

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Insolvency

Individuals

Sections 256 and 269 & Schedules 19 and 23: Duration of bankruptcy & Minor and consequential amendments

734. Currently, bankrupts are discharged from bankruptcy three years after the making of the bankruptcy order, although there are exceptions to this rule; for example: in cases where the court has made an order for summary administration; where the bankrupt does not comply with his or her obligations and the court suspends automatic discharge; and where the debtor has been an undischarged bankrupt within the previous fifteen years or remains subject to an existing criminal bankruptcy order. However, in general, the duration of the bankruptcy is the same for bankrupts regardless of culpability or the level of their assets or liabilities.
735. **Section 256** replaces the existing section 279 Insolvency Act 1986 on duration of bankruptcy. It provides for bankrupts to be automatically discharged one year after the bankruptcy order was made, but the period may be reduced if the Official Receiver files a notice stating that further investigation into the bankrupt's conduct and affairs is unnecessary, or has been concluded. The ability to suspend discharge where the bankrupt fails to comply with an obligation remains (see new subsections (3) and (4)). At present, where a bankruptcy order is made upon a debtor's own petition and, at that time, the debt is less than the small bankruptcies level (currently £20,000), and in the preceding five years the debtor has not been made bankrupt or entered into an individual voluntary arrangement, the court may issue a certificate of summary administration. One of the effects of this certificate is to reduce the discharge period from three to two years.
736. In order to reduce the discharge period to one year, it will be necessary to make amendments to current bankruptcy legislation, for example repealing those provisions in the Insolvency Act 1986 dealing with summary administration. These amendments are made in Schedule 23 to the Act, which is given effect by section 269.
737. As the discharge period is being altered, transitional provision needs to be made to deal with individuals who have already been made bankrupt on commencement but have not yet been discharged. This is done in Schedule 19. In this case, neither the existing nor the new section 279 Insolvency Act 1986 will apply. Instead, Schedule 19 provides that the date of discharge will be one year from the date of commencement of section 256 or earlier if the three-year discharge period is due to end before that date.
738. The position is different for those individuals who have been undischarged bankrupts more than once in the previous fifteen years and who are still undischarged at the time section 256 commences. In this case, the bankrupt is discharged five years from the date of commencement or earlier if an order under section 280(2) Insolvency Act

*These notes refer to the Enterprise Act 2002 (c.40)
which received Royal Assent on 7 November 2002*

1986 is made or comes into effect. Section 280(2) allows the court to refuse discharge, conditionally discharge or absolutely discharge a bankrupt on his or her application. An application can be made any time after five years from the date of bankruptcy so that, for example, a person made bankrupt for the second time one year before the date of commencement of section 256 would be eligible to apply for discharge under section 280 four years after. If the court grants discharge on such an application, it will have effect from that date. If he or she makes no such application, or an application is refused, discharge will occur automatically five years after commencement.

739. Those persons made bankrupt under section 264(1)(d) (criminal bankruptcy) can only be discharged by order of the court under section 280 Insolvency Act 1986.