

SCHEDULES

SCHEDULE 11

TRANSITIONAL PROVISIONS AND SAVINGS

PART II

INDIVIDUAL INSOLVENCY

Bankruptcy (general)

- 10 (1) Subject to the following provisions of this Part of this Schedule, so much of this Act as replaces Part III of the Insolvency Act 1985 does not apply in relation to any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before the appointed day.
- (2) In relation to any such case as is mentioned above, the enactments specified in Schedule 8 to that Act, so far as they relate to bankruptcy, and those specified in Parts III and IV of Schedule 10 to that Act, so far as they so relate, have effect without the amendments and repeals specified in those Schedules.
- (3) Where any subordinate legislation made under an enactment referred to in sub-paragraph (2) is in force immediately before the appointed day, that subordinate legislation continues to have effect on and after that day in relation to any such case as is mentioned in sub-paragraph (1).
- 11 (1) In relation to any such case as is mentioned in paragraph 10(1) the references in any enactment or subordinate legislation to a petition, order or other matter which is provided for under the Bankruptcy Act 1914 and corresponds to a petition, order or other matter provided for under provisions of this Act replacing Part III of the Insolvency Act 1985 continue on and after the appointed day to have effect as references to the petition, order or matter provided for by the Act of 1914 ; but otherwise those references have effect on and after that day as references to the petition, order or matter provided for by those provisions of this Act.
- (2) Without prejudice to sub-paragraph (1), in determining for the purposes of section 279 of this Act (period of bankruptcy) or paragraph 13 below whether any person was an undischarged bankrupt at a time before the appointed day, an adjudication in bankruptcy and an annulment of a bankruptcy under the Act of 1914 are to be taken into account in the same way, respectively, as a bankruptcy order under the provisions of this Act replacing Part III of the Insolvency Act 1985 and the annulment under section 282 of this Act of such an order.
- 12 Transactions entered into before the appointed day have effect on and after that day as if references to acts of bankruptcy in the provisions for giving effect to those transactions continued to be references to acts of bankruptcy within the meaning of the Bankruptcy Act 1914, but as if such acts included failure to comply with a statutory demand served under section 268 of this Act.

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Discharge from old bankruptcy

- 13 (1) Where a person—
- (a) was adjudged bankrupt before the appointed day or is adjudged bankrupt on or after that day on a petition presented before that day, and
 - (b) that person was not an undischarged bankrupt at any time in the period of 15 years ending with the adjudication,
- that person is deemed (if not previously discharged) to be discharged from his bankruptcy for the purposes of the Bankruptcy Act 1914 at the end of the discharge period.
- (2) Subject to sub-paragraph (3) below, the discharge period for the purposes of this paragraph is—
- (a) in the case of a person adjudged bankrupt before the appointed day, the period of 3 years beginning with that day, and
 - (b) in the case of a person who is adjudged bankrupt on or after that day on a petition presented before that day, the period of 3 years beginning with the date of the adjudication.
- (3) Where the court exercising jurisdiction in relation to a bankruptcy to which this paragraph applies is satisfied, on the application of the official receiver, that the bankrupt has failed, or is failing, to comply with any of his obligations under the Bankruptcy Act 1914, any rules made under that Act or any such rules as are mentioned in paragraph 19(1) below, the court may order that the discharge 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.

Provisions relating to trustee

- 14 (1) This paragraph applies as regards the trustee in the case of a person adjudged bankrupt before the appointed day, or adjudged bankrupt on or after that day on a petition presented before that day.
- (2) The official receiver may at any time when he is the trustee of the bankrupt's estate apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver; and on any such application the Secretary of State shall either make an appointment or decline to make one.
- (3) Where on the appointed day the trustee of a bankrupt's estate has not made an application under section 93 of the Bankruptcy Act 1914 (release of trustee), then—
- (a) except where the Secretary of State otherwise directs, sections 298(8), 304 and 331(1) to (3) of this Act apply, and section 93 of the Act of 1914 does not apply, in relation to any trustee of the bankrupt's estate who holds office on or at any time after the appointed day and is not the official receiver ;
 - (b) section 331(4) of this Act applies in relation to the carrying out at any time on or after the appointed day by the trustee of the bankrupt's estate of any of his functions; and
 - (c) a trustee in relation to whom section 298(8) of this Act has effect by virtue of this paragraph has his release with effect from the time specified in section 299(3)(d).
- (4) Subsection (5) of section 299 has effect for the purposes of sub-paragraph (3)(c) as it has for the purposes of that section.

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- (5) In the application of subsection (3) of section 331 in relation to a case by virtue of this paragraph, the reference in that subsection to section 330(1) has effect as a reference to section 67 of the Bankruptcy Act 1914.
- (6) The trustee of the bankrupt's estate may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection ; but if he does so employ a solicitor, he shall inform the committee of inspection that he has done so.

Copyright

- 15 Where a person who is adjudged bankrupt on a petition presented on or after the appointed day is liable, by virtue of a transaction entered into before that day, to pay royalties or a share of the profits to any person in respect of any copyright or interest in copyright comprised in the bankrupt's estate, section 60 of the Bankruptcy Act 1914 (imitation on trustee's powers in relation to copyright) applies in relation to the trustee of that estate as it applies in relation to a trustee in bankruptcy under the Act of 1914.

Second bankruptcy

- 16 (1) Sections 334 and 335 of this Act apply with the following modifications where the earlier bankruptcy (within the meaning of section 334) is a bankruptcy in relation to which the Act of 1914 applies instead of the second Group of Parts in this Act, that is to say—
 - (a) references to property vested in the existing trustee under section 307(3) of this Act have effect as references to such property vested in that trustee as was acquired by or devolved on the bankrupt after the commencement (within the meaning of the Act of 1914) of the earlier bankruptcy ; and
 - (b) references to an order under section 310 of this Act have effect as references to an order under section 51 of the Act of 1914.
- (2) Section 39 of the Act of 1914 (second bankruptcy) does not apply where a person who is an undischarged bankrupt under that Act is adjudged bankrupt under this Act.

Setting aside of preferences and other transactions

- 17 (1) A preference given, assignment made or other transaction entered into before the appointed day shall not be set aside under any of sections 339 to 344 of this Act except to the extent that it could have been set aside under the law in force immediately before that day.
- (2) References in sub-paragraph (1) to setting aside a preference, assignment or other transaction include the making of any order which varies or reverses any effect of a preference, assignment or other transaction.

Bankruptcy offences

- 18 (1) Where a bankruptcy order is made under this Act on or after the appointed day, a person is not guilty of an offence under Chapter VI of Part IX in respect of anything done before that day ; but, notwithstanding the repeal by the Insolvency Act 1985 of the Bankruptcy Act 1914, is guilty of an offence under the Act of 1914 in respect of anything done before the appointed day which would have been an offence under

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that Act if the making of the bankruptcy order had been the making of a receiving order under that Act.

- (2) Subsection (5) of section 350 of this Act applies (instead of sections 157(2), 158(2), 161 and 165 of the Act of 1914) in relation to proceedings for an offence under that Act which are instituted (whether by virtue of sub-paragraph (1) or otherwise) after the appointed day.

Power to make rules

- 19 (1) The preceding provisions of this Part of this Schedule are without prejudice to the power conferred by this Act under which rules under section 412 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a bankruptcy notwithstanding that it arose from a petition presented before either the coming into force of the rules or the appointed day.
- (2) Rules under section 412 may provide for such notices served before the appointed day as may be prescribed to be treated for the purposes of this Act as statutory demands served under section 268.