by subsections (2) and (3) of that section.
- (9) Where the bankruptcy order was made on a petition under section 119(1)(d) above, no distribution shall be made under this section so long as an appeal is pending (within the meaning of section 125 above) against the bankrupt's conviction of any offence by virtue of which the criminal bankruptcy order on which the petition was based was made.

## **166 Priority of debts**

- (1) In the distribution of the bankrupt's estate, the preferential debts listed in Part I of Schedule 4 to this Act shall be paid in priority to other debts; and Part II of that Schedule shall have effect for the interpretation of the said Part I.
- (2) Preferential debts shall rank equally between themselves after the expenses of the bankruptcy and shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they shall abate in equal proportions between themselves.
- (3) Debts which are neither preferential debts nor debts falling within subsection (6) below shall also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they shall abate in equal proportions between themselves.
- (4) Any surplus remaining after the payment of the debts that are preferential or rank equally under subsection (3) above shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts shall rank equally with interest on debts other than preferential debts.
- (5) The rate of the interest payable under subsection (4) above in respect of any debt shall be whichever is the greater of—
  - (a) the rate specified in section 17 of the Judgments Act 1838 at the commencement of the bankruptcy; and

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- (b) the rate applicable to that debt apart from the bankruptcy.
- (6) Bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse at the time the credit was provided) was the bankrupt's spouse at the commencement of the bankruptcy shall—
  - (a) rank in priority after the debts and interest required to be paid in pursuance of subsections (3) and (4) above; and
  - (b) be payable with interest at the rate specified in subsection (5) above in respect of the period during which they have been outstanding since the commencement of the bankruptcy; and the interest payable under paragraph (b) above shall have the same priority as the debts on which it is payable.
- (7) This section is without prejudice to any provision of this Act or of any other Act under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

#### **167 Final distribution**

- (1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the opinion of the trustee, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—
  - (a) of his intention to declare a final dividend; or
  - (b) that no dividend, or further dividend, will be declared.
- (2) The notice given under subsection (1) above shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date (" the final date ") specified in the notice.
- (3) The court may, on the application of any person, postpone the final date.
- (4) After the final date, the trustee shall—
  - (a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate; and
  - (b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.
- (5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt shall be entitled to the surplus.

#### **168 Final meeting**

- (1) Subject to subsections (2) and (3) below, where it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete and the trustee is not the official receiver, the trustee shall summon a final general meeting of the bankrupt's creditors which—
  - (a) shall receive the trustee's report of his administration of the bankrupt's estate; and
  - (b) shall determine whether the trustee should have his release under section 146 above.

- (2) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under section 167(1) above but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.
- (3) In a case where property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse is comprised in the bankrupt's estate and the trustee has been unable for any reason to realise that property, the trustee shall not summon a meeting under this section unless either—
  - (a) the court has made an order under section 159 above imposing a charge on that property for the benefit of the bankrupt's estate ; or
  - (b) the court has declined, on an application under that section, to make such an order ; or
  - (c) the Secretary of State has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.
- (4) In the administration of the bankrupt's estate it shall be the duty of the trustee to retain sufficient sums from the bankrupt's estate to cover the expenses of summoning and holding the meeting required by this section.

### *Supplemental*

#### **169 Duties of bankrupt in relation to trustee**

- (1) The bankrupt shall—
  - (a) give to the trustee such information as to his affairs;
  - (b) attend on the trustee at such times ; and
  - (c) do all such other things,as the trustee may for the purposes of carrying out his functions under this Part reasonably require.
- (2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is any increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.
- (3) Subsection (1) above shall apply to a bankrupt after his discharge.
- (4) If the 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.

#### **170 Second bankruptcy**

- (1) This section applies where a bankruptcy order is made against an undischarged bankrupt; and in this section—
  - (a) references to the later bankruptcy are references to the bankruptcy arising from that order ;

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- (b) references to the earlier bankruptcy are references to the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy; and
  - (c) references to the existing trustee are references to the trustee (if any) of the bankrupt's estate for the purposes of the earlier bankruptcy.
- (2) Without prejudice to section 131 above, where the existing trustee has been given the prescribed notice of the presentation of the petition for the later bankruptcy, any distribution or other disposition by him of anything to which subsection (3) below applies shall, if made after the giving of the notice, be void except to the extent that it was made with the consent of the court or is or was subsequently ratified by the court.
- (3) This subsection applies to—
  - (a) any property which is vested in the existing trustee under section 154(3) above ;
  - (b) any money paid to the existing trustee in pursuance of an order under section 156 above ; and
  - (c) any property or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within paragraph (a) or (b) above.
- (4) With effect from the commencement of the later bankruptcy anything to which subsection (3) above applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy shall be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, shall be dealt with by the existing trustee in accordance with the rules.
- (5) Any sums which in pursuance of an order under section 156 above are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy and the court may give such consequential directions for the modification of the order as it thinks fit.
- (6) Anything comprised in a bankrupt's estate by virtue of subsection (4) or (5) above shall be so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.
- (7) Except as provided by the preceding provisions of this section, property which is, or by virtue of section 155 above is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to the earlier bankruptcy, shall not be comprised in his estate for the purposes of the later bankruptcy.
- (8) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier bankruptcy shall not be creditors of the bankrupt in the later bankruptcy in respect of the same debts, but the existing trustee may prove in the later bankruptcy for—
  - (a) the unsatisfied balance of the debts (including any debt under this subsection) provable against the bankrupt's estate in the earlier bankruptcy ;
  - (b) any interest payable on that balance ; and
  - (c) any unpaid expenses of the earlier bankruptcy.
- (9) Any amount provable under subsection (8) above shall rank in priority after all the other debts provable in the later bankruptcy and after interest on those debts and,



accordingly, shall not be paid unless those debts and that interest have first been paid in full.

## CHAPTER VI

### EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS ETC

#### *Rights of occupation*

#### **171 Rights of occupation etc. of bankrupt's spouse**

- (1) Nothing occurring in the period to which section 131 above applies shall be taken as having given rise to any rights of occupation under the Matrimonial Homes Act 1983 in relation to a dwelling house comprised in a bankrupt's estate.
- (2) Where a spouse's rights of occupation under the said Act of 1983 are a charge on the estate or interest of the other spouse or of trustees for the other spouse and the other spouse is adjudged bankrupt—
  - (a) the charge shall continue to subsist notwithstanding the bankruptcy and, subject to the provisions of that Act, shall bind the trustee of the bankrupt's estate and persons deriving title under that trustee; and
  - (b) any application for an order under section 1 of that Act shall be made to the court having jurisdiction in relation to the bankruptcy.
- (3) Where a person and his spouse or former spouse are trustees for sale of a dwelling house and that person is adjudged bankrupt, any application by the trustee of the bankrupt's estate for an order under section 30 of the Law of Property Act 1925 (powers of court where trustees for sale refuse to exercise powers) shall be made to the court having jurisdiction in relation to the bankruptcy.
- (4) On such an application as is mentioned in subsection (2) or (3) above the court shall make such order under the said section 1 or the said section 30 as it thinks just and reasonable having regard to the interests of the bankrupt's creditors, to the conduct of the spouse or former spouse so far as contributing to the bankruptcy, to the needs and financial resources of the spouse or former spouse, to the needs of any children and to all the circumstances of the case other than the needs of the bankrupt.
- (5) Where such an application is made after the end of the period of one year beginning with the first vesting, under Chapter V of this Part, of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

#### **172 Rights of occupation of bankrupt**

- (1) This section applies where—
  - (a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt; and
  - (b) any persons under the age of eighteen with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.

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- (2) Whether or not the bankrupt's spouse (if any) has rights of occupation under the Matrimonial Homes Act 1983—
- (a) the bankrupt shall have the following rights as against the trustee of his estate—
    - (i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part thereof, except with the leave of the court;
    - (ii) if not in occupation, a right with the leave of the court to enter into and occupy the dwelling house; and
  - (b) the bankrupt's rights shall be a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.
- (3) The Matrimonial Homes Act 1983 shall have effect, with the necessary modifications, as if—
- (a) the rights conferred by paragraph (a) of subsection (2) above were rights of occupation under that Act;
  - (b) any application for leave such as is mentioned in that paragraph were an application for an order under section 1 of that Act; and
  - (c) any charge under paragraph (b) of that subsection on the estate or interest of the trustee were a charge under that Act on the estate or interest of a spouse.
- (4) Any application for leave such as is mentioned in subsection (2)(a) above or otherwise by virtue of this section for an order under section 1 of the said Act of 1983 shall be made to the court having jurisdiction in relation to the bankruptcy.
- (5) On such an application as is mentioned in subsection (4) above the court shall make such order under the said section 1 as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.
- (6) Where such an application is made after the end of the period of one year beginning with the first vesting, under Chapter V of this Part, of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

### **173    Payments in respect of premises occupied by bankrupt**

Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of section 172 above or otherwise) on condition that he makes payments towards satisfying any liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt shall not, by virtue of those payments, acquire any interest in the premises.

*Transactions etc.*

### **174    Transactions at an undervalue and preferences**

- (1) Subject to the following provisions of this section and to section 175 below, where an individual is adjudged bankrupt and he has at a relevant time entered into a transaction with any person at an undervalue or given a preference to any person—

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- (a) the trustee of the bankrupt's estate may apply to the court for an order under this section ; and
  - (b) the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction or, as the case may be, had not given that preference.
- (2) For the purposes of this section and section 175 below an individual enters into a transaction with a person at an undervalue if—
- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;
  - (b) he enters into a transaction with that person in consideration of marriage; or
  - (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.
- (3) For the purposes of this section and section 175 below an individual gives a preference to a person if—
- (a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities ; and
  - (b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.
- (4) The court shall not make an order under this section in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3) (b) above.
- (5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his shall be presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4) above.
- (6) The fact that something has been done in pursuance of the order of a court shall not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.
- (7) Subject to subsections (8) and (10) below, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time for the purposes of this section if the transaction is entered into or the preference is given—
- (a) in the case of a transaction at an undervalue, at a time in the period of five years ending with the day of the presentation of the bankruptcy petition on which that individual is adjudged bankrupt;
  - (b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of that individual, at a time in the period of two years ending with that day; and
  - (c) in any other case of a preference which is not a transaction at an undervalue, at a time in the period of six months ending with that day.
- (8) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a), (b) or (c) of subsection (7) above, not being, in

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the case of a transaction at an undervalue, a time less than two years before the end of the period mentioned in the said paragraph (a), that time shall not be a relevant time for the purposes of this section unless the individual—

- (a) is insolvent at that time ; or
- (b) becomes insolvent in consequence of the transaction or preference;

but the requirements of this subsection shall be presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his.

- (9) For the purposes of subsection (8) above an individual is insolvent if—
  - (a) he is unable to pay his debts as they fall due ; or
  - (b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.
- (10) A transaction entered into or preference given by a person who is subsequently adjudged bankrupt on a petition under section 119(1)(d) above shall be treated as having been entered into or given at a relevant time for the purposes of this section if it was entered into or given at any time on or after the date specified for the purposes of this subsection in the criminal bankruptcy order on which the petition was based.
- (11) No order shall be made under this section by virtue of subsection (10) above where an appeal is pending (within the meaning of section 125 above) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made.
- (12) For the purposes of this section a person who is an associate of an individual by reason only of being his employee shall be deemed not to be an associate of that individual.

## **175 Orders under s. 174**

- (1) Without prejudice to the generality of subsection (1)(b) of section 174 above, an order under that section with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject to subsection (2) below)—
  - (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;
  - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
  - (c) release or discharge (in whole or in part) any security given by the individual;
  - (d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the court may direct;
  - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate ;
  - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and

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- (g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.
- (2) An order under section 174 above may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; and
  - (b) shall not require a person who received a benefit from the transaction or preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the trustee of the bankrupt's estate, except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.
- (3) Any sums required to be paid to the trustee in accordance with an order under section 174 above shall be comprised in the bankrupt's estate.
- (4) For the purposes of this section the relevant circumstances, in relation to a transaction or preference, are—
- (a) the circumstances by virtue of which an order under section 174 above could be made in respect of the transaction or preference if the individual in question were adjudged bankrupt within a particular period after the transaction is entered into or the preference given; and
  - (b) if that period has expired, the fact that that individual has been adjudged bankrupt within that period.

## **176 Extortionate credit transactions**

- (1) This section applies where a person who is or has been a party to a transaction for, or involving, the provision to him of credit is adjudged bankrupt.
- (2) The court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than three years before the commencement of the bankruptcy.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
  - (b) it otherwise grossly contravened ordinary principles of fair dealing;
- and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.

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- (4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—
- (a) provision setting aside the whole or part of any obligation created by the transaction ;
  - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held ;
  - (c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;
  - (d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction ;
  - (e) provision directing accounts to be taken between any persons.
- (5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this section shall be comprised in the bankrupt's estate.
- (6) Neither the trustee of a bankrupt's estate nor an undischarged bankrupt shall be entitled to make an application under section 139(1)(a) of the Consumer Credit Act 1974 (re-opening of extortionate credit agreements) for any agreement by which credit is or has been provided to the bankrupt to be re-opened ; but the powers conferred by this section shall be exercisable in relation to any transaction concurrently with any powers exercisable under this Act in relation to that transaction as a transaction at an undervalue.

#### **177 Avoidance of general assignment of book debts**

- (1) Where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt, the assignment shall be void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition unless the assignment has been registered under the Bills of Sale Act 1878.
- (2) For the purposes of subsection (1) above " assignment" includes an assignment by way of security or charge on book debts and " general assignment" does not include an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts or an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.
- (3) For the purposes of registration under the said Act of 1878 an assignment of book debts shall be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of that Act with respect to the registration of bills of sale shall apply accordingly with such necessary modifications as may be made by rules under that Act.

#### **178 Contracts to which bankrupt is a party**

- (1) Where a contract has been made with a person who is subsequently adjudged bankrupt, the court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the court to be equitable.

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- (2) Any damages payable by the bankrupt by virtue of an order of the court under subsection (1) above shall be provable as a bankruptcy debt.
- (3) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

## **179 Enforcement procedures**

- (1) Subject to section 132 above and to the following provisions of this section, where the creditor of any person who is adjudged bankrupt has, before the commencement of the bankruptcy—
  - (a) issued execution against the goods or land of that person; or
  - (b) attached a debt due to that person from another person,that creditor shall not be entitled, as against the official receiver or trustee of the bankrupt's estate, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.
- (2) Subject to subsections (6) to (8) below, where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the sheriff or other officer charged with the execution that that person has been adjudged bankrupt—
  - (a) the sheriff or other officer shall on request deliver to the official receiver or trustee of the bankrupt's estate the goods and any money seized or recovered in part satisfaction of the execution ; but
  - (b) the costs of the execution shall be a first charge on the goods or money so delivered and the official receiver or trustee of the bankrupt's estate may sell the goods or a sufficient part of them for the purpose of satisfying the ' charge.
- (3) Subject to subsection (6) below, where—
  - (a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale ; and
  - (b) before the end of the period of fourteen days beginning with the day of the sale or payment the sheriff or other officer charged with the execution is given notice that a bankruptcy petition has been presented in relation to that person ; and
  - (c) a bankruptcy order is or has been made on that petition,the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.
- (4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3) above, the sheriff or other officer charged with the execution—
  - (a) shall not dispose of the balance mentioned in subsection (3) above at any time within the period of fourteen days so mentioned or while a bankruptcy petition of which he has been given notice under that subsection is pending ; and

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- (b) shall pay that balance, where by virtue of that subsection it is comprised in the bankrupt's estate, to the official receiver or (if there is one) to the trustee of that estate.
- (5) For the purposes of this section—
  - (a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 1 of the Charging Orders Act 1979 ;
  - (b) an execution against land is completed by seizure, by the appointment of a receiver or by the making of a charging order under that section ;
  - (c) an attachment of a debt is completed by the receipt of the debt.
- (6) The rights conferred by virtue of subsections (1) to (3) above on the official receiver or the trustee of a bankrupt's estate may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt.
- (7) Nothing in this section shall entitle the trustee of a bankrupt's estate to claim goods from a person who has acquired them in good faith under a sale by a sheriff or other officer charged with an execution.
- (8) Neither subsection (2) nor subsection (3) above shall apply in relation to any execution against property which has been acquired by or has devolved upon the bankrupt since the commencement of the bankruptcy unless, at the time the execution is issued or before it is completed—
  - (a) the property has been or is claimed for the bankrupt's estate under section 154 above ; and
  - (b) a copy of the notice given under that section has been or is served on the sheriff or other officer charged with the execution.

## **180 Distress etc.**

- (1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of an undischarged bankrupt for rent due to him from the bankrupt shall be available (subject to subsection (5) below) against goods and effects comprised in the bankrupt's estate but only for six months' rent accrued due before the commencement of the bankruptcy.
- (2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy petition relates and a bankruptcy order is subsequently made on that petition, any amount recovered by way of that distress which—
  - (a) is in excess of the amount which by virtue of subsection (1) above would have been recoverable after the commencement of the bankruptcy ; or
  - (b) is in respect of rent for a period or part of a period after the distress was levied, shall be held for the bankrupt as part of his estate.
- (3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of three months beginning with the distraint, so much of those goods or effects, or of the proceeds of sale of those goods or effects, as is not held for the bankrupt under subsection (2) above shall be charged for the benefit of the bankrupt's estate with-the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting them.



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- (4) Where by virtue of any charge under subsection (3) above any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person shall, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of the payment, rank as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.
- (5) A landlord or other person to whom rent is payable shall not at any time after the discharge of a bankrupt be entitled to distrain upon any goods or effects comprised in the bankrupt's estate.
- (6) Where in the case of any execution—
  - (a) a landlord is (apart from this section) entitled under section 1 of the Landlord and Tenant Act 1709 or section 102 of the County Courts Act 1984 (claims for rent where goods seized in execution) to claim for an amount not exceeding one year's rent; and
  - (b) the person against whom the execution is levied is adjudged bankrupt before the notice of claim is served on the sheriff or other officer charged with the execution,the right of the landlord to claim under that section shall be restricted to a right to claim for an amount not exceeding six months' rent and shall not extend to any rent payable in respect of a period after the notice of claim is so served.
- (7) Nothing in subsection (6) above shall impose any liability on a sheriff or other officer charged with an execution to account to the official receiver or the trustee of a bankrupt's estate for any sums paid by him to a landlord at any time before the sheriff or other officer was served with notice of the bankruptcy order in question; but this subsection is without prejudice to the liability of the landlord.
- (8) Nothing in this Part shall affect any right to distrain otherwise than for rent, and any such right shall at any time be exercisable without restriction against property comprised in a bankrupt's estate, even if that right is expressed by any enactment to be exercisable in like manner as a right to distrain for rent.
- (9) Any right to distrain against property comprised in a bankrupt's estate shall be exercisable notwithstanding that the property has vested in the trustee of that estate.
- (10) The provisions of this section are without prejudice to a landlord's right in a bankruptcy to prove for any bankruptcy debt in respect of rent.

## **181 Apprenticeships etc.**

- (1) This section applies where—
  - (a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articled clerk at the time when the petition on which that order was made was presented ; and
  - (b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.
- (2) Subject to subsection (6) below, the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.

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- (3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as the trustee thinks reasonable, having regard to—
- (a) the amount of the fee ;
  - (b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy; and
  - (c) the other circumstances of the case.
- (4) The power of the trustee to make a payment under subsection (3) above shall have priority over the obligation of the trustee to distribute the bankrupt's estate.
- (5) Instead of making a payment under subsection (3) above, the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.
- (6) Where a transfer is made under subsection (5) above, subsection (2) above shall have effect only as between the apprentice or clerk and the bankrupt.

## **182 Unenforceability of liens on books etc.**

- (1) Subject to subsection (2) below, a lien or other right to retain possession of any of the books, papers or other records of a bankrupt shall be unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.
- (2) Subsection (1) above does not apply to a lien on documents which give a title to property and are held as such.

## **CHAPTER VII**

### **BANKRUPTCY OFFENCES**

## **183 Preliminary**

- (1) Subject to section 189(3) below, this Chapter applies where the court has made a bankruptcy order on a bankruptcy petition.
- (2) This Chapter applies whether or not the bankruptcy is annulled, but proceedings for an offence under this Chapter shall not be instituted after the annulment.
- (3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt shall not be guilty of an offence under this Chapter in respect of anything done after his discharge ; but nothing in this Part shall prevent the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.
- (4) A person shall not be guilty of an offence under section 184(1), (2) or (3), 185(1), (2) or (3), 186(1), 187(1) or (2) or 188 (1) below if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

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- (5) It shall not be a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside England and Wales.
- (6) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Secretary of State or by or with the consent of the Director of Public Prosecutions.

#### **184 Failure to hand over property etc.**

- (1) The bankrupt shall be guilty of an offence if—
  - (a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee of that estate; or
  - (b) he does not inform the official receiver or that trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of;but paragraph (b) above shall not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.
- (2) The bankrupt shall be guilty of an offence if—
  - (a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up;
  - (b) he conceals any debt due to or from him or conceals any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or trustee; or
  - (c) in the period of twelve months ending with the presentation of the petition or between the presentation of the petition and the commencement of the bankruptcy, he did anything which would have been an offence under paragraph (b) above if the order had been made immediately before he did it.
- (3) The bankrupt shall be guilty of an offence if he removes, or between the presentation of the petition and the commencement of the bankruptcy removed, any property the value of which was not less than the prescribed amount and possession of which he has or would have been required to deliver up to the official receiver or the trustee of his estate.
- (4) The bankrupt shall be guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver or by the court—
  - (a) to account for the loss of any substantial part of his property incurred in the period of twelve months ending with the presentation of the petition or between the presentation of the petition and the commencement of the bankruptcy; or
  - (b) to give a satisfactory explanation of the manner in which such a loss was incurred.
- (5) References in this section to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of a bankrupt's estate include references to any property which would be such property if a notice in respect of it were given under section 154 or 155 above.

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### **185 Concealment etc. of books and papers**

- (1) The bankrupt shall be guilty of an offence if he does not deliver up possession to the official receiver or the trustee of his estate, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or affairs.
- (2) The bankrupt shall be guilty of an offence if—
  - (a) he prevents, or between the presentation of the petition and the commencement of the bankruptcy prevented, the production of any books, papers or records relating to his estate or affairs ;
  - (b) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs ;
  - (c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or
  - (d) in the period of twelve months ending with the presentation of the petition or between the presentation of the petition and the making of the bankruptcy order, he did anything which would have been an offence under paragraph (b) or (c) above if the order had been made before he did it.
- (3) The bankrupt shall be guilty of an offence if—
  - (a) he disposes of, alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs ; or
  - (b) in the period of twelve months ending with the presentation of the petition or between the presentation of the petition and the commencement of the bankruptcy, he did anything which would have been an offence under paragraph (a) above if the order had been made before he did it.

### **186 False statements**

- (1) The bankrupt shall be guilty of an offence if he makes or has made any material omission in any statement made under this Part and relating to his affairs.
- (2) The bankrupt shall be guilty of an offence if—
  - (a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee of his estate as soon as practicable; or
  - (b) he attempts to account for any part of his property by fictitious losses or expenses; or
  - (c) at any meeting of his creditors in the period of twelve months ending with the presentation of the petition or (whether or not at such a meeting) at any time between the presentation of the petition and the commencement of the bankruptcy, he did anything which would have been an offence under paragraph (b) above if the order had been made before he did it; or
  - (d) he is, or has at any time been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

### **187 Fraudulent disposal etc. of property**

- (1) The bankrupt shall be guilty of an offence if—

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- (a) he makes or causes to be made, or has in the period of five years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property ; or
  - (b) he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within two months before, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.
- (2) The bankrupt shall be guilty of an offence if—
- (a) he leaves, or attempts or makes preparations to leave, England and Wales with any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or the trustee of his estate ; or
  - (b) in the period of six months ending with the presentation of the petition or between the presentation of the petition and the commencement of the bankruptcy, he did anything which would have been an offence under paragraph (a) above if the order had been made immediately before he did it.
- (3) In this section—
- (a) references to property possession of which is required to be delivered up to the official receiver or the trustee of a bankrupt's estate include references to any property which would be such property if a notice in respect of it were given under section 154 or 155 above; and
  - (b) references to making a transfer of or charge on any property include references to causing or conniving at the levying of any execution against that property.

## **188 Fraudulent dealing with property obtained on credit**

- (1) The bankrupt shall be guilty of an offence if, in the period of twelve months ending with the presentation of the petition or between the presentation of the petition and the commencement of the bankruptcy, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.
- (2) A person shall be guilty of an offence if, in the period of twelve months ending with the presentation of the petition or between the presentation of the petition and the commencement of the bankruptcy, he acquired or received property from the bankrupt knowing or believing—
- (a) that the bankrupt owed money in respect of the property ; and
  - (b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.
- (3) A person shall not be guilty of an offence under subsection (1) or (2) above if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.
- (4) In determining for the purposes of this section whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.
- (5) In this section references to disposing of property include references to pawning or pledging it, and references to acquiring or receiving property shall be construed accordingly.

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## **189 Obtaining credit**

- (1) The bankrupt shall be guilty of an offence if—
  - (a) either alone or jointly with another person, he obtains credit to the extent of the prescribed amount or more without giving the person from whom he obtains it the relevant information about his status ; or
  - (b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.
- (2) The reference in subsection (1) above to the bankrupt obtaining credit includes a reference to—
  - (a) a case where goods are bailed to him under a hire purchase agreement or agreed to be sold to him under a conditional sale agreement; and
  - (b) a case where he is paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) A person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt in Northern Ireland shall be guilty of an offence if, before his discharge, he does anything in England and Wales which would be an offence under subsection (1) above if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in Northern Ireland were an adjudication under this Part.
- (4) For the purposes of subsection (1)(a) above the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

## **190 Failure to keep proper accounts of business**

- (1) Where the bankrupt has been engaged in any business for any of the period of two years ending with the presentation of the petition, he shall be guilty of an offence if he has not kept proper accounting records throughout that period and throughout any further period in which he was so engaged between the presentation of the petition and the commencement of the bankruptcy, or has not preserved all the accounting records which he has kept.
- (2) The bankrupt shall not be guilty of an offence under subsection (1) above—
  - (a) if his unsecured liabilities at the commencement of the bankruptcy did not exceed the prescribed amount; or
  - (b) if he proves that in the circumstances in which he carried on business the omission was honest and excusable.
- (3) For the purposes of this section a person shall be deemed not to have kept proper accounting records if he has not kept such records as are necessary to show or explain his transactions and financial position in his business, including—
  - (a) records containing entries from day to day, in sufficient detail, of all cash received and paid ;
  - (b) where the business involved dealings in goods, statements of annual stock-takings ; and

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- (c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.
- (4) In relation to any such records as are mentioned in subsection (3) above, section 185(2)(d) and (3)(b) above shall have effect with the substitution for any reference to twelve months of a reference to two years.

## **191 Gambling**

- (1) The bankrupt shall be guilty of an offence if he has—
  - (a) in the period of two years ending with the presentation of the petition, materially contributed to, or increased the extent of, his insolvency by gambling or by rash and hazardous speculations ; or
  - (b) between the presentation of the petition and the commencement of the bankruptcy, lost any part of his property by gambling or by rash and hazardous speculations.
- (2) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the bankrupt at the time when he entered into them shall be taken into consideration.

## **192 Penalties**

- (1) A person guilty of an offence under section 184(1), (2) or (3), 185(1), (2) or (3), 186(1) or (2) or 188(1) or (2) above shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both ;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both.
- (2) A person guilty of an offence under section 184(4), 187(1) or (2), 189(1) or (3), 190(1) or 191 above shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

# **CHAPTER VIII**

## **POWERS OF COURT IN BANKRUPTCY**

## **193 General control of court**

- (1) Every bankruptcy shall be under the general control of the court and, subject to the provisions of this Part, the court shall have full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.
- (2) Without prejudice to any other provision of this Part, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter V of this

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Part shall do all such things as he may be directed to do by the court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.

- (3) The official receiver or the trustee of a bankrupt's estate may at any time apply to the court for a direction under subsection (2) above.
- (4) If any person without reasonable excuse fails to comply with any obligation imposed on him by subsection (2) above, 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.

#### **194 Power of arrest**

- (1) In the cases specified in subsection (2) below the court may cause a warrant to be issued to a constable or prescribed officer of the court—

- (a) for the arrest of a debtor to whom a bankruptcy petition relates or of an undischarged bankrupt or of a discharged bankrupt whose estate is still being administered under Chapter V of this Part; and
- (b) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant;

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

- (2) The powers conferred by subsection (1) above shall be exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the presentation of the bankruptcy petition relating to him or the making of the bankruptcy order against him, it appears to the court—

- (a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs;

or

- (b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official receiver or the trustee of his estate; or
- (c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate ; or
- (d) that he has, without the leave of the official receiver or the trustee of his estate, removed any goods in his possession which exceed in value such sum as may be prescribed for the purposes of this paragraph ; or
- (e) that he has failed, without reasonable excuse, to attend any examination ordered by the court.

#### **195 Seizure of bankrupt's property**

- (1) At any time after a bankruptcy order has been made, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or



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affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver or trustee.

- (2) Any person executing a warrant under this section may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.
- (3) If, after a bankruptcy order has been made, the court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to him, it may issue a warrant authorising any constable or prescribed officer of the court to search those premises for the property, books, papers or records.
- (4) A warrant under subsection (3) above shall not be executed except in the prescribed manner and in accordance with its terms.

## **196 Inquiry into bankrupt's dealings and property**

- (1) At any time after a bankruptcy order has been made the court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—
  - (a) the bankrupt or the bankrupt's spouse or former spouse ;
  - (b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt;
  - (c) any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property ;and the court may require any such person as is mentioned in paragraph (b) or (c) above to submit an affidavit to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.
- (2) Without prejudice to section 194 above, in a case where a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section, the court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—
  - (a) for the arrest of that person ; and
  - (b) for the seizure of any books, papers, records, money or goods in that person's possession;and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.
- (3) Any person who appears or is brought before the court under this section may be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

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- (4) If it appears to the court, on consideration of any evidence obtained under this section, that any person has in his possession any property comprised in the bankrupt's estate, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or trustee at such time, in such manner and on such terms as the court thinks fit.
- (5) If it appears to the court, on consideration of any evidence obtained under this section, that any person is indebted to the bankrupt, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the court thinks fit.
- (6) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under this section shall be examined in any part of the United Kingdom where he may for the time being be, or in any place outside the United Kingdom.
- (7) This section shall apply where an interim receiver has been appointed under section 133 above as it applies where a bankruptcy order has been made as if—
  - (a) references to the official receiver or trustee of the bankrupt's estate were references to the interim receiver, and
  - (b) references to the bankrupt and to his estate were references, respectively, to the debtor and his property.

#### **197 Power to order production of documents in custody of inland revenue official**

- (1) For the purposes of an examination under section 137 above or proceedings under section 196 above, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order an inland revenue official to produce to the court—
  - (a) any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official;
  - (b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official; or
  - (c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.
- (2) Where the court has made an order under subsection (1) above for the purposes of any examination or proceedings, the court may, at any time after the document to which the order relates is produced to it, by order authorise the disclosure of the document, or of any part of its contents, to the official receiver, the trustee of the bankrupt's estate or the bankrupt's creditors.
- (3) The court shall not address an order under subsection (1) above to an inland revenue official unless it is satisfied that that official is dealing, or has dealt, with the affairs of the bankrupt.
- (4) Where any document to which an order under subsection (1) above relates is not in the possession of the official to whom the order is addressed, it shall be the duty of

that official to take all reasonable steps to secure possession of it and, if he fails to do so, to report the reasons for his failure to the court.

- (5) Where any document to which an order under subsection (1) above relates is in the possession of an inland revenue official other than the one to whom the order is addressed, it shall be the duty of the official in possession of the document, at the request of the official to whom the order is addressed, to deliver it to the official making the request.
- (6) In this section " inland revenue official " means any inspector or collector of taxes appointed by the Commissioners of Inland Revenue or any person appointed by the Commissioners to serve in any other capacity.
- (7) This section shall not apply for the purposes of an examination under section 196 above which takes place by virtue of subsection (7) of that section.

#### **198 Power to appoint special manager**

- (1) The court may, on an application under this section, appoint any person to be the special manager of a bankrupt's estate or of the business of an undischarged bankrupt or of the property or business of a debtor in whose case the official receiver has been appointed interim receiver under section 133 above.
- (2) An application under this section may be made by the official receiver or the trustee of a bankrupt's estate in any case where it appears to the official receiver or trustee that the nature of the estate, property or business, or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.
- (3) A special manager appointed under this section shall have such powers as may be entrusted to him by the court.
- (4) The power of the court under subsection (3) above to entrust powers to a special manager shall include power to direct that any provision of this Part that has effect in relation to the official receiver, interim receiver or trustee shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the official receiver, interim receiver or trustee.
- (5) A special manager appointed under this section shall—
  - (a) give such security as may be prescribed ;
  - (b) prepare and keep such accounts as may be prescribed; and
  - (c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

#### **199 Re-direction of bankrupt's letters etc.**

- (1) Where a bankruptcy order has been made, the court may from time to time, on the application of the official receiver or the trustee of the bankrupt's estate, order the Post Office to re-direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of the Post Office Act 1953) which would otherwise be sent or delivered by them to the bankrupt at such place or places as may be specified in the order.
- (2) An order under this section shall have effect for such period, not exceeding three months, as may be specified in the order.

## CHAPTER IX

### GENERAL

#### *Supplies by utilities*

#### **200 Supplies by utilities**

- (1) This section applies where on any day (" the relevant day ")—
- (a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed;
  - (b) a composition or scheme proposed by an individual is approved under Chapter I of this Part; or
  - (c) a deed of arrangement is made for the benefit of an individual's creditors;
- and in this section " the office holder " means the official receiver, the trustee in bankruptcy, the interim receiver, the supervisor of the composition or scheme or the trustee under the deed of arrangement, as the case may be.
- (2) If a request falling within subsection (3) below is made for the giving after the relevant day of any of the supplies mentioned in subsection (4) below, the supplier—
- (a) may make it a condition of the giving of the supply that the office holder personally guarantees the payment of any charges in respect of the supply; but
  - (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the individual before the relevant day are paid.
- (3) A request falls within this subsection if it is made—
- (a) by or with the concurrence of the office holder; and
  - (b) for the purposes of any business which is or has been carried on by the individual, by a firm or partnership of which the individual is or was a member or by an agent or manager for the individual or for such a firm or partnership.
- (4) The supplies referred to in subsection (2) above are—
- (a) a supply of gas by the British Gas Corporation ;
  - (b) a supply of electricity by an Electricity Board (within the meaning of the Energy Act 1983);
  - (c) a supply of water by statutory water undertakers;
  - (d) a supply of telecommunication services (within the meaning of the Telecommunications Act 1984) by a public telecommunications operator (within the meaning of that Act).
- (5) In subsection (4) above the reference to telecommunication services does not include a reference to services consisting in the conveyance of cable programmes, that is to say programmes included in cable programme services (within the meaning of the Cable and Broadcasting Act 1984).

### *Insolvency jurisdiction*

#### **201 Jurisdiction in relation to insolvent individuals**

- (1) It shall be the High Court and the county courts which shall have jurisdiction throughout England and Wales for the purposes of this Part.
- (2) For the purposes of this Part a county court shall, in addition to its ordinary jurisdiction, have all the powers and jurisdiction of the High Court; and the orders of the court may be enforced accordingly in the prescribed manner.
- (3) Jurisdiction for the purposes of this Part shall be exercised—
  - (a) by the High Court in relation to the proceedings which, in accordance with the rules, are allocated to the London insolvency district; and
  - (b) by each county court in relation to the proceedings which are so allocated to the insolvency district of that court.
- (4) Subsection (3) above is without prejudice to the transfer of proceedings from one court to another in the manner prescribed by the rules; and nothing in that subsection shall invalidate any proceedings on the grounds that they were initiated or continued in the wrong court.

#### **202 Insolvency districts**

- (1) The Lord Chancellor may by order designate the areas which are for the time being to be comprised, for the purposes of this Part, in the London insolvency district and the insolvency district of each county court; and an order under this section may—
  - (a) exclude any county court from having jurisdiction for the purposes of this Part; or
  - (b) confer jurisdiction for the purposes of this Part on any county court which has not previously had that jurisdiction.
- (2) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor necessary or expedient.
- (3) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (4) Subject to any order under this section—
  - (a) the district which, on the day before the coming into force of this section, is the London bankruptcy district shall, after that day, be the London insolvency district;
  - (b) any district which on that day is the bankruptcy district of a county court shall, after that day, be the insolvency district of that court; and
  - (c) any county court which on that day is excluded from having jurisdiction in bankruptcy shall, after that day, be excluded from having jurisdiction for the purposes of this Part.

#### **203 Appeals etc. from courts exercising insolvency jurisdiction**

- (1) Every court having jurisdiction for the purposes of this Part may review, rescind or vary any order made by it in the exercise of that jurisdiction.

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- (2) An appeal from a decision made in the exercise of jurisdiction for the purposes of this Part by a county court or by a registrar in bankruptcy of the High Court shall lie to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal shall, with the leave of the judge or of the Court of Appeal, lie to the Court of Appeal.
- (3) A county court shall not, in the exercise of its jurisdiction for the purposes of this Part, be subject to be restrained by the order of any other court and no appeal shall lie from its decision in the exercise of that jurisdiction except as provided by this section.

## CHAPTER X

### SUPPLEMENTAL

#### **204 Time limits**

Where by this Part or by the rules the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

#### **205 Formal defects**

The acts of a person as the trustee of a bankrupt's estate or as a special manager and the acts of a committee established under section 148 above, shall be valid notwithstanding any defect in the appointment, election or qualifications of the trustee or manager or, as the case may be, of any member of the committee.

#### **206 Exemption from stamp duty**

Stamp duty shall not be charged on—

- (a) any document, being a deed, conveyance, assignment, surrender, admission or other assurance relating solely to property which is comprised in a bankrupt's estate and which, after the execution of that document, is or remains at law or in equity the property of the bankrupt or of the trustee of that estate;
- (b) any writ, order, certificate or other instrument relating solely to the property of a bankrupt or to any bankruptcy proceedings.

#### **207 Individual insolvency rules**

- (1) The Lord Chancellor may, with the concurrence of the Secretary of State, make rules for the purpose of giving effect to this Part.
- (2) Without prejudice to the generality of subsection (1) above or to any provision of this Part by virtue of which rules under this section may be made with respect to any matter, rules under this section may contain—
  - (a) any such provision as is specified in Schedule 7 to this Act or corresponds to provision contained immediately before the coming into force of this section in rules made under section 132 of the Bankruptcy Act 1914; and
  - (b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor necessary or expedient.

- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Regulations made by the Secretary of State under a power conferred by rules under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (5) Nothing in this section or section 208 below shall be taken as prejudicing any power to make rules of court.

## **208 Fees orders**

- (1) There shall be paid in respect of—
  - (a) proceedings under this Part; and
  - (b) the performance by the official receiver or the Secretary of State of functions under this Part,such fees as the Lord Chancellor may with the sanction of the Treasury by order direct; and the Treasury may by order direct by whom and in what manner the fees are to be collected and accounted for.
- (2) The Lord Chancellor may, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for—
  - (a) fees payable by virtue of this section ; and
  - (b) fees payable to any person who has prepared a report under section 123(3) above.
- (3) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Treasury necessary or expedient.
- (4) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (5) Fees payable by virtue of this section shall be paid into the Consolidated Fund.

## **209 Orders prescribing monetary limits**

- (1) The Secretary of State may by order prescribe amounts for the purposes of the following provisions of this Part—
  - (a) section 123 ;
  - (b) section 179(3);
  - (c) section 184(2) and (3);
  - (d) section 187(2);
  - (e) section 189(1);
  - (f) section 190(2); and
  - (g) section 194(2)(d);and references in this Part to the amount prescribed for the purposes of any of those provisions, and references in those provisions to the prescribed amount, shall be construed accordingly.

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- (2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
- (3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **210 Annual report**

As soon as practicable after the end of 1986 and each subsequent calendar year, the Secretary of State shall prepare and lay before each House of Parliament a report about the operation during that year of this Part and about proceedings in the course of that year under the Deeds of Arrangement Act 1914.

## **211 Interpretation of Part III**

- (1) In this Part, except in so far as the context otherwise requires—
  - " bankrupt" means an individual who has been adjudged bankrupt and, in relation to a bankruptcy order, means the individual adjudged bankrupt by that order;
  - " bankruptcy debt", in relation to a bankrupt, means (subject to subsection (2) below) any of the following—
    - (a) any debt or liability to which he is subject at the commencement of the bankruptcy;
    - (b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy;
    - (c) any amount specified in pursuance of section 39(3) of the Powers of Criminal Courts Act 1973 in any criminal bankruptcy order made against him before the commencement of the bankruptcy; and
    - (d) any interest provable as mentioned in section 163(2) above;
  - "bankruptcy order" means an order adjudging an individual bankrupt;
  - " bankruptcy petition " means a petition to the court for a bankruptcy order;
  - " the court ", in relation to any matter, means the court to which, in accordance with section 201 above and the rules, proceedings with respect to that matter are allocated or transferred;
  - " creditor "—
    - (a) in relation to a bankrupt, means a person to whom any of the bankruptcy debts is owed (being, in the case of an amount falling within paragraph of the definition of " bankruptcy debt", the person in respect of whom that amount is specified in the criminal bankruptcy order in question); and
    - (b) in relation to an individual to whom a bankruptcy petition relates, means a person who would be a creditor in the bankruptcy if a bankruptcy order were made on that petition ;
  - " creditor's petition " means a bankruptcy petition under section 119(1)(a) above;
  - " criminal bankruptcy order " means an order under section 39(1) of the Powers of Criminal Courts Act 1973 ;
  - " debt" shall be construed in accordance with subsection (3) below;



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- " the debtor "—
- (a) in relation to a proposal for the purposes of Chapter I of this Part, means the individual making or intending to make that proposal; and
  - (b) in relation to a bankruptcy petition, means the individual to whom the petition relates :
- " debtor's petition" means a bankruptcy petition under section 119(1)(b) above;
- " dwelling house" includes any building or part of a building which is occupied as a dwelling and any yard, garden, garage or outhouse belonging to the dwelling house and occupied with it;
- " estate", in relation to a bankrupt, shall be construed in accordance with section 130 above ;
- " family ", in relation to a bankrupt, means the persons (if any) who are living with him and are dependent on him;
- " liability " means, subject to subsection (3) below, a liability to pay money or money's worth, including any liability under any enactment, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution ;
- " prescribed" means (subject to section 209 above) prescribed by the rules;
- " the rules " means rules made under section 207 above ;
- "secured" and related expressions shall be construed in accordance with subsections (5) to (7) below.
- (2) In determining for the purposes of this Part whether any liability in tort is a bankruptcy debt the bankrupt shall be deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.
  - (3) For the purposes of references in this Part to a debt or liability it shall be immaterial whether the debt or liability is present or future, whether it is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in this Part to owing a debt shall be construed accordingly.
  - (4) References in this Part to a person's affairs include references to his business, if any.
  - (5) Subject to subsections (6) and (7) below and any provision of the rules requiring a creditor to give up his security for the purposes of proving a debt, a debt is secured for the purposes of this Part to the extent that the person to whom the debt is owed holds any security for the debt (whether a mortgage, charge, lien or other security) over any property of the person by whom the debt is owed.
  - (6) Where a statement such as is mentioned in section 120(5)(a) above has been made by a secured creditor for the purposes of any bankruptcy petition and a bankruptcy order is subsequently made on that petition, the creditor shall be deemed for the purposes of this Part to have given up the security specified in the statement.
  - (7) In subsection (5) above the reference to a security does not include a reference to a lien on books, papers or other records, except to the extent that they consist of documents which give a title to property and are held as such.

## PART IV

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Miscellaneous*

#### **212 Transactions defrauding creditors**

(1) Where—

- (a) a person (" the relevant person ") has entered into a transaction with any other person at an undervalue; and
- (b) the court is satisfied that the transaction was entered into for the purpose of putting assets beyond the reach of a person who is making, or may at some time make, a claim against the relevant person or of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make,

the court may make such order as it thinks fit for restoring the position to what it would have been if the transaction had not been entered into and of protecting the interests of the persons on whose behalf the application is treated as made.

(2) An application for an order under this section shall not be made in relation to a transaction except—

- (a) in a case where the relevant person has been adjudged bankrupt or is a body corporate which is being wound up or in relation to which an administration order is in force, by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or, with the leave of the court, by a person who is, or is capable of being, prejudiced by the transaction;
- (b) in a case where a person who is, or is capable of being, prejudiced by the transaction is bound by a composition or scheme approved under Chapter II of Part II or Chapter I of Part III of this Act, by the supervisor of the composition or scheme or by any person who (whether or not so bound) is, or is capable of being, so prejudiced; or

(c) in any other case, by a person who is, or is capable of being, so prejudiced ; and an application made under any of the preceding paragraphs in relation to a transaction shall be treated as made on behalf of every person who is, or is capable of being, prejudiced by the transaction.

(3) For the purposes of this section a person enters into a transaction with another person at an undervalue if—

- (a) he makes a gift to that other person or he otherwise enters into a transaction with that other person on terms that provide for him to receive no consideration ;
- (b) he enters into a transaction with that other person in consideration of marriage ; or
- (c) he enters into a transaction with that other person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the relevant person.

(4) Without prejudice to the generality of the preceding provisions of this section, an order made under this section with respect to any transaction may, subject to subsection (5) below—

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- (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
  - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
  - (c) release or discharge (in whole or in part) any security given by the relevant person ;
  - (d) require any person to pay to any other person in respect of benefits received from the relevant person such sums as the court may direct;
  - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the court thinks appropriate;
  - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.
- (5) An order under this section may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the relevant person entered into the transaction ; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than the relevant person and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; and
  - (b) shall not require a person who received a benefit from that transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
- (6) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under this section may be made in respect of the transaction.
- (7) In this section—
- " the court" means the High Court or—
    - (a) if the relevant person is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to the relevant person ;
    - (b) if the relevant person is not an individual, any other court having jurisdiction to wind up the relevant person under Part XX or XXI of the 1985 Act;
  - " security" means any mortgage, charge, lien or other security.

## **213 Co-operation between courts exercising jurisdiction in relation to insolvency law**

- (1) An order made by a court in any part of the United Kingdom in the exercise of jurisdiction in relation to insolvency law shall be enforced in any other part of the United Kingdom as if it were made by a court exercising the corresponding jurisdiction in that other part; but, without prejudice to the following provisions of this section, nothing in this subsection shall require a court in any part of the United Kingdom to enforce, in relation to property situated in that part, any order made by a court in any other part of the United Kingdom.

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- (2) The Secretary of State, with the concurrence in relation to property situated in England and Wales of the Lord Chancellor, may by order make provision for securing that a trustee or assignee under the insolvency law of any part of the United Kingdom has, with such modifications as may be specified in the order, the same rights in relation to any property situated in another part of the United Kingdom as he would have in the corresponding circumstances if he were a trustee or assignee under the insolvency law of that other part.
- (3) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.
- (4) For the purposes of subsection (3) above a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory shall be authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction ; and in exercising its discretion under this subsection, a court shall have regard in particular to the rules of private international law.
- (5) Where a person who is a trustee or assignee under the insolvency law of any part of the United Kingdom claims property situated in any other part of the United Kingdom (whether by virtue of an order under subsection (2) above or otherwise), the submission of that claim to the court exercising jurisdiction in relation to insolvency law in that other part shall be treated in the same manner as a request made by a court for the purposes of subsection (3) above.
- (6) Section 38 of the Criminal Law Act 1977 (execution of warrant of arrest throughout the United Kingdom) shall apply to a warrant which, in exercise of any jurisdiction in relation to insolvency law, is issued in any part of the United Kingdom for the arrest of a person as it applies to a warrant issued in that part of the United Kingdom for the arrest of a person charged with an offence.
- (7) Without prejudice to any power to make rules of court, any power to make provision by subordinate legislation for the purpose of giving effect in relation to companies or individuals to the insolvency law of any part of the United Kingdom shall include power to make provision for the purpose of giving effect in that part to any provision made by or under the preceding provisions of this section.
- (8) An order under subsection (2) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section " insolvency law " means—
  - (a) in relation to England and Wales, provision extending to England and Wales and made by or under this Act or Parts XIX to XXI of the 1985 Act;
  - (b) in relation to Scotland, provision extending to Scotland and made by or under this Act, Parts XVIII to XXI of the 1985 Act or the Bankruptcy (Scotland) Act 1985 ;
  - (c) in relation to Northern Ireland, provision made by or under the Bankruptcy Acts (Northern Ireland) 1857 to 1980, Part V, VI or IX of the Companies Act (Northern Ireland) 1960 or Part IV of the Companies (Northern Ireland) Order 1978;

(d) in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions falling within any of the foregoing paragraphs ;

and references in this subsection to any enactment include, in relation to any time before the coming into force of that enactment, references to the corresponding enactment in force at that time.

(10) In this section " relevant country or territory " means—

- (a) any of the Channel Islands or the Isle of Man; or
- (b) any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument.

## **214 Parliamentary disqualification etc.**

(1) Where a court in England and Wales or Northern Ireland adjudges an individual bankrupt or a court in Scotland awards sequestration of an individual's estate, the individual shall be disqualified—

- (a) for sitting or voting in the House of Lords ;
- (b) for being elected to, or sitting or voting in, the House of Commons; and
- (c) for sitting or voting in a committee of either House.

(2) Where an individual is disqualified under this section, the disqualification shall cease—

- (a) except where the adjudication is annulled or the award recalled or reduced without the individual having been first discharged, on the discharge of the individual; and
- (b) in the said excepted case, on the annulment, recall or reduction, as the case may be.

(3) No writ of summons shall be issued to any lord of Parliament who is for the time being disqualified under this section for sitting and voting in the House of Lords.

(4) Where a member of the House of Commons who is disqualified under this section continues to be so disqualified until the end of the period of six months beginning with the day of the adjudication or award, his seat shall be vacated at the end of that period.

(5) A court which makes an adjudication or award such as is mentioned in subsection (1) above in relation to any lord of Parliament or member of the House of Commons shall forthwith certify the adjudication or award to the Speaker of the House of Lords or, as the case may be, to the Speaker of the House of Commons.

(6) Where a court has certified an adjudication or award to the Speaker of the House of Commons under subsection (5) above, then, immediately after it becomes apparent which of the following certificates is applicable, the court shall certify to the Speaker of the House of Commons—

- (a) that the period of six months beginning with the day of the adjudication or award has expired without the adjudication or award having been annulled, recalled or reduced; or
- (b) that the adjudication or award has been annulled, recalled or reduced before the end of that period.

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- (7) Subject to the preceding provisions of this section, so much of this Act and of any other enactment (whenever passed) and of any subordinate legislation (whenever made) as—
- (a) makes provision for or in connection with bankruptcy in one or more parts of the United Kingdom ; or
  - (b) makes provision conferring a power of arrest in connection with the winding up or insolvency of companies in one or more parts of the United Kingdom,
- shall apply in relation to persons having privilege of Parliament or peerage as it applies in relation to persons not having such privilege.

## **215 Power to inspect Land Register etc.**

After section 112A of the Land Registration Act 1925 (inspection in connection with criminal proceedings) there shall be inserted the following section—

### **“112AA Inspection in connection with insolvency.**

- (1) If an official receiver or the official assignee, the liquidator or administrator of a company or the trustee of a bankrupt's estate—
  - (a) applies to the registrar for permission to make an inspection under this section in relation to a person specified in the application or to property so specified ; and
  - (b) gives the registrar an appropriate certificate,

the registrar shall permit him to inspect and make copies of and extracts from any register or document kept in the custody of the registrar so far as it relates to the person or property so specified.
- (2) In subsection (1) above " appropriate certificate " means a certificate that there is reason to believe that the register may contain information which would be of assistance to the person giving the certificate in the carrying out of his functions as official receiver or official assignee, as liquidator or administrator of a company or as trustee of a bankrupt's estate.
- (3) In this section—
  - (a) references to an official receiver are references to an official receiver for the purpose of the Insolvency Act 1985 or the Companies Act 1985 or a person acting as a deputy to such an official receiver;
  - (b) references to the trustee of a bankrupt's estate include references to a permanent or interim trustee in the sequestration of a debtor's estate in Scotland;
  - (c) references to the official assignee are references to the Official Assignee for bankruptcy for Northern Ireland or the Official Assignee for company liquidations for Northern Ireland ; and
  - (d) references to a company include references to a company registered or incorporated in Northern Ireland and references to a bankrupt include references to a person adjudged bankrupt in Northern Ireland.”

## **216 Repeal of section 152(4) of Social Security Act 1975**

Section 152(4) of the Social Security Act 1975 (liability of directors in respect of unpaid National Insurance contributions) shall cease to have effect.

## **217 Amendments of Restrictive Trade Practices Act 1976**

- (1) No restriction in respect of any of the matters specified in subsection (2) below shall, after the coming into force of this section, be regarded as a restriction by virtue of which the Restrictive Trade Practices Act 1976 applies to any agreement (whenever made).
- (2) The said matters are—
  - (a) the charges to be made, quoted or paid for insolvency services supplied, offered or obtained ;
  - (b) the terms or conditions on or subject to which insolvency services are to be supplied or obtained ;
  - (c) the extent (if any) to which, or the scale (if any) on which, insolvency services are to be made available, supplied or obtained ;
  - (d) the form or manner in which insolvency services are to be made available, supplied or obtained ;
  - (e) the persons or classes of persons for whom or from whom, or the areas or places in or from which, insolvency services are to be made available or supplied or are to be obtained.
- (3) In this section " insolvency services " means the services of persons acting as insolvency practitioners or carrying out under the law of Northern Ireland functions corresponding to those mentioned in section 1(2) or (3) above, in their capacity as such; and expressions which are also used in the said Act of 1976 have the same meanings as in that Act.
- (4) In Schedule 1 to the said Act of 1976 (services excluded from designated services), after paragraph 9 there shall be inserted the following paragraph—

“9A Insolvency services within the meaning of section 217 of the Insolvency Act 1985.”

## **218 Amendments of Employment Protection (Consolidation) Act 1978**

- (1) Section 122 of the Employment Protection (Consolidation) Act 1978 (employee's right on the insolvency of his employer to be paid certain debts out of the Redundancy Fund) shall be amended as follows.
- (2) In subsection (1) (conditions of payment), after paragraph (a) there shall be inserted the following paragraph—

“(aa) that the employment of the employee has been terminated ; and”.
- (3) For subsection (2) (date for determining debts payable out of Fund) there shall be substituted the following subsection—

“(2) In this section ' the relevant date '—
  - (a) in relation to arrears of pay (not being remuneration under a protective award made under section 101 of the Employment Protection Act

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- 1975) and to holiday pay, means the date on which the employer became insolvent;
- (b) in relation to such an award and to a basic award of compensation for unfair dismissal, means whichever is the latest of—
- (i) the date on which the employer became insolvent;
  - (ii) the date of the termination of the employee's employment;
  - and
  - (iii) the date on which the award was made ;
- (c) in relation to any other debt to which this section applies, means whichever is the later of the dates mentioned in sub-paragraphs (i) and (ii) of paragraph (b)”
- (4) For subsection (4) (debts to be treated as arrears of pay) there shall be substituted the following subsection—
- “(4) For the purposes of this section, the following amounts shall be treated as arrears of pay, namely—
- (a) a guarantee payment;
  - (b) remuneration on suspension on medical grounds under section 19;
  - (c) any payment for time off under section 27(3) or 31(3) or 31A(4);
  - (d) remuneration under a protective award made under section 101 of the Employment Protection Act 1975;
  - (e) statutory sick pay, payable under Part I of the Social Security and Housing Benefits Act 1982.”
- (5) In subsection (7) (reasonable payments to apprentices and articled clerks), for the words from " section 34 " onwards there shall be substituted the words " section 181 of the Insolvency Act 1985 (effect of bankruptcy on apprenticeships etc.), whether as originally enacted or as applied to the winding up of a company by rules under section 106 of that Act ".
- (6) In subsection (9) (provisions applying on appointment of certain officers)—
- (a) after the words " a liquidator," there shall be inserted the words " an administrator, " ; and
  - (b) for the words from " ' liquidator ' and " onwards there shall be substituted the words " ' trustee ', in relation to a composition or arrangement, includes the supervisor of a composition or scheme proposed for the purposes of, and approved under, Chapter II of Part II or Chapter I of Part III of the Insolvency Act 1985 ".

## **219 Amendments of Banking Act 1979**

- (1) For subsections (1) and (2) of section 18 of the Banking Act 1979 (grounds on which a recognised bank or licensed institution may be wound up on the petition of the Bank of England), there shall be substituted the following subsections—
- “(1) On a petition presented by the Bank by virtue of this section, the court having jurisdiction under the Companies Act 1985 may wind up a recognised bank or licensed institution under that Act if—
- (a) the institution is unable to pay its debts within the meaning of section 518 of that Act; or



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- (b) the court is of the opinion that it is just and equitable that the institution should be wound up ;  
and for the purposes of such a petition an institution which defaults in an obligation to pay any sum due and payable to a depositor shall be deemed to be unable to pay its debts as mentioned in paragraph (a) above.
- (2) If a petition is presented by the Bank by virtue of this section for the winding up of a recognised bank or licensed institution which is a partnership (whether limited or not), the court has jurisdiction, and the Companies Act 1985 has effect, as if the institution concerned were an unregistered company within the meaning of Part XXI of that Act.”
- (2) For subsection (4) of that section there shall be substituted the following subsection—
- “(4) In its application to Northern Ireland, this section shall have effect—
- (a) with the substitution of a reference to the Companies Act (Northern Ireland) 1960 for any reference to the Companies Act 1985 ;
- (b) with the substitution of a reference to section 211 of the said Act of 1960 for the reference to section 518 of the said Act of 1985 ;
- (c) with the substitution of a reference to Part IX of the said Act of 1960 for the reference to Part XXI of the said Act of 1985 ; and
- (d) with the insertion in subsection (2) after the words ' (whether limited or not)' of the words ' then, notwithstanding section 348(d) of the Companies Act (Northern Ireland) 1960 (exclusion of partnerships etc. having less than eight members)'.”
- (3) In subsection (2) of section 19 of that Act (cases in which the Bank of England may disclose information obtained under or for the purposes of that Act), after paragraph (b) there shall be inserted the following paragraph—
- “(ba) in connection with any proceedings under any provision of Parts XVIII to XXI of the Companies Act 1985 or any provision (other than section 100) of Part II of the Insolvency Act 1985 ; or”.
- (4) In subsection (8) of that section, for paragraph (a) there shall be substituted the following paragraphs—
- “(a) for the reference in subsection (2) to Parts XVIII to XXI of the Companies Act 1985 there shall be substituted a reference to Parts V, VI and IX of the Companies Act (Northern Ireland) 1960 ;
- (aa) for any reference in subsection (5) to section 432 or 442 of the said Act of 1985 there shall be substituted respectively a reference to section 159 or 165A of the said Act of 1960;”.

## **220 Amendments of County Courts Act 1984**

- (1) The County Courts Act 1984 shall be amended as follows.
- (2) In section 112(4) (b) (minimum amount which must be owed to creditor presenting, or joining in, a bankruptcy petition while administration order is in force), for " £400 " there shall be substituted " £1500 ".
- (3) In subsection (1) of section 115 (execution while administration order is in force if debtor's property exceeds £10 in value), for "£10" there shall be substituted the words " the minimum amount ".

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- (4) After subsection (1) of the said section 115 there shall be inserted the following subsection—

“(1A) In subsection (1) above 'the minimum amount' means £50 or such other amount as the Lord Chancellor may by order specify instead of that amount or the amount for the time being specified in such an order; and an order under this subsection shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

## **221 Disabilities on revocation of administration order against individual**

- (1) Where a person fails to make any payment which he is required to make by virtue of an administration order under Part VI of the County Courts Act 1984, the court which is administering the estate of that person under that order may, if it thinks fit, revoke the administration order and make an order directing that this section shall apply to that person for such period, not exceeding two years, as may be specified in the order.
- (2) A person to whom this section applies by virtue of an order under subsection (1) above shall not, except with the leave of the court which made that order, act as director or liquidator of, or directly or indirectly take part or be concerned in the promotion, formation or management of, a company (within the meaning of section 1 above).
- (3) A person to whom this section so applies shall not—
- (a) either alone or jointly with another person, obtain credit to the extent of the amount prescribed for the purposes of section 189(1)(a) above or more ; or
  - (b) enter into any transaction in the course of or for the purposes of any business in which he is directly or indirectly engaged,
- without disclosing the fact that this section applies to him to the person from whom he obtains the credit or, as the case may be, with whom the transaction is entered into.
- (4) The reference in subsection (3) above to a person obtaining credit includes a reference to—
- (a) a case where goods are bailed or hired to him under a hire-purchase agreement or agreed to be sold to him under a conditional sale agreement; and
  - (b) a case where he is paid in advance (whether in money or otherwise) for the supply of goods or services.
- (5) A person who contravenes this section shall be guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both ;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### *Official receivers*

## **222 Official receivers: appointment etc.**

- (1) For the purposes of this Act and the 1985 Act the official receiver, in relation to any bankruptcy or winding up, is any person who by virtue of the following provisions of this section or section 224 below is authorised to act as the official receiver in relation to that bankruptcy or winding up.

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- (2) The Secretary of State may (subject to the approval of the Treasury as to numbers) appoint persons to the office of official receiver, and a person appointed to that office (whether under this section or section 70 of the Bankruptcy Act 1914)—
  - (a) shall be paid out of money provided by Parliament such salary as the Secretary of State may with the concurrence of the Treasury direct;
  - (b) shall hold office on such other terms and conditions as the Secretary of State may with the concurrence of the Treasury direct; and
  - (c) may be removed from office by a direction of the Secretary of State.
- (3) Where a person holds the office of official receiver, the Secretary of State shall from time to time attach him either to the High Court or to a county court having jurisdiction for the purposes of Part III of this Act; and, subject to any directions under subsection (5) below, an official receiver attached to a particular court shall be the person authorised to act as the official receiver in relation to every bankruptcy or winding up falling within the jurisdiction of that court.
- (4) The Secretary of State shall ensure that there is, at all times, at least one official receiver attached to the High Court and at least one attached to each county court having jurisdiction for the purposes of Part III of this Act, but he may attach the same official receiver to two or more different courts.
- (5) The Secretary of State may give directions with respect to the disposal of the business of official receivers, and such directions may, in particular—
  - (a) authorise an official receiver attached to one court to act as the official receiver in relation to any case or description of cases falling within the jurisdiction of another court;
  - (b) provide, where there is more than one official receiver authorised to act as the official receiver in relation to cases falling within the jurisdiction of any court, for the distribution of their business between or among themselves.
- (6) A person who at the coming into force of this section is an official receiver attached to a court shall continue in office after the coming into force of this section as an official receiver attached to that court under this section.

## **223 Functions and status of official receivers**

- (1) In addition to any functions conferred on him by this Act or the 1985 Act, a person holding the office of official receiver shall carry out such other functions as may from time to time be conferred on him by the Secretary of State.
- (2) In the exercise of the functions of his office a person holding the office of official receiver shall act under the general directions of the Secretary of State and shall also be an officer of the court in relation to which he exercises those functions.
- (3) Any property vested in his official capacity in a person holding the office of official receiver shall, on his dying, ceasing to hold office or being otherwise succeeded in relation to the bankruptcy or winding up in question by another official receiver, vest in his successor without any conveyance, assignment or transfer.

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## **224 Deputy official receivers and staff**

- (1) If he thinks it expedient to do so in order to facilitate the disposal of the business of the official receiver attached to any court, the Secretary of State may appoint an officer of his department to act as deputy to that official receiver.
- (2) Subject to any directions given by the Secretary of State under section 222 or 223 above, a person appointed to act as deputy to an official receiver shall, on such conditions and for such period as may be specified in the terms of his appointment, have the same status and functions as the official receiver to whom he is appointed deputy; and, accordingly, references in this Act (except section 222(1) to (4) above) and in the 1985 Act to an official receiver include references to a person appointed to act as his deputy.
- (3) An appointment made under subsection (1) above may be terminated at any time by the Secretary of State.
- (4) The Secretary of State may, subject to the approval of the Treasury as to numbers and remuneration and as to the other terms and conditions of the appointments, appoint officers of his department to assist official receivers in the carrying out of their functions.

### *Official Petitioner*

## **225 Official Petitioner. ?**

- (1) There shall continue to be an officer known as the Official Petitioner for the purpose of discharging, in relation to cases in which a criminal bankruptcy order is made, the functions assigned to him by or under this Act; and the Director of Public Prosecutions shall, by virtue of his office, continue to be the Official Petitioner.
- (2) The functions of the Official Petitioner shall include the following functions, namely—
  - (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 petition under section 119 (1)(d) above;
  - (b) to present such a petition in any 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 in pursuance of such a petition ; and
  - (d) to exercise, so far as he considers it in the public interest to do so, any of the powers conferred on him by or under this Act.
- (3) Any functions of the Official Petitioner may be discharged on his behalf by any person acting with his authority.
- (4) Neither the Official Petitioner nor any person acting with his authority shall be liable to any action or proceeding in respect of anything done or omitted to be done in the discharge, or purported discharge, of the functions of the Official Petitioner.
- (5) In this section " criminal bankruptcy order " means an order under section 39(1) of the Powers of Criminal Courts Act 1973.

### *Powers to make subordinate legislation*

#### **226 Insolvency rules committee**

- (1) The committee established under section 10 of the Insolvency Act 1976 (advisory committee on bankruptcy and winding-up rules) shall continue to exist for the purpose of being consulted under subsection (2) below, instead of for the purpose of carrying out the functions conferred by that section.
- (2) The Lord Chancellor shall consult the committee before making any rules under section 106 or 207 above.
- (3) Subject to subsection (4) below, the committee shall continue to 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) the registrar of a county court;
  - (e) a practising barrister;
  - (f) a practising solicitor ; and
  - (g) a practising accountant;and the appointment of any person as a member of the committee shall be made by the Lord Chancellor.
- (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.

#### **227 Insolvent partnerships**

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State, provide that such provisions of this Act and Parts XX and XXI of the 1985 Act as may be specified in the order shall apply in relation to insolvent partnerships with such modifications as may be so specified.
- (2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor necessary or expedient.
- (3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### **228 Insolvent estates of deceased persons**

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State, provide that such provisions of this Act as may be specified in the order shall apply to the administration of the insolvent estates of deceased persons with such modifications as may be so specified.
- (2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor necessary or expedient.

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- (3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) For the purposes of this section the estate of a deceased person is insolvent if, when realised, it will be insufficient to meet in full all the debts and other liabilities to which it is subject

## **229 Recognised banks etc.**

- (1) The Secretary of State may, by order made with the concurrence of the Treasury and after consultation with the Bank of England, provide that such provisions of Part II of this Act and Parts XVIII to XXI of the 1985 Act as may be specified in the order shall apply in relation to—
  - (a) recognised banks and licensed institutions within the meaning of the Banking Act 1979 ; and
  - (b) institutions to which sections 16 and 18 of that Act apply as if they were licensed institutions,
 with such modifications as may be so specified.
- (2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.
- (3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### *Other supplemental provisions*

## **230 Offences by bodies corporate**

- (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

## **231 Admissibility of statements of affairs etc.**

In any proceedings (whether or not under this Act), any statement of affairs prepared for the purposes of any provision of this Act and any other statement made in pursuance of a requirement imposed by or under this Act or rules made under this Act may be used in evidence against any person making or concurring in making it.

## **232 Interpretation**

In this Act, except in so far as the context otherwise requires—  
 " the 1985 Act" means the Companies Act 1985 ;

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- " associate " shall be construed in accordance with section 233 below;
- " business " includes a trade or profession;
- " conditional sale agreement" and " hire-purchase agreement " have the same meanings as in the Consumer Credit Act 1974;
- " modifications " includes additions, alterations and omissions and cognate expressions shall be construed accordingly ;
- " property " includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;
- " records " includes computer records and other non-documentary records;
- " standard scale " has the meaning given by section 75 of the Criminal Justice Act 1982 ;
- " statutory maximum " has the meaning given by section 74 of the Criminal Justice Act 1982;
- " subordinate legislation " has the same meaning as in the Interpretation Act 1978;
- " transaction" includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

### **233 Meaning of " associate "**

- (1) For the purposes of this Act any question whether a person is an associate of another person shall be determined, in accordance with the following provisions of this section (any provision that a person is an associate of another person being taken to mean that they are associates of each other).
- (2) A person is an associate of an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.
- (3) A person is an associate of any person with whom he is in partnership, and of the husband or wife or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm.
- (4) A person is an associate of any person whom he employs or by whom he is employed.
- (5) A person in his capacity as trustee of a trust other than—
  - (a) a trust arising under Part III of this Act or the Bankruptcy (Scotland) Act 1985 ; or
  - (b) a pension scheme or an employees' share scheme (within the meaning of the 1985 Act),is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.
- (6) A company is an associate of another company—
  - (a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other; or
  - (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the

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same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

- (7) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.
- (8) For the purposes of this section a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—
- (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child; and
  - (b) an illegitimate child as the legitimate child of his mother and reputed father ;
- and references in this section to a husband or wife include a former husband or wife and a reputed husband or wife.
- (9) For the purposes of this section any director or other officer of a company shall be treated as employed by that company.
- (10) For the purposes of this section a person shall be taken to have control of a company if—
- (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions ; or
  - (b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it;
- and where two or more persons together satisfy either of the above conditions, they shall be taken to have control of the company.
- (11) In this section " company " includes any body corporate (whether incorporated in Great Britain or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company shall have effect with any necessary modifications.

#### **234 Crown application**

For the avoidance of doubt it is hereby declared that this Act binds the Crown so far as it affects or relates to the following matters, namely—

- (a) remedies against, or against the property of, companies or individuals;
- (b) priorities of debts ;
- (c) transactions at an undervalue or preferences ;
- (d) compositions or schemes approved under Chapter II of Part II or Chapter I of Part III; and
- (e) discharge from bankruptcy.

#### **235 Consequential amendments, transitional provisions, savings and repeals**

- (1) The enactments mentioned in Schedule 8 to this Act shall have effect with the amendments there specified (being amendments consequential on the provisions of this Act).



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- (2) The transitional provisions and savings contained in Schedule 9 to this Act shall have effect, but those provisions and savings are without prejudice to sections 16 and 17 of the Interpretation Act 1978 (effect of repeals).
- (3) The enactments mentioned in Schedule 10 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The Lord Chancellor may by order make such consequential modifications of any provision contained in any subordinate legislation made before the coming into force of Part III of this Act and such transitional provisions in connection with those modifications as appear to him necessary or expedient in respect of—
  - (a) any reference in that subordinate legislation to the Bankruptcy Act 1914;
  - (b) any reference in that subordinate legislation to any enactment repealed by Part III or IV of Schedule 10 to this Act; or
  - (c) any reference in that subordinate legislation to any matter provided for under the said Act of 1914 or under any enactment so repealed.
- (5) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### **236 Short title, commencement and extent**

- (1) This Act may be cited as the Insolvency Act 1985.
- (2) This Act shall come into force on such day as the Secretary of State may, by order made by statutory instrument, appoint; and different days may be so appointed for different purposes and for different provisions.
- (3) The following provisions of this Act do not extend to Scotland—
  - (a) section 49;
  - (b) sections 101 and 102;
  - (c) section 105;
  - (d) Part III;
  - (e) section 212;
  - (f) section 215;
  - (g) section 220;
  - (h) section 221(1);
  - (i) sections 222 to 228 ;
  - (j) Schedule 8 so far as it amends enactments that extend to England and Wales only ;
  - (k) Parts III and IV of Schedule 9 ; and
  - (l) Part III of Schedule 10.
- (4) This Act, with the exception of this section and of—
  - (a) section 213 ;
  - (b) section 214;
  - (c) section 217;
  - (d) section 219;
  - (e) paragraph 6 of Schedule 1;

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- (f) so much of section 235 and Schedule 8 as relates to enactments which extend to Northern Ireland ; and
  - (g) so much of section 235 and Part IV of Schedule 10 as relates to the Irish Bankrupt and Insolvent Act 1857, the Bankruptcy Disqualification Act 1871, the Bankruptcy (Ireland) Amendment Act 1872, the Bankruptcy Act 1883, the Bankruptcy Act 1914, the Criminal Law Act 1977, the Civil Jurisdiction and Judgments Act 1982, section 570 of the Companies Act 1985 and the Companies Act (Northern Ireland) 1960,  
does not extend to Northern Ireland.
- (5) Her Majesty may, by Order in Council, direct that such of the provisions of this Act as are specified in the Order shall extend to any of the Channel Islands or any colony with such modifications as may be so specified.